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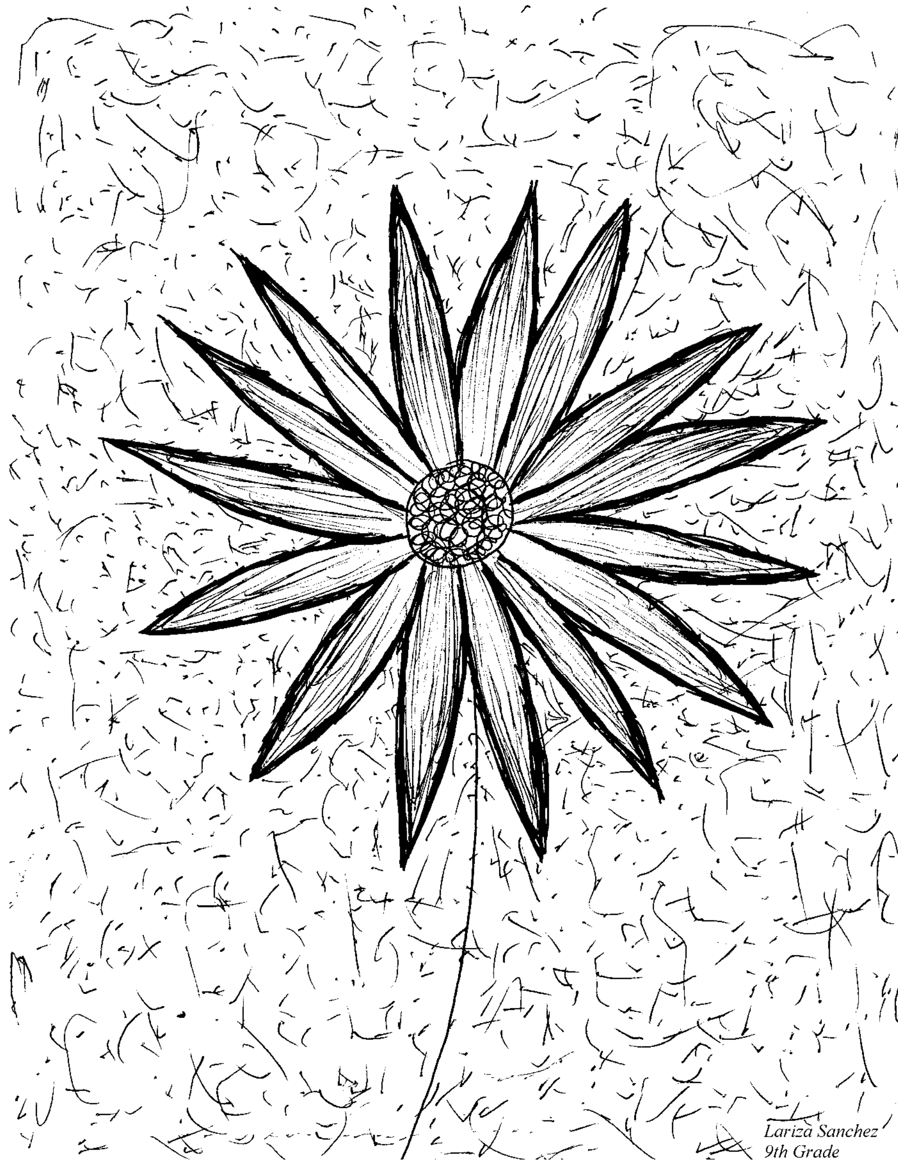

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but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

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P.O. Box 13824
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(512) 463-5561
FAX (512) 463-5569

http://www.sos.state.tx.us
register@sos.state.tx.us

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Dan Procter

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THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Request for Opinions

RQ-0796-GA

Requestor:

Major General Jose S. Mayorga

Adjutant General of Texas

Adjutant General's Department

Post Office Box 5218

Camp Mabry

Austin, Texas 78763-5218

Re: Whether the Adjutant General and Assistant Adjutant Generals can accrue compensatory leave (RQ-0796-GA)

Briefs requested by June 19, 2009

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

TRD-200901976
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: May 20, 2009

TEXAS ETHICS COMMISSION

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

Advisory Opinion Request

AOR-547. The Texas Ethics Commission has been asked to consider whether an elected officeholder may accept transportation, meals, and lodging from a corporation or labor organization in return for addressing an audience or participating in a seminar when the reason they are asked to participate is their public position or duties and the service is more than perfunctory.

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

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

TRD-200901967
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Filed: May 20, 2009

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 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 17. MARKETING AND PROMOTION

SUBCHAPTER G. GO TEXAN PARTNER PROGRAM RULES

4 TAC §17.308

The Texas Department of Agriculture (the department) proposes an amendment to Chapter 17, Subchapter G, §17.308, concerning the use of Go Texan Partner Program (GOTEPP) funds. The amendment is proposed to add a subsection to prohibit a person from receiving GOTEPP grant funds, either as an applicant or a vendor, during a period of time that the person is acting as an agent for an applicant for GOTEPP grant funds.

Gene Richards, Assistant Commissioner for Marketing and Promotions, has determined that, for the first five-year period the proposed amendment is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section, as amended.

Mr. Richards has also determined that for the first five years that the proposed amendment is in effect, the public benefit of the proposed amendment will add transparency to the process of expending grant funds. There will be no effect on microbusinesses, small businesses or persons required to comply with the amended section, as proposed, therefore, no regulatory flexibility analysis is required.

Written comments on the proposal may be submitted to Gene Richards, Assistant Commissioner for Marketing and Promotions, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Written comments must be received no later than 30 days from the date of publication of the proposed amendment in the *Texas Register.*

The amendment of §17.308 is proposed under Agriculture Code (the Code), §46.012, which provides the department with the authority to adopt rules to administer Chapter 46 of the Code, relating to the Go Texan Partner Program; and §46.005, which authorizes the department to establish standards for the use of grants and matching funds.

Texas Agriculture Code, Chapter 46, is affected by the proposal.

§17.308. Use of Funds.

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

(h) A person may not receive GO TEXAN program funds as a vendor or applicant during any grant award period or agreement term during which the person is also acting as an agent for an applicant.

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

Filed with the Office of the Secretary of State on May 15, 2009.

TRD-200901925
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: June 28, 2009
For further information, please call: (512) 463-4075

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

19 TAC §97.1001

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §97.1001 is not included in the print version of the Texas Register. The figure is available in the on-line version of the May 29, 2009, issue of the Texas Register.)

The Texas Education Agency (TEA) proposes an amendment to §97.1001, concerning accountability. The section describes the state accountability rating system and annually adopts the most current accountability manual. The proposed amendment would adopt applicable excerpts of the *2009 Accountability Manual.* Earlier versions of the manual will remain in effect with respect to the school years for which they were developed.

Legal counsel with the TEA has recommended that the procedures for issuing accountability ratings for public school districts and campuses be adopted as part of the *Texas Administrative Code.* This decision was made in 2000 given a court decision challenging state agency decision making via administrative letter/publications. Given the statewide application of the accountability rating process and the existence of sufficient statutory authority for the commissioner of education to formally adopt rules

in this area, portions of each annual accountability manual have been adopted since 2000. The accountability system evolves from year to year so the criteria and standards for rating and acknowledging schools in the most current year differ to some degree over those applied in the prior year. The intention is to annually update 19 TAC §97.1001 to refer to the most recently published accountability manual.

The proposed amendment to 19 TAC §97.1001 would adopt excerpts of the *2009 Accountability Manual* into rule as a figure. The excerpts, *Chapters 2-6, 8, 10-13, 15-17,* and *Appendix K* of the *2009 Accountability Manual,* specify the indicators, standards, and procedures used by the commissioner of education to determine accountability ratings, both standard and alternative education accountability (AEA) procedures, for districts, campuses, and charter schools. These chapters also specify indicators, standards, and procedures used to determine Gold Performance Acknowledgment (GPA) on additional indicators for Texas public school districts and campuses. The TEA will issue accountability ratings under the procedures specified in the *2009 Accountability Manual* by August 1, 2009. Ratings may be revised as a result of investigative activities by the commissioner as authorized under TEC, §39.074 and §39.075.

In 2009, campuses and districts will be evaluated using three base indicators: Texas Assessment of Knowledge and Skills (TAKS) results, completion rates, and annual dropout rates. In 2009, the GPA system will award acknowledgment on up to 15 separate indicators to districts and campuses rated *Academically Acceptable, AEA Academically Acceptable,* or higher: Attendance Rate for Grades 1-12; Advanced Course/Dual Enrollment Completion; Advanced Placement/International Baccalaureate Results; College Admissions Test Results; Commended Performance on Reading/English Language Arts (ELA), Mathematics, Writing, Science and/or Social Studies; Recommended High School Program/Distinguished Achievement Program Participation; Comparable Improvement on Reading/ELA and Mathematics; Texas Success Initiative - Higher Education Readiness Component on ELA and/or Mathematics; and College-Ready Graduates.

The proposed amendment would also modify subsection (e) to specify that accountability manuals adopted for school years prior to 2009-2010 will remain in effect with respect to those school years.

The proposed amendment would place the specific procedures contained in *Chapters 2-6, 8, 10-13, 15-17,* and *Appendix K* of the *2009 Accountability Manual* for annually rating school districts and campuses in the *Texas Administrative Code.* Applicable procedures would be adopted each year as annual versions of the accountability manual are published. The proposed amendment would have no locally maintained paperwork requirements.

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 no additional costs for state or local government as a result of enforcing or administering the amendment.

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 will be to continue to inform the public of the existence of annual manuals specifying rating procedures for the public schools by including this rule in the *Texas Administrative Code.* There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

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.

The public comment period on the proposal begins May 29, 2009, and ends June 29, 2009. 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* 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* on May 29, 2009.

The amendment is proposed under the Texas Education Code, §§39.051(c)-(d), 39.072(c), 39.0721, 39.073, and 29.081(e), which authorize the commissioner of education to specify the indicators, standards, and procedures used to determine standard accountability ratings and alternative education accountability ratings and to determine acknowledgment on additional indicators.

The amendment implements the Texas Education Code, §§39.051(c)-(d), 39.072(c), 39.0721, 39.073, and 29.081(e).

§97.1001. Accountability Rating System.

(a) The rating standards established by the commissioner of education under Texas Education Code (TEC), §39.051(c) and (d), shall be used to evaluate the performance of districts, campuses, and charter schools. The indicators, standards, and procedures used to determine ratings under both standard and alternative education accountability (AEA) procedures will be annually published in official Texas Education Agency publications. These publications will be widely disseminated and cover the following procedures:

(1) indicators, standards, and procedures used to determine district ratings;

(2) indicators, standards, and procedures used to determine campus ratings;

(3) indicators, standards, and procedures used to determine acknowledgment on Additional Indicators; and

(4) procedures for submitting a rating appeal.

(b) The standard and alternative procedures by which districts, campuses, and charter schools are rated and acknowledged for 2009 [~~2008~~] are based upon specific criteria and calculations, which are described in excerpted sections of the *2009* [~~*2008*~~] *Accountability Manual* provided in this subsection.
Figure: 19 TAC §97.1001(b)
[~~Figure: 19 TAC §97.1001(b)~~]

(c) Ratings may be revised as a result of investigative activities by the commissioner as authorized under TEC, §39.074 and §39.075.

(d) The specific criteria and calculations used in the accountability manual are established annually by the commissioner of education and communicated to all school districts and charter schools.

(e) The specific criteria and calculations used in the annual accountability manual adopted for school years prior to 2009-2010 [~~2008-2009~~] remain in effect for all purposes, including accountability, data standards, and audits, with respect to those school years.

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

Filed with the Office of the Secretary of State on May 18, 2009.

TRD-200901940
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: June 28, 2009
For further information, please call: (512) 475-1497

TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §153.9

The Texas Appraiser Licensing and Certification Board (TALCB or Board) proposes amendments to §153.9, regarding Applications. The proposed amendments would clarify the requirements regarding education evaluations and would adopt by reference 18 new and revised application forms. The changes to the forms primarily reflect formatting changes; however, the forms also expand and clarify the criminal background questions and harmonize, when possible, the instructions and certification sections at the end of the forms. A multi-purpose application form was divided into three separate applications: Application for License, TALCB Form AL-0; Application for Certification--Certified Residential Appraiser, TALCB Form CRA-0; and Application for Certification--Certified General Appraiser, TALCB Form CGA-0. The Request for Inactive Status (For Expired Certification of License Within One Year of Expiration Date), TALCB Form RISE-0, was also created for expired licensees and certificate holders, based on the inactive status form for currently licensed or certified appraisers. The form previously called "Supplement to Application for Appraiser Certification or Licensing by Reciprocity" was renamed "Application for Certification or License by Reciprocity" to reflect that it is a stand-alone form. Separate ACE extension request forms for provisional licensees and for other license types were combined into a single form.

Devon V. Bijansky, Counsel for the Board, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the amendments. There is no anticipated impact on local or state employment as a result of implementing the amendments. There is no anticipated impact on small businesses or micro-businesses as a result of implementing the amendments. There is no anticipated economic cost to persons who are required to comply with the amendments.

Ms. Bijansky has also determined that the anticipated public benefit as a result of these amendments is greater clarity and consistency in TALCB's application and licensing processes.

Comments on the proposed amendments may be submitted to Devon V. Bijansky, Counsel for the Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under the Texas Occupations Code, §1103.151, Rules Relating to Certificates and Licenses.

The statute affected by this proposal is Texas Occupations Code, Chapter 1103. No other statute, code, or article is affected by the proposed amendments.

§153.9. Applications.

(a) A person desiring to be certified or licensed as an appraiser, [~~or~~] approved as an appraiser trainee, or registered as a temporary non-resident appraiser shall file an application using forms prescribed by the Board. The Board may decline to accept for filing an application that [~~which~~] is materially incomplete or that [~~which~~] is not accompanied by the appropriate fee. [~~Prior to submission of any application, an applicant shall submit the applicant's education for evaluation and approval along with the requisite education evaluation fee and must obtain a written response from the Board showing the applicant meets current education requirements for the applicable license or certification. Any such approval shall then remain valid for one year from the date of issuance.~~] Except as provided by the Act, the Board may not grant a certification, license or approval of trainee status to an applicant unless the applicant:

(1) pays the required fees [~~requested by the board~~];

(2) satisfies any experience and education requirements established by the Act or by these sections;

(3) successfully completes any qualifying examination prescribed by the Board [~~board~~];

(4) provides all supporting documentation or information requested by the Board [~~board~~] in connection with the application;

(5) satisfies all unresolved enforcement matters and requirements with the Board [~~board~~]; and

(6) meets any additional or superseding requirements established by the Appraisal Qualifications Board.

(b) Prior to submitting an application, an applicant must submit a completed education evaluation request form along with the appropriate fee. If the Board determines that the applicant has met current education requirements for the applicable license or certification, it shall notify the applicant that his or her education has been approved. Any such approval shall then remain valid for one year from the date the Board received the education evaluation request. If the Board determines that the applicant has not completed all required education, the applicant has until one year from the date the Board received the request to meet all education requirements and submit an application for licensure or the education evaluation request will expire. If the education requirements change while the education evaluation request is pending, any evaluation issued by the Board after the new requirements take effect will be based on then-current requirements. If the education requirements change after the Board has notified the applicant that his or her education satisfies the Board's requirements but before the applicant submits an application, the applicant must meet any additional education requirements before the application will be processed.

(c) [~~(b)~~] The Texas Appraiser Licensing and Certification Board adopts by reference the following forms [~~approved by the Board and~~] published by and available from the Board, P.O. Box 12188, Austin, Texas 78711-2188, www.talcb.state.tx.us:

(1) Application for Appraiser License, TALCB Form AL-0;

(2) Application for Certification--Certified Residential Appraiser, TALCB Form CRA-0;

(3) Application for Certification--Certified General Appraiser, TALCB Form CGA-0;

(4) Application for Certification or License by Reciprocity, TALCB Form CLR-0;

(5) Application for Approval as an Appraiser Trainee, TALCB Form AAT-0;

(6) Application for Provisional Appraiser License, TALCB Form PAL-0;

(7) Affidavit Declining Sponsorship, TALCB Form ADS-0;

(8) Application for Temporary Non-Resident Appraiser Registration, TALCB Form TNAR-0;

(9) Request for Extension of Temporary Non-Resident Appraiser Registration, TALCB Form NRE-0;

(10) Request for Inactive Status (For Currently Certified or Licensed Appraisers), TALCB Form RIS-0;

(11) Request for Inactive Status (For Expired Certification of License Within One Year of Expiration Date), TALCB Form RISE-0;

(12) Request for Active Status, TALCB Form RAS-0;

(13) ACE Extension Request, TALCB Form AER-0;

(14) Change of Address, TALCB Form COA-0;

(15) Addition or Termination of Appraiser Trainee Sponsorship, TALCB Form ATS-0;

(16) Appraiser Experience Affidavit, TALCB Form AEA-0;

(17) Appraisal Experience Explanation, TALCB Form AEE-0;

[(1) Application for Appraiser Certification or Licensing, TALCB Form ACL 1-1 (10/07);]

[(2) Application for Provisional Appraiser License, TALCB Form APL 2-1 (10/07);]

[(3) Affidavit Declining Sponsorship, TALCB Form ADS 2A-0 (804);]

[(4) Application for Approval as an Appraiser Trainee, TALCB Form AAT 3-1 (10/07);]

[(5) Supplement to Application for Appraiser Certification or Licensing by Reciprocity, TALCB Form ACR 4-1 (10/07);]

[(6) Temporary Non-Resident Appraiser Registration, TALCB Form TRN 5-1 (10/07);]

[(7) Extension of Non-Resident Temporary Practice Registration, TALCB Form NRE 5E-1 (10/07);]

[(8) Appraiser Experience Affidavit, TALCB Form AEA 6-0 (804);]

(18) [(9)] Appraiser Experience Log, TALCB Form AEL 7-1 (10/08); and

[(10) Addition or Termination of Appraiser Trainee Sponsorship, TALCB Form TAT 8-0 (804);]

[(11) Change of Office Address, TALCB Form COA 9-0 (804);]

(19) [(12)] Request for Course Approval and Renewal, TALCB Form CAR 10.0 (804).[;]

[(13) Extension Request Form (For Residential/General Certified and State Licensed Appraisers) TALCB Form ExtReq 11-1 (10/07);]

[(14) Extension Request Form for Provisional Licensee TALCB ExtReq-Provisional 12-1 (10/07);]

[(15) Request for Inactive Status Form (For Currently Certified or State Licensed Appraisers;]

[(16) Request for Active Status Form; and]

[(17) Appraisal Experience Explanation, TALCB Form AEE 6A-0 (804).]

(d) [(c)] An application may be considered void and subject to no further evaluation or processing if an applicant fails to provide information or documentation within 60 days after the Board makes written request for the information or documentation.

(e) [(d)] A certification, license, or appraiser trainee approval is valid for the term for which it is issued by the Board unless suspended or revoked for cause and unless revoked, may be renewed in accordance with the requirements of §153.17 of this title (relating to Renewal of Certification, License or Trainee Approval).

(f) [(e)] The Board may deny certification, licensing, approval as an appraiser trainee, or registration for non-resident temporary practice to an applicant who fails to satisfy the Board [board] as to the applicant's honesty, trustworthiness, and integrity.

(g) [(f)] The Board may deny certification, licensure, approval as an appraiser trainee, or registration for non-resident temporary practice to an applicant who submits incomplete, false, or misleading information on the application or supporting documentation.

(h) [(g)] An application shall be considered void and subject to no further evaluation or processing if the applicant fails to provide acceptable documentation that all requirements for licensure, certification, or approval as an appraiser trainee have been met within one year of the date the application was received by the Board.

(i) [(h)] When an application is denied by the Board, no subsequent application will be accepted within one year of the application denial.

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 May 15, 2009.

TRD-200901921
Devon V. Bijansky
Counsel
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: June 28, 2009
For further information, please call: (512) 465-3900

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 31. NUTRITION SERVICES

SUBCHAPTER C. SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC)

25 TAC §31.25, §31.37

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §31.25 and §31.37, concerning the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).

BACKGROUND AND PURPOSE

Under federal and state enabling legislation, the WIC Program is funded entirely by a combination of federal grant funds and by rebates from manufacturers of infant formula and infant cereal that can only be expended to defray WIC food costs. The United States Department of Agriculture (USDA) awards federal grant funds to the department to administer the program, provided the department does so in accordance with federal law and regulations and in accordance with the department's annual submission of a state plan approved by USDA. USDA deems the following types of changes to be substantive amendments to the state plan that require federal approval: rule or policy changes initiated by legislation, USDA, or the state agency; changes affecting client or vendor services and benefits; changes in the monitoring/oversight of vendors and local agencies; any other operational changes aimed at improving or enhancing program delivery or accountability; and changes in related state procedures.

Revisions to these rules are proposed primarily to comply with new federal regulations governing the WIC program in 7 Code of Federal Regulations (CFR) Part 246.

SECTION-BY-SECTION SUMMARY

The amendment to §31.25, concerning certification time periods for WIC eligibility, is authorized by federal regulations governing the WIC Program at 7 CFR §246.7(g), which give state WIC programs the option to set the certification of eligibility time period for breastfeeding women at intervals of approximately six months or a period of up to one year (to the last day of the month in which her infant turns one year old or she ceases breastfeeding, whichever occurs first). The department proposes to amend the certification time from a six-month period to up to one year to eliminate the necessity for a second in-person certification interview that is no longer required by federal regulations for many breastfeeding clients.

The amendment to §31.37, concerning the selection of allowable foods for the WIC program, will align the department with new federal WIC regulations at 7 CFR §246.10, that add new foods to the foods currently issued to WIC recipients. The current list of foods must be updated to add the new foods. Detailed descriptions concerning individual food types, such as whether or not milk must be low fat, are being eliminated as unnecessary. In addition, the process for informing food manufacturers about food changes is being amended to eliminate information that could become out of date. The proposed language continues to mandate notification to food manufacturers without specifying the process, thus making it subject to department and state policies, rules, and laws affecting such business transactions.

FISCAL NOTE

Mike Montgomery, Director, Nutrition Services Section, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the sections as proposed. All activities required by §31.25 and §31.37 will be performed by existing department staff and with existing funding.

SMALL AND MICRO-BUSINESS ECONOMIC IMPACT ANALYSIS

Mr. Montgomery has also determined that there will be no adverse economic impact on small businesses or micro-businesses. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices as a result of the changes. The change to §31.25 applies only to breastfeeding women who are enrolled in WIC and has no implications or effect on businesses. The change to §31.37 is to add new foods to those offered to recipients by the WIC program to comply with federal regulations. No food manufacturers classified as small or micro-businesses are required to provide WIC foods to contracted food vendors for purchase by the WIC Program, and none that do so will be deprived of a business opportunity to provide WIC foods since the amendment only adds new foods to the current selection of allowable foods. An economic impact statement and regulatory flexibility analysis are not required. There are no anticipated economic costs to persons, including WIC applicants and WIC recipients, as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

Mr. Montgomery has determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is improved access to nutrition services by streamlining the certification process for WIC eligibility for breastfeeding women and an assurance that the department is in compliance with federal regulations governing the WIC Program.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Valerie Wolfe, Nutrition Services Section, Mail Code 1933, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347, (512) 341-4533 or by email to Valerie.Wolfe@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

LEGAL CERTIFICATION

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

STATUTORY AUTHORITY

The amendments are authorized under Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

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

§31.25. Participant Certification Periods.

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

(d) A breastfeeding woman shall be certified to receive one set of food instruments each month for up to one year [~~a six-month period~~]. The certification expiration date shall be set to the last day of the month in which her infant turns one year old or she ceases breastfeeding, whichever occurs first [~~for the last day of the sixth month. Any subsequent certification shall expire on the day of the infant's first birthday~~].

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

§31.37. Selection of Allowable WIC Program Supplemental Foods.

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

(d) The state agency shall review the WIC Program list of allowable foods annually to determine the need for adding or deleting food products. If the state agency determines that the list of allowable foods should be changed, the state agency shall notify the appropriate manufacturers of that intent.

~~[(1) If the state agency determines that the list of allowable cereals or juices should be changed, the state agency shall notify both juice and cereal manufacturers of that intent through a request for information (RFI).]~~

~~[(2) Juice and cereal manufacturers may contact the WIC Program at any time during the year to request that their names and addresses be added to the mailing list for an RFI.]~~

~~[(3) Manufacturers of juice and cereal shall certify through their RFI response that their products meet the requirements for nutritional content as specified in federal regulations governing the program.]~~

(e) - (k) (No change.)

(l) Allowable foods may include: milk; cheese; tofu; soy-based beverages; breakfast cereal; juice; beans; peas; lentils; peanut butter; tuna; salmon; mackerel; sardines; fruits; vegetables; whole wheat bread; whole grain bread; brown rice; bulgur; oatmeal; whole grain barley; corn or whole wheat tortillas; infant cereal; infant fruits; infant vegetables; infant meats; infant formula; exempt infant formula; and WIC-eligible medical foods.

~~[(l) Additional criteria for each food type are as follows:]~~

~~[(1) Milk. Milk shall be:]~~

~~[(A) unflavored, fresh, whole, reduced fat, low-fat or fat-free (nonfat or skim) milk including cultured buttermilk fortified with vitamins A and D to meet the federal standards;]~~

~~[(B) whole, low-fat, or fat-free (nonfat) evaporated milk fortified with vitamins A and D to meet the federal standards; and/or]~~

~~[(C) nonfat, dry, powdered milk fortified with vitamins A and D to meet the federal standards.]~~

~~[(2) Cheese. Cheese shall be unflavored and pasteurized.]~~

~~[(3) Cereals.]~~

~~[(A) Cereal shall contain a minimum of 28 milligrams of iron per 100 grams of dry cereal, and not more than 21.2 grams of sucrose and other sugars per 100 grams of dry cereal (6 grams per ounce).]~~

~~[(B) The state agency reserves the right to determine the number and brands of cereals, which shall include at least one hot cereal and at least one corn, wheat, oat, rice, and multi-grain cereal.]~~

~~[(4) Juice.]~~

~~[(A) Juices shall be single-strength fluid fruit or vegetable juices containing a minimum of 30 milligrams of vitamin C per 100 milliliters and/or concentrated fruit or vegetable juices containing a minimum of 30 milligrams of vitamin C per 100 milliliters of reconstituted juice.]~~

~~[(B) Juices shall be 100% juice and shall contain no added sugar, or other natural or artificial sweeteners.]~~

~~[(C) Juices packaged in a variety of containers, even though made by the same manufacturer, shall be evaluated separately.]~~

~~[(5) Eggs. Eggs shall be fresh grade A or grade AA large, medium, or small.]~~

~~[(6) Beans/Peas/Lentils. Beans, peas, and lentils shall be dry with the exception of canned beans/peas/lentils which may be authorized only for the homeless food package.]~~

~~[(7) Peanut Butter. Peanut butter shall contain no other ingredients such as jelly or candy pieces.]~~

~~[(8) Tuna. Tuna shall be packed in water.]~~

~~[(9) Carrots. Carrots shall be bagged, fresh, large carrots without tops and/or canned, sliced carrots.]~~

~~[(10) Infant formula. Infant formulas shall be registered with the United States Food and Drug Administration as complying with the legal definition of infant formula.]~~

~~[(11) Infant cereal. Infant cereal shall contain a minimum of 45 milligrams of iron per 100 grams of dry cereal in dehydrated flake form.]~~

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 May 13, 2009.

TRD-200901910

Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: June 28, 2009
For further information, please call: (512) 458-7111 x6972

CHAPTER 97. COMMUNICABLE DISEASES
SUBCHAPTER A. CONTROL OF COMMUNICABLE DISEASES
25 TAC §97.7

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes an amendment to §97.7, concerning the control of communicable diseases requiring exclusion from schools.

BACKGROUND AND PURPOSE

The Communicable Disease Act requires the department to designate communicable diseases that require exclusion from schools not child-care facilities (Health and Safety Code, §81.042). Child-care facilities are governed by minimum standards, designed to promote the health and safety of children attending licensed facilities, promulgated by the Department of Family and Protective Services (Human Resources Code, §42.042(e)). The Department of Family and Protective Services rule (40 TAC §746.3603) adopts by reference the department's current rule, §97.7 (being amended here) on school exclusion. The references to child-care facilities in §97.7 are being deleted because the department has no authority to exclude children from child-care facilities.

The overall purpose of the rule is to provide school personnel as well as parents with guidance regarding appropriate control measures for the prevention and containment of wound, skin, and soft tissue infections. The amendments are necessary to provide a more comprehensive rule related to the prevention of transmission of skin and soft tissue infections in school settings.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 97.7 has been reviewed and the department has determined that reasons for adopting the section continue to exist because a rule on this subject is needed.

SECTION-BY-SECTION SUMMARY

The amendments to §97.7 create an additional condition for which children may be excluded from schools to prevent the transmission of bacterial infections, especially antibiotic resistant staphylococcal infections. The amendment addresses all wound and skin and soft tissue infections instead of only one specific skin and soft tissue infection concerning impetigo. The caption and text of the rule has also been amended to delete references to exclusion from child-care facilities because the department has no authority to exclude children from child-care facilities. Exclusion from these facilities is addressed in 40 TAC §746.3603, of the Department of Family and Protective Services, which adopts by reference the exclusion list in the department's current rule, §97.7 (being amended here).

FISCAL NOTE

Adolfo Valadez, M.D., MPH, Division Director, Prevention and Preparedness Services, has determined that for each calendar year of the first five years the section is in effect, there will be no fiscal implications to state government because the state does not operate schools. For each calendar year of the first five years the section is in effect, there may be minor fiscal implications to local school districts as a result of enforcing or administering the section as proposed. The rule will have a neutral or net positive effect on local school districts. Public school systems must provide home or hospital bedside instruction when a student is unable to attend school for chronic or temporary illnesses that are anticipated to amount to four weeks or more of confinement. Schools send a teacher to serve the student at home or hospital bedside and receive weighted funding to cover the expenses. They may lose funds from the state when a student cannot attend because of this rule. But because this rule will prevent the spread of disease, overall absenteeism will be reduced along with these attendant costs. It is anticipated that this will be a rare occurrence.

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

Dr. Valadez has also determined that there will be no adverse economic impact on small businesses or micro-businesses required to comply with the section as proposed. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the section. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no anticipated negative impact on local employment. Therefore, an economic impact statement and regulatory flexibility analysis for micro-businesses and small businesses are not required.

PUBLIC BENEFIT

In addition, Dr. Valadez has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing or administering the section is to prevent transmission of infectious diseases, specifically skin and soft tissue infections.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Marilyn Felkner, Infectious Disease Control Unit, Department of State Health Services, MC 1960, P.O. Box 149347, Austin, Texas 78714-9347, (512) 458-7676, or by email to marilyn.felkner@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

LEGAL CERTIFICATION

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

STATUTORY AUTHORITY

The amendment is authorized by Health and Safety Code, §81.004, which gives the commissioner of the department (commissioner) general statewide responsibility for the administration of the Communicable Disease Act and authorizes the adoption of rules necessary for its effective administration and implementation; §81.042(c), which requires rules to establish procedures to determine if a child should be reported and excluded from school; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of the Health and Safety Code, Chapter 1001. The review of the rule implements Government Code, §2001.039.

The amendment affects Health and Safety Code, Chapters 81 and 1001; and Government Code, Chapters 531 and 2001.

§97.7. Diseases Requiring Exclusion from [~~Child-care Facilities and~~] Schools.

(a) The [~~owner or operator of a child-care facility, or the~~] school administrator[~~,~~] shall exclude from attendance any child having or suspected of having a communicable condition. Exclusion shall continue until the readmission criteria for the conditions are met. The conditions and readmission criteria are as follows:

(1) amebiasis--exclude until treatment is initiated;

(2) campylobacteriosis--exclude until after diarrhea and fever subside;

(3) chickenpox--exclude until the lesions become dry;

(4) common cold--exclude until fever subsides;

(5) conjunctivitis, bacterial and/or viral--exclude until written permission and/or permit is issued by a physician or local health authority;

(6) fever--exclude until fever subsides without use of fever suppressing medications;

(7) fifth disease (erythema infectiosum)--exclude until fever subsides;

(8) gastroenteritis--exclude until diarrhea subsides without the use of diarrhea suppressing medications;

(9) giardiasis--exclude until diarrhea subsides;

(10) head lice (pediculosis)--exclude until one medicated shampoo or lotion treatment has been given;

(11) hepatitis A--exclude until one week after onset of illness;

(12) infections (wounds, skin, and soft tissue)--exclude until drainage from wounds or skin and soft tissue infections is contained and maintained in a clean dry bandage; restrict from situations that could result in the infected area becoming exposed, wet, soiled, or otherwise compromised;

[~~(12) impetigo--exclude until treatment has begun;~~]

(13) infectious mononucleosis--exclude until physician decides or fever subsides;

(14) influenza--exclude until fever subsides;

(15) measles (rubeola)--exclude until four days after rash onset or in the case of an outbreak, unimmunized children should also be excluded for at least two weeks after last rash onset occurs;

(16) meningitis, bacterial--exclude until written permission and/or permit is issued by a physician or local health authority;

(17) meningitis, viral--exclude until fever subsides;

(18) mumps--exclude until nine days after the onset of swelling;

(19) pertussis (whooping cough)--exclude until completion of five days of antibiotic therapy;

(20) ringworm--exclude until treatment has begun;

(21) rubella (German measles)--exclude until seven days after rash onset or in the case of an outbreak, unimmunized children should be excluded for at least three weeks after last rash onset occurs;

(22) salmonellosis--exclude until diarrhea and fever subside;

(23) scabies--exclude until treatment has begun;

(24) shigellosis--exclude until diarrhea and fever subside;

(25) streptococcal sore throat and scarlet fever--exclude until 24 hours from time antibiotic treatment was begun and fever subsided; and

(26) tuberculosis, pulmonary--exclude until antibiotic treatment has begun and a physician's certificate or health permit obtained.

(b) The [~~owner or operator of a child-care facility, or the~~] school administrator[~~,~~] shall exclude from attendance any child having or suspected of having a communicable disease designated by the Commissioner of Health (commissioner) as cause for exclusion until one of the criteria listed in subsection (c) of this section is fulfilled.

(c) Any child excluded for reason of communicable disease may be readmitted, as determined by the health authority, by:

(1) submitting a certificate of the attending physician, advanced practice nurse, or physician assistant attesting that the child does not currently have signs or symptoms of a communicable disease or to the disease's non-communicability in a [~~child-care or~~] school setting;

(2) submitting a permit for readmission issued by a local health authority; or

(3) meeting readmission criteria as established by the commissioner.

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 May 13, 2009.

TRD-200901899
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: June 28, 2009
For further information, please call: (512) 458-7111 x6972

TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER G. CIGARETTE TAX

34 TAC §3.101

The Comptroller of Public Accounts proposes an amendment to §3.101, concerning cigarette tax and stamping activities. Subsection (g) and (g)(1) are amended to reflect the change in the interagency cooperation contract between the comptroller and the Texas Alcoholic Beverage Commission (TABC) for the comptroller to sell cigarette tax stamps to the TABC for the purpose of collecting the cigarette tax at ports of entry into the state. The comptroller, in a new interagency cooperation contract with the TABC, authorizes the TABC to generate a cigarette tax stamp using the TABC's Ports of Entry Tax Collection System (POETCS) and to affix the cigarette tax stamp to cigarette packages for which the cigarette tax has been collected.

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

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the proposed amendment would benefit the public by improving the administration of the ports of entry program of the Texas Alcoholic Beverage Commission. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

This amendment is proposed under Tax Code, §111.002 and §111.0022, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The amendment implements Tax Code, §154.021(a) and §154.024(b).

§3.101. Cigarette Tax and Stamping Activities.

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

(g) Generation and affixing [~~Issuance~~] of cigarette tax stamps by [~~to~~] the Texas Alcoholic Beverage Commission (TABC).

(1) The comptroller, by interagency cooperation contract, may authorize [~~shall sell cigarette tax stamps to~~] the Texas Alcoholic Beverage Commission to generate a cigarette tax stamp using the TABC's Port of Entry Tax Collection System (POETCS) and to affix the cigarette tax stamp to cigarette packages for the purpose of collecting the cigarette tax at ports of entry into the state.

(2) Payment for the cigarette tax stamps sold will be made by that agency according to the terms and conditions stipulated in the interagency cooperation contract between the comptroller and the Texas Alcoholic Beverage Commission.

(h) - (j) (No change.)

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

Filed with the Office of the Secretary of State on May 15, 2009.

TRD-200901922
Martin Cherry
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: June 28, 2009
For further information, please call: (512) 475-0387

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 421. STANDARDS FOR CERTIFICATION

37 TAC §421.5, §421.17

The Texas Commission on Fire Protection (Commission) proposes amendments to Chapter 421, Standards for Certification, §421.5, Definitions. The purpose of the proposed amendments to §421.5 is to acknowledge and accept the State Firemen and Fire Marshals' Association Level II Instructor certification by individuals received on or after June 1, 2008, or Instructor I certification received on or after June 1, 2008. The Commission will credit the time the individual has held the new certification if issued after the effective date. Concerning §421.17, Requirement to Maintain Certification, an individual whose certificate has been expired for one year or longer may not renew the certificate that was previously held. To obtain a new certification, an individual must meet the requirements in §439.1 of this title (relating to Requirements--General).

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period these proposed amendments are in effect there will be no fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each year of the first five years these proposed amendments are in effect, there will be a better understanding by the public of certificates issued by the State Firemen and Fire Marshals' Association that are recognized by the Commission.

Comments regarding these proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286,

Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments will be reviewed and discussed at a future Commission meeting.

These amendments are proposed under Texas Government Code, Chapter 419, Subchapter B, Regulation and Assisting Fire Fighters and Fire Departments.

Cross reference to statute: Texas Government Code, §419.021, Definitions.

§421.5. Definitions.

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

(1) - (42) (No change.)

(43) Years of experience--For purposes of higher levels of certification or fire service instructor certification:

(A) Except as provided in subparagraph (B) of this paragraph, years of experience is defined as full years of full-time, part-time or volunteer fire service while holding:

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

(iv) for fire service instructor eligibility only, a State Firemen's and Fire Marshals' Association Level II Instructor Certification received prior to June 1, 2008 or Instructor I received on or after June 1, 2008 or an equivalent instructor certification from the Texas Department of State Health Services (DSHS) or the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE). Documentation of at least three years of experience as a volunteer in the fire service shall be in the form of a non self-serving sworn affidavit.

(B) (No change.)

§421.17. Requirement to Maintain Certification.

(a) All full-time or part-time employees of a fire department or local government who are assigned duties identified as fire protection personnel duties must maintain certification by the Commission [~~commission~~] in the discipline(s) to which they are assigned for the duration of their assignment.

(b) In order to maintain the certification required by this section, the certificate(s) of the employees must be renewed annually by complying with §437.5 of this title (relating to Renewal Fees) [~~, Renewal Fees,~~] and Chapter 441 of this title (relating to Continuing Education)[~~, Continuing Education,~~] of the Commission's [~~commission's~~] standards manual.

(c) An individual whose certificate has been expired for one year or longer may not renew the certificate that was previously held. To obtain a new certification, an individual must meet the requirements in Chapter 439 of this title (relating to Examinations for Certification).

(d) [~~(c)~~] The Commission [~~commission~~] will provide proof of current certification to individuals whose certification has been renewed.

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 May 12, 2009.

TRD-200901885

Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: June 28, 2009
For further information, please call: (512) 936-3838

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CHAPTER 427. TRAINING FACILITY CERTIFICATION

SUBCHAPTER B. DISTANCE TRAINING PROVIDER

37 TAC §427.201

The Texas Commission on Fire Protection (Commission) proposes amendments to Chapter 427, Training Facility Certification, Subchapter B, Distance Training Provider, §427.201, Minimum Standards for Distance Training Provider. The purpose of these proposed amendments is to remove redundant language.

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period these proposed amendments are in effect there will be no fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each year of the first five years these proposed amendments are in effect, the public benefit anticipated as a result of enforcing these amendments is to provide a better understanding of the Commission's intent by removing repetitive language from different sections. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with these proposed amendments.

Comments regarding these proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments will be reviewed and discussed at a future Commission meeting.

These amendments are proposed under Texas Government Code, Chapter 419, Subchapter B, Regulating and Assisting Fire Fighters and Fire Departments.

Cross reference to statute: Texas Government Code, §419.028, Training Programs and Instructors.

§427.201. Minimum Standards for Distance Training Provider.

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

(c) In order to become a Commission-approved [~~commission approved~~] distance training provider; the provider must submit a completed Commission [~~commission~~] training facility application with supporting documentation and fees [~~fee~~]. Such application will include descriptions and addresses of where the distance training provider will have their course delivery and materials. A distance training provider must provide documentation of its ability to meet all minimum requirements for each discipline for which it seeks certification. The documentation must also identify how students and instructors will access resources as identified in the curriculum.

[~~(d) All training for certification must be submitted to the commission for approval at least 20 days prior to the proposed starting date of the training. Approved courses are subject to audit by commission staff any time during the approved schedule. Any deviation in the ap-~~

~~proved course schedule or content must be reported to the commission within three business days of the deviation. The academy coordinator will:~~]

[~~(1) attest to the fact that the training meets the competencies in the applicable Commission Curriculum and/or NFPA Standards;~~]

[~~(2) submit a testing schedule for all academy periodic, final, or skills examinations as required in §427.305 of this title; and~~]

[~~(3) notify the Commission of any changes in instructor staff and/or field examiners.~~]

(d) [~~(e)~~] A distance training provider that applies for certification as a training facility in a discipline that includes skills training shall comply with Subchapter A of this chapter concerning minimum standards, facilities, apparatus, protective clothing, equipment, and live fire training utilized to teach and test the required skills.

(e) [~~(f)~~] A distance training provider certified for the first time by the Commission [~~commission~~] will receive, at no charge, one Commission Certification Curriculum and Standards Manual on CD to be utilized by the certified distance training provider's instructors. The distance training provider is responsible for ensuring that all subjects are taught as required by the curricula. Additional CD copies may be purchased from the Commission [~~commission~~] or downloaded from the agency web site. Distance training providers that renew their certification will receive appropriate updates at no charge.

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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Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3838

SUBCHAPTER C. TRAINING PROGRAMS FOR ON-SITE AND DISTANCE TRAINING PROVIDERS

37 TAC §427.303, §427.305

The Texas Commission on Fire Protection (Commission) proposes amendments to Chapter 427, Training Facility Certification, Subchapter C, Training Programs for On-Site and Distance Training Providers, §427.303, Training Approval Process for On-Site and Distance Training Providers; and §427.305, Procedures for Testing Conducted by On-Site and Distance Training Providers. The purpose of these proposed amendments is to specify what deviations from the original course approval must be submitted to the Commission. Some changes to the present language were made for better clarification and to also establish that performance skills testing will not be conducted until after all required training is complete. This will facilitate the Commission's ability to audit the skills testing portion of the test.

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period these proposed amendments are in effect there will be no fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each year of the first five years these proposed amendments are in effect, the public benefit anticipated as a result of enforcing these amendments will be a better understanding of the Commission's intent to audit the performance skills testing being conducted at the training academies and that the skills will not be evaluated until all required training is complete. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with these proposed amendments.

Comments regarding these proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments will be reviewed and discussed at a future Commission meeting.

These amendments are proposed under Texas Government Code, Chapter 419, Subchapter B, Regulating and Assisting Fire Fighters and Fire Departments.

Cross reference to statute: Texas Government Code, §419.028, Training Programs and Instructors.

§427.303. Training Approval Process for On-Site and Distance Training Providers.

(a) (No change.)

(b) All training for certification must be approved by the Commission [~~commission~~]. A training provider must submit to the Commission [~~commission~~] a completed Training Prior Approval Form, a schedule of periodic, final, and skills tests, and a class schedule at least 20 days prior to the proposed starting date of the training.

(c) The provider of training will receive from the Commission [~~commission~~] the following documents.

(1) A Notice of Course Approval. This document will serve as notification that the course has been approved by the Commission [~~commission~~] and will contain the approval number assigned by the Commission [~~commission~~] and the course I.D. number.

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

(d) Approved courses are subject to audit by Commission [~~commission~~] staff at any time during the approved schedule. Any deviation in the approved course schedule, content, field examiners, or the substitution of one instructor for another (this does not apply to [~~the addition of~~] an instructor [~~to the roster of instructors~~] already approved for the course [~~by the commission~~]) must be reported to the Commission [~~commission~~] within three business days of the deviation.

§427.305. Procedures for Testing Conducted by On-Site and Distance Training Providers.

(a) The requirements and provisions in this section apply to procedures for periodic, final, and skills testing conducted by training providers during and at the end of a training program. For procedures regarding state examinations for certification (Commission [~~commission~~] examinations that occur after a training program is completed), see Chapter 439 of this title.

(b) Periodic and comprehensive final tests shall be given by the training provider in addition to the Commission [~~commission~~] examination required in Chapter 439 of this title.

(c) (No change.)

(d) If performance skill evaluations are part of the applicable curriculum, performance testing [~~shall be done and~~] records shall be kept in accordance with §427.301 of this title. This will ensure that each trainee has demonstrated an ability to competently and carefully perform all tasks and operations associated with the training, both individually and as a member of a team.

(e) During the course of instruction, the provider of training shall test for competency all performance skills listed in the applicable curriculum. This applies only for curricula in which performance standards have been developed. Skill evaluations may take place at any time during the academy but must take place after all training on the identified subject area has been completed. The number of opportunities to successfully complete particular performance skill objectives evaluated during an academy is at the discretion of the designated training officer. Retests must be conducted prior to the administration of the Commission designated performance evaluations. All skills must be demonstrated in the presence of a Commission-approved field examiner. [~~Performance testing should be used to the maximum extent practical. The performance skills contained in the applicable curriculum shall be used to satisfy performance skills requirements. Each trainee shall be prepared to demonstrate any performance skill in the presence of a commission representative as required in Chapter 439 of this title.~~]

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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CHAPTER 433. MINIMUM STANDARDS FOR DRIVER/OPERATOR-PUMPER

37 TAC §433.5

The Texas Commission on Fire Protection (Commission) proposes amendments to Chapter 433, Minimum Standards for Driver/Operator-Pumper, §433.5, Examination Requirements. The purpose of this proposed amendment is to remove restrictions requiring individuals to take a written test. This change would allow the Commission the latitude to administer a computer-based test. The change also restructures the last section to define the requirements that individuals must meet before they can take the test.

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period this proposed amendment is in effect there will be no fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing this amendment is that the public will have a better understanding of the requirements to test for the Driver/Operator-Pumper certification and the Commission may administer a computer-based examination.

Comments regarding this proposed amendment may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments will be reviewed and discussed at a future Commission meeting.

This amendment is proposed under Texas Government Code, Chapter 419, Subchapter B, Regulating and Assisting Fire Fighters and Fire Departments.

Cross reference to statute: Texas Government Code, §419.035, Certification Examinations.

§433.5. Examination Requirements.

(a) Examination [~~The written examination~~] requirements of Chapter 439 of this title (relating to Examinations for Certification) must be met in order to receive driver/operator-pumper certification.

(b) Individuals will be permitted to take the Commission examination for driver/operator-pumper by documenting, as a minimum, completion of the NFPA 1001 Fire Fighter I training, and completing a Commission-approved driver/operator-pumper curriculum. [~~Performance skills must meet the requirements in Chapter 439.~~]

[~~(c) No individual will be permitted to take the commission examination for driver/operator-pumper unless the individual documents, as a minimum, completion of the NFPA 1001 Fire Fighter I training.~~]

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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CHAPTER 437. FEES

37 TAC §§437.3, 437.5, 437.13

The Texas Commission on Fire Protection (Commission) proposes amendments to Chapter 437, Fees, §437.3, Certification Fees; §437.5, Renewal Fees; and §437.13, Basic Certification Examination Fees. The purpose of these proposed amendments is to raise the fees charged by the Commission to process applications for testing, certification and renewal of certifications and associated late fees. The fee increase was a condition agreed to by the legislature to supplement the cost associated of adding seven additional employees to the Commission staff in order to meet the demands placed upon it by the fire service.

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period these proposed amendments are in effect, the total impact will be based upon the number of personnel within the jurisdiction that apply for additional certifications during the year and that increase would be $15 per each certification application. The number of paid personnel that the jurisdiction renews annually at the end of the year will be increased $10 per person for their renewal application. Applications to test for additional certifications will cost an additional $20 each.

Mr. Soteriou has also determined that for each year of the first five years these proposed amendments are in effect, the public benefit anticipated as a result of enforcing these amendments is that the additional staff at the Commission will facilitate the inspection and testing needs of the fire fighters and departments. This will insure that the fire fighters are properly trained and equipped to protect the citizens they work for. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with these proposed amendments.

Comments regarding these proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments will be reviewed and discussed at a future Commission meeting.

The amendments are proposed under Texas Government Code, Chapter 419, Subchapter B, Regulating and Assisting Fire Fighters and Fire Departments.

Cross reference to statute: Texas Government Code, §419.026, Fees for Certificates.

§437.3. Certification Fees.

(a) A $35.00 [~~$20~~] non-refundable application fee is required for each certificate issued by the Commission [~~commission~~]. If a certificate is issued within the time provided in §401.125 of this title (relating to Processing Periods), the fee will be applied to the certification. If the certificate is denied, the applicant must pay a new certification application fee to file a new application.

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

(d) Any person who holds a certificate, and is no longer employed by an entity that is regulated by the Commission [~~commission~~] may submit in writing, a request, together with the required fee to receive a one-time [~~one time~~] certificate stating the level of certification in each discipline held by the person on the date that person left employment pursuant to the Texas Government Code, §419.033(b). Multiple certifications may be listed on the one-time certificate. The one-time fee for the one-time certificate shall be the same as the current certification fee provided in subsection (a) of this section.

(e) A facility that provides basic level training for any discipline for which the Commission [~~commission~~] has established a Basic Curriculum must be certified by the Commission [~~commission~~]. The training facility will be charged a separate certification fee for each discipline.

§437.5. Renewal Fees.

(a) A $35.00 [~~$25~~] non-refundable annual renewal fee shall be assessed for each certified individual and certified training facility. If an individual or certified training facility holds more than one certificate, the Commission [~~commission~~] may collect only one $35.00 [~~$25~~] renewal fee, which will renew all certificates held by the individual or certified training facility.

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

(d) If a person reapplies for a certificate(s) which has been expired less than one year and the individual is not employed by a regulated employing entity[~~,~~] as defined in subsection (b) of this section, the individual must pay all applicable renewal fee(s) and any applicable additional fee(s). Upon payment of the required fee(s), the certificate(s) previously held by the individual, for whom [~~which~~] he or she continues to qualify, will be renewed.

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

(g) All certification renewal fees must be returned with the renewal statement to the Commission [~~commission~~].

(h) (No change.)

(i) The certification period shall be a period not to exceed one year. The certification period for employees of regulated employing entities is November 1 to October 31. The certification period of certified training facilities is February 1 to January 31. The certification period of individual [~~Individual~~] certificate holders is May 1 to April 30.

(j) - (k) (No change.)

(l) All certification renewal fees received from one to 30 days after the renewal date posted on the renewal notice will cause the individual or entity responsible for payment to be assessed a non-refundable $17.50 [~~$10~~] late fee in addition to the renewal fee for each individual for which a renewal fee was due.

(m) All certification renewal fees received more than 30 days after the renewal date posted on the renewal notice will cause the individual or entity responsible for payment to be assessed a non-refundable $35.00 [~~$20~~] late fee in addition to the renewal fee for each individual for which a renewal fee was due.

(n) In addition to any non-refundable late fee(s) assessed for certification renewal, the Commission [~~commission~~] may hold an informal conference to determine if any further action(s) is [~~are~~] to be taken.

(o) An individual or entity may petition the Commission [~~commission~~] for a waiver of the late fees required by this section if the person's certificate expired because of the individual or regulated employing entity's good faith clerical error, or expired as a result of termination of the person's employment where the person has been restored to employment through a disciplinary procedure or a court action. All required renewal fees including applicable late fees and all required continuing education must be submitted before the waiver request may be considered.

(1) Applicants claiming good faith clerical error must submit a sworn statement together with any supporting documentation that evidences the applicant's good faith efforts to comply with Commission [~~commission~~] renewal requirements and that failure to comply was due to circumstances beyond the control of the applicant.

(2) (No change.)

(p) An individual, upon returning from activation to military service, whose certification has expired, must notify the Commission [~~commission~~] in writing. The individual will have any normally associated late fees waived and will be required to pay a $35.00 [~~$25~~] renewal fee.

§437.13. Processing Fees for Test Application [~~Basic Certification Examination Fees~~].

(a) A non-refundable application processing fee of $35.00 [~~$15~~] shall be charged for each [~~written or performance skill~~] examination [~~administered by the Commission~~].

(b) Fees [~~Academy testing fees~~] will be paid in advance with the [~~students'~~] application or the provider of training may be invoiced or billed if previous arrangements have been made with the Commission. [~~to test or be billed after the state testing has been completed. The exceptions to this rule are:~~]

[~~(1) individual walk-ins; and~~]

[~~(2) retesting of a failed skill administered the same day.~~]

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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CHAPTER 439. EXAMINATIONS FOR CERTIFICATION

SUBCHAPTER A. EXAMINATIONS FOR ON-SITE DELIVERY TRAINING

37 TAC §§439.1, 439.3, 439.5, 439.7, 439.9, 439.11, 439.19

The Texas Commission on Fire Protection (Commission) proposes amendments to Chapter 439, Examinations for Certification, Subchapter A, Examinations for On-Site Delivery Training. The purpose of the proposed amendments in §439.1, Requirements-General, to remove redundant language and language that is not a requirement to test. Language was incorporated from another section that addresses the requirements to retest for expired certifications; §439.3, Definitions, language was cleaned up to clarify intent and meaning; §439.5, Procedures, procedures for test administration were restructured to facilitate the ability to administer computer-based tests and not limit the Commission to administering written examinations; §439.7, Eligibility, clarifies the necessary steps to determine eligibility; §439.9, Grading, language was removed that limited the Commission to written examinations; §439.11, Academy Administered Performance Skill Evaluations identifies the procedures and time to complete the performance skills relating to the certification examination process; §439.19, Number of Test Questions, the word "written" was removed from that section in order to not to limit the Commission in administering only written tests, but to also enable the Commission to administer computer-based questions. It also identifies the total number of skills evaluated for each certification and the minimum number required for a final evaluation.

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period these proposed amendments are in effect there will be no fiscal impact on state and local governments.

Mr. Soteriou has also determined that for each year of the first five years these proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide a better understanding of the Commission's testing procedures and processes. The public will also know that the Commission can administer computer-based examinations. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with these proposed amendments.

Comments regarding these proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments will be reviewed and discussed at a future Commission meeting.

The amendments are proposed under Texas Government Code, Chapter 419, Subchapter B, Regulating and Assisting Fire Fighters and Fire Departments.

Cross reference to statute: Texas Government Code, §419.035, Certification Examinations.

§439.1. Requirements--General.

(a) The administration of examinations for certification, including performance skill evaluations, shall be conducted in compliance with the Commission [~~commission~~] and International Fire Service Accreditation Congress (IFSAC) regulations. It is incumbent upon Commission [~~commission~~] staff, committee members, training officers and field examiners to maintain the integrity of any state examination (or portion thereof) for which they are responsible.

(b) Exams will be based on curricula as currently adopted in the Commission's [~~commission's~~] Certification Curriculum Manual. [~~The state test can consist of only a written test or it can consist of a test that contains both a written portion and a performance skills portion. If the training program is conducted in the phase format, the examination will be based on the curriculum in effect at the time of the examination.~~]

[~~(c) If performance skills are required as part of a certification examination, the entity applying for the certification examination shall be responsible for providing the required number of approved field examiners. The number of field examiners shall be determined by the commission.~~]

(c) [~~(d)~~] Commission examinations that receive a passing grade shall expire two years from the date of the examination.

(d) [~~(e)~~] The Commission [~~commission~~] shall prescribe the content of any certification examination that tests the knowledge and/or skill of the examinee concerning the discipline addressed by the examination.

(1) An examination based on Chapter 1, "Basic Fire Suppression Curriculum" as identified in the Certification Curriculum Manual may consist of four sections: Fire Fighter I, Fire Fighter II, First Responder Awareness, and First Responder Operations.

(2) An examination based on Chapter 4, "Basic Fire Inspector Curriculum" as identified in the Certification Curriculum Manual may consist of three sections: Inspector I, Inspector II, and Plan Examiner I.

(3) All other state examinations consist of only one section.

(4) The Head of Department examination will be based on NFPA 1021, Chapter 7.

(e) [~~(f)~~] The [~~An~~] individual who fails to pass a Commission [~~commission written~~] examination for state certification will be given one additional opportunity to pass the examination or section thereof. This opportunity must be exercised within 180 days after the date of the first failure. An individual who passes the applicable state certification examination but fails to pass a section thereof for an IFSAC seal(s) will be given one additional opportunity to pass the section thereof. This opportunity must be exercised within two years after the date of the first attempt. An examinee who fails to pass the examination within the required time may not sit for the same examination again until the examinee has re-qualified by repeating the curriculum applicable to that examination.

[(g) An examinee who fails a state performance skill evaluation may be allowed a retest at a time and place to be determined by the lead examiner. If the candidate fails the retest, remedial training conducted by a certified instructor who is approved to teach in that specific subject area is required for a second retest. Remedial training must be of a duration no less than the recommended curriculum instructional hours for the section in which the failed skill(s) is reflected. An examinee being retested on a performance skill must be retested on any skill, randomly selected by the lead examiner, from the same subject area as the performance skill objective that was failed. If the examinee fails the final retest as part of a state performance skill evaluation, the examinee must requalify by repeating the entire curriculum applicable to the examination.]

(f) An individual may obtain a new certificate in a discipline which was previously held by passing a Commission proficiency examination.

(g) If an individual who has never held certification in a discipline defined in §421.5 of this title (relating to Definitions), seeks certification in that discipline, the individual shall complete all certification requirements.

(h) If an individual completes an approved training program that has been evaluated and deemed equivalent to a certification curriculum approved by the Commission, such as an out-of-state or military training program or a training program administered by the State Firemen's and Fire Marshals' Association of Texas, the individual must pass a Commission examination for certification status and meet any other certification requirements in order to become eligible for certification by the Commission as fire protection personnel.

(i) An individual or entity may petition the Commission for a waiver of the examination required by this section if the person's certificate expired because of the individual's or employing entity's good faith clerical error, or expired as a result of termination of the person's employment where the person has been restored to employment through a disciplinary procedure or a court action. All required renewal fees including applicable late fees and all required continuing education must be submitted before the waiver request may be considered.

(1) Applicants claiming good faith clerical error must submit a sworn statement together with any supporting documentation that evidences the applicant's good faith efforts to comply with Commission renewal requirements and that failure to comply was due to circumstances beyond the control of the applicant.

(2) Applicants claiming restoration to employment as a result of a disciplinary or court action must submit a certified copy of the order, ruling or agreement restoring the applicant to employment.

§439.3. Definitions.

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

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

(5) Endorsement of eligibility--A signed statement testifying to the fact that an individual has met all requirements specified by the Commission [commission] and is qualified to take a Commission [commission] examination. An endorsement of eligibility will be issued[, when appropriate,] by a member of the Commission [commission] staff.

(6) Examination--A state test [administered by the commission] which an examinee must pass as one of the requirements for certification.

(7) (No change.)

(8) Field examiner--An individual authorized to evaluate performance skills in Commission-approved [commission-approved] curricula. The field examiner must possess a Fire Instructor Certification, complete the on-line Commission [commission] field examiner course, and sign an agreement to comply with the Commission's [commission's] testing procedures. The field examiner must be approved by the Commission [commission] to instruct all subject areas identified in the curriculum that he or she will be evaluating. [The field examiner will work under the supervision of a lead examiner during a commission-administered examination.] The field examiner must repeat the examiner course every two years and submit a new Letter of Intent.

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

§439.5. Procedures.

(a) Procedures for conducting [written and/or performance] examinations are determined by the Commission [commission].

[(b) As part of the training approval process, the designated training officer, except for a Basic Fire Suppression academy, will choose a test location and date from the list provided by the commission. The designated training officer of a Basic Fire Suppression academy may request during the training approval process to schedule the examination as soon as possible after the completion of the applicable course and at a place agreeable to the commission. The provider of training will receive from the commission an Application for Testing form with the course approval notice which will reflect the tentative date, time, and location of the examination. The provider of training must have each examinee complete the Application for Testing form and return it to the commission office no later than the third day of instruction. The commission, upon receipt of the Application for Testing form, will confirm the time and place for the examination.]

(b) [(c)] All application processing [training providers are responsible for ensuring that all testing] fees due to the Commission must be [commission are] paid in a timely manner. [In addition, all training providers of a Basic Fire Suppression academy that schedule through the commission an examination for less than ten (10) examinees must pay an examination fee equal to the amount that would be charged for ten (10) examinees.]

[(d) If the designated training officer determines that the time and/or place of the examination as set by the commission is not acceptable for good cause, he or she may request the commission to reschedule or relocate the examination providing the request is received at least 20 days prior to the original scheduled time of the examination or the new proposed time, whichever would result in the earliest notification. The commission shall give all such requests due consideration and may reschedule or relocate the examination as necessary.]

(c) [(e)] Each examination must be administered by a lead examiner.

[(f) The lead examiner may administer the examination alone or with the assistance of field examiner(s). The field examiners shall be approved by the commission prior to the administration of the examination.]

(d) [(g)] The lead examiner must:

(1) ensure that the tests remain secure and that the examination is conducted under conditions warranting honest results;

[(2) collect all examination materials from any examinee who is dismissed;]

(2) [(3)] monitor the examination while in progress;

(3) [(4)] control entrance to and exit from the test site;

[(5) permit no one in the room while the written test is in progress except examiners, examinees, and commission staff;]

(4) [(6)] assign or re-assign seating; and

(5) [(7)] bar admission to or dismiss any examinee who fails to comply with any of the applicable provisions of this chapter.

[(h) Examination booklets, answer sheets, scratch paper and grade roster(s) will be delivered to the lead examiner by means specified by the commission. The lead examiner must immediately notify the commission and document any errors detected in the examination materials provided.]

[(i) Immediately following the completion of the written examination, the lead examiner must remit to the commission all examination booklets, answer sheets and scratch paper in the return container provided by the commission.]

(e) [(j)] All official grading and notification must come from the Commission or its designee [commission]. The [commission staff must make available the] preliminary test results shall be made available within seven (7) business days after completion of the examination.

§439.7. Eligibility.

(a) An examination may not be taken by an individual who currently holds an active certificate from the Commission [commission] in the discipline to which the examination pertains, unless required by the Commission [commission] in a disciplinary matter, or test scores have expired and the individual is testing for IFSAC seals.

(b) An individual who passes an examination and is not certified in that discipline, will not be allowed to test again until 30 days before the expiration date of the previous examination unless required by the Commission [commission] in a disciplinary matter.

(c) In order to qualify for a Commission [commission] examination, the examinee must:

(1) meet or exceed the minimum requirements set by the Commission [commission] as a prerequisite for the specified examination;

(2) submit a test application with documentation showing completion of a Commission-approved curriculum and any other prerequisite requirements, along with the appropriate application processing fee(s).

(3) receive from the Commission an "Endorsement of Eligibility" letter and provide this letter to the lead examiner.

[(2) provide the lead examiner with a copy of a Certificate of Completion for the course required for the specific examination sought or an endorsement of eligibility issued by the commission;]

(4) [(3)] bring to the test site, and display upon request, state issued [some form of] identification which contains the name and [a] photograph of the examinee;

(5) [(4)] report on time to the proper location; and

(6) [(5)] comply with all the written and verbal instructions of the lead examiner.

(d) (No change.)

(e) No person shall be permitted to sit for any Commission [commission] examination who has an outstanding debt owed to the Commission [commission].

§439.9. Grading.

[(a) For a score to be valid and remain valid:]

[(1) the examinee must complete the answer sheet, or otherwise record the answers, as instructed by the lead examiner; and]

(a) [(2)] If [if] performance skills are required as a part of the examination, the examinee must demonstrate performance skill objectives in a manner consistent with performance skill evaluation forms provided by the Commission [commission]. The evaluation format for a particular performance skill will determine the requirements for passage of the skill. Each performance skill evaluation form will require successful completion of one of the following formats:

(1) [(A)] all mandatory tasks; or

(2) [(B)] an accumulation of points to obtain a passing score of at least 70%; or

(3) [(C)] a combination of both paragraphs (1) and (2) of this subsection [(A) and (B)].

(b) The minimum passing score on each [written] examination or section thereof as outlined in §439.1(d) [(e)] of this title (relating to Requirements--General) shall be 70%. This means that 70% of the total possible active questions must be answered correctly. The Commission [commission] may, at its discretion, invalidate any question.

(c) If the Commission [commission] invalidates an examination score for any reason, it may also, at the discretion of the Commission [commission and for good cause shown], require a retest to obtain a substitute valid test score.

§439.11. Commission-Designated [Academy Administered] Performance Skill Evaluations.

(a) The evaluation for competency of the Commission-designated skills will take place at the end of all training. The date(s), time(s) and location(s) will be provided to the Commission on the Training Prior Approval form. The evaluation will be a formal test setting supervised by the chief training officer. All evaluators must be a current field examiner with the Commission.

(b) The provider of training for Commission certification courses will receive from the Commission, with the course approval notice, a set of randomly selected performance skills as outlined in subsection (d) of this section.

(c) In order to qualify for the Commission certification examination, the student must successfully complete and pass all designated skill evaluations. The student may be allowed two attempts to complete each skill. A second failure during the evaluation process will require remedial training in the failed skill area with a certified instructor before being allowed a third attempt. A third failure shall require that the student repeat the entire certification curriculum.

(d) The randomly selected Commission-designated skills will be based off the following table:
Figure: 37 TAC §439.11(d)

[(a) The provider of training of a Basic Fire Suppression Fire Fighter I academy will receive from the commission with the course approval notice at least seven randomly selected performance skill objectives from Section II of the Performance Evaluation Forms that each examinee must successfully complete prior to the commission examination. The provider of training of a Basic Fire Suppression Fire Fighter II academy will receive from the commission with the course approval notice at least seven randomly selected performance skill objectives from Section III of the Performance Evaluation Forms that each examinee must successfully complete prior to the commission examination. The provider of training of a Basic Fire Suppression Fire Fighter I and Fire Fighter II combined academy will receive from the commission with the course approval notice at least seven randomly selected performance skill objectives from Section II and Section III of the Perfor-

~~mance Evaluation Forms that each examinee must successfully complete prior to the Commission examination. One of the seven randomly selected skills must be a live fire skill.~~]

[~~(b) The evaluation for competency to qualify for the state performance skills evaluation may occur at any time during the course of instruction but must take place after all training on the identified subject area has been completed. The number of opportunities to successfully complete particular performance skill objectives evaluated during an academy is at the discretion of the designated training officer. Retests must be conducted prior to the completion of the course. All skills must be demonstrated in the presence of a commission-approved field examiner. The instructor of a particular subject may not evaluate the performance skill related to that subject unless the instructor is an approved field examiner. At the conclusion of a course at an approved training facility, the examinee must complete the state performance skill evaluation in accordance with §439.13 of this title.~~]

[~~(c) During the course of instruction, the provider of training, except for a Basic Fire Suppression academy identified in subsection (a) of this section, shall test for competency all performance skills listed in the applicable curriculum. This applies only for curricula in which performance standards have been developed. Retests must be conducted prior to the completion of the course. All skills must be demonstrated before a commission-approved field examiner.~~]

§439.19. Number of Test Questions.

(a) Each [~~written~~] examination may have two types of questions: pilot and active. Pilot questions are new questions placed on the examination for statistical purposes only. These questions do not count against an examinee if answered incorrectly.

(b) The number of questions on the [~~written portion of the~~] state examination will be based upon the number of recommended hours in the particular curriculum or section being tested. The standard is outlined below:
Figure: 37 TAC §439.19(b) (No change.)

(c) (No change.)

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

Filed with the Office of the Secretary of State on May 12, 2009.

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Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: June 28, 2009
For further information, please call: (512) 936-3838

37 TAC §§439.13, 439.15, 439.17

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

The Texas Commission on Fire Protection (Commission) proposes the repeal of Chapter 439, Examinations for Certification, Subchapter A, Examinations for On-Site Delivery Training, §439.13, State Administered Performance Skill Evaluation; §439.15, Testing for Proof of Proficiency; and §439.17, Testing for Certification Status. The purpose of the proposed repeal is to remove the existing three sections as some of the information was redundant and the required proof of proficiency and certification status was incorporated into §439.1 as part of the general requirements.

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each year of the first five years the proposed repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be a better understanding of the requirements and process to complete a Commission certification examination. There will be no additional costs of compliance for small or large businesses or individuals that are required to comply with the proposed repeal.

Comments regarding the proposed repeal may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or by email to info@tcfp.state.tx.us. Comments will be reviewed and discussed at a future Commission meeting.

The repeal is proposed under Texas Government Code, Chapter 419, Subchapter B, §419.008, Regulating and Assisting Fire Fighters and Fire Departments.

Cross reference to statute: Texas Government Code, §419.022, General Powers Relating to this Subchapter; §419.028, Training Programs and Instructors; §419.029, Training Curriculum; §419.032, Appointment of Fire Protection Personnel; and §419.035, Certification Examinations.

§439.13. State Administered Performance Skill Evaluation.
§439.15. Testing for Proof of Proficiency.
§439.17. Testing for Certification Status.

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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Gary L. Warren, Sr.
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Texas Commission on Fire Protection
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For further information, please call: (512) 936-3838

SUBCHAPTER B. EXAMINATIONS FOR DISTANCE TRAINING

37 TAC §439.203, §439.205

The Texas Commission on Fire Protection (Commission) proposes amendments to Chapter 439, Examinations for Certification, Subchapter B, Examinations for Distance Training, §439.203, Procedures; and §439.205, Performance Skill Evaluation. The purpose of the proposed amendments are to remove redundant language as procedures and skill evaluation requirements are addressed in Subchapter A and they are applicable to all types of training facilities.

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period

these proposed amendments are in effect there will be no fiscal impact on state and local governments.

Jake Soteriou has also determined that the public benefit anticipated as a result of enforcing these amendments will be to provide a clearer understanding of the Commission's requirements to apply for and complete a certification examination. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with these proposed amendments.

Comments regarding these proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments will be reviewed and discussed at a future Commission meeting.

These amendments are proposed under Texas Government Code, Chapter 419, Subchapter B, Regulating and Assisting Fire Fighters and Fire Departments.

Cross reference to statute: Texas Government Code, §419.035.

§439.203. Procedures.

[~~(a)~~] Once distance training is completed, each individual receiving a certificate of completion must [~~contact the commission to~~] obtain the appropriate test application packet [~~unless the commission has established an examination with the provider of training~~].

[~~(b) To apply for a state administered commission examination, an individual who completes distance training must complete the Application for Testing form and return it to the commission with the individual's certificate of completion. The commission, upon receipt of the Application for Testing form and supporting documentation, will confirm the time and place for the examination.~~]

§439.205. Performance Skill Evaluation.

[~~(a) State performance skill evaluation. If a performance skill test is part of a commission examination, the examinee must complete a state performance skill evaluation as indicated in the particular standard related to the curriculum being tested or examined.~~]

[~~(b)~~] [~~Evaluation procedures.~~] If the performance skill portion of a state exam is to be evaluated by an approved field examiner who will not observe the completion of the skill while in the immediate physical presence of the examinee, a letter of assurance from the candidate's training officer or fire chief is required stating that the fire department assures the integrity of the evaluation procedure. If the candidate is not a member of a fire department, then a certified fire instructor, fire chief, or training officer may provide a letter of assurance that meets the requirements of this subsection. The provider of distance training is required to keep a record of this assurance and provide it to the Commission [~~commission~~] upon request.

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

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TRD-200901895

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3838

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CHAPTER 449. HEAD OF A FIRE DEPARTMENT

37 TAC §449.3, §449.5

The Texas Commission on Fire Protection (Commission) proposes an amendment to Chapter 449, Head of a Fire Department, §449.3, Minimum Standards for Certification as Head of a Suppression Fire Department; and §449.5, Minimum Standards for Certification as Head of a Prevention Only Department. The purpose of these proposed amendments is to remove the word written which would enable the Commission to administer a computer-based examination.

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period these proposed amendments are in effect there will be no fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each year of the first five years these proposed amendments are in effect, the public benefit anticipated as a result of enforcing these amendments is to ensure the public understands the Commission examinations are not limited to a written format and they may administer a computer-based examination. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with these proposed amendments.

Comments regarding these proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or by email to info@tcfp.state.tx.us. Comments will be reviewed and discussed at a future Commission meeting.

These amendments are proposed under Texas Government Code, Chapter 419, Subchapter B, Regulating and Assisting Fire Fighters and Fire Departments.

Cross reference to statute: Texas Government Code, §419.032, Appointment of Fire Protection Personnel.

§449.3. Minimum Standards for Certification as Head of a Suppression Fire Department.

(a) In order to be certified as a head of a fire department providing fire suppression, an individual must be appointed as head of a fire department; and

(1) hold a certification as a fire protection personnel in any discipline that has a Commission-approved [~~commission approved~~] curriculum that requires structural fire protection personnel certification and five years experience in a full-time fire suppression position; or

(2) an individual from another jurisdiction who possesses valid documentation of accreditation from the International Fire Service Accreditation Congress that is deemed equivalent to the Commission's [~~commission's~~] approved basic fire suppression curriculum and provide documentation in the form of a sworn non self serving affidavit of five years experience in a full-time fire suppression position; or

(3) provide documentation in the form of a non self serving sworn affidavit of ten years experience as an employee of a local governmental entity in a full-time structural fire protection personnel position in a jurisdiction other than Texas; and successfully pass a Commis-

sion [~~written~~] Head of Department examination as specified in Chapter 439 of this title (relating to Examinations for Certification); or

(4) provide documentation in the form of a sworn nonself [~~non self~~] serving affidavit of ten years of experience as a certified structural part-time fire protection employee; or

(5) provide documentation in the form of a sworn nonself [~~non self~~] serving affidavit of ten years experience as an active volunteer fire fighter in one or more volunteer fire departments that meet the requirements of subsection (b) of this section and successfully pass a Commission [~~written commission~~] Head of Department examination as specified in Chapter 439 of this title.

(b) (No change.)

(c) Individuals certified as the head of a fire department must meet the continuing education requirement as provided for in Chapter 441 of this title (relating to Continuing Education).

(d) (No change.)

§449.5. Minimum Standards for Certification as Head of a Prevention Only Department.

(a) In order to be certified as the head of a fire department providing fire prevention activities only, an individual must be appointed as head of a Fire Prevention Department; and

(1) (No change.)

(2) an individual from another jurisdiction who possesses valid documentation of accreditation from the International Fire Service Accreditation Congress that is deemed equivalent to the Commission's [~~commission's~~] approved basic arson investigator, fire investigator or fire inspector curriculum and provide documentation in the form of a sworn nonself [~~non self~~] serving affidavit of five years experience in a full-time fire prevention position; or

(3) provide documentation in the form of a sworn nonself [~~non self~~] serving affidavit of ten years experience as an employee of a local governmental entity in a full-time fire inspector, fire investigator, or arson investigator position in a jurisdiction other than Texas and successfully pass a Commission [~~written commission~~] Head of Department examination as specified in Chapter 439 of this title (relating to Examinations for Certification); or

(4) provide documentation in the form of a sworn nonself [~~non self~~] serving affidavit of ten years experience as a certified fire investigator, fire inspector or arson investigator as a part-time fire prevention employee; or

(5) provide documentation in the form of a sworn nonself [~~non self~~] serving affidavit of ten years experience as an active volunteer fire inspector, fire investigator, or arson investigator with ten years experience in fire prevention and successfully pass a Commission [~~written commission~~] Head of Department examination as specified in Chapter 439 of this title.

(b) Individuals certified as the head of a fire department under this section must meet the continuing education requirement as provided for in Chapter 441 of this title (relating to Continuing Education).

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

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TRD-200901890

Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
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For further information, please call: (512) 936-3838

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CHAPTER 451. FIRE OFFICER
SUBCHAPTER A. MINIMUM STANDARDS FOR FIRE OFFICER I

37 TAC §451.5

The Texas Commission on Fire Protection (Commission) proposes amendments to Chapter 451, Fire Officer, Subchapter A, Minimum Standards for Fire Officer I, §451.5, Examination Requirements. The purpose of this proposed amendment is to remove the restriction requiring individuals to take a written test. This change would allow the Commission the latitude to administer a computer-based test. The change also restructures the last section to define the requirements an individual must meet before they can take the test.

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period this proposed amendment is in effect there will be no fiscal impact on state and local governments.

Mr. Soteriou has also determined that for each year of the first five years this proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be a better understanding of the prerequisites needed before an individual can take the Fire Officer I examination. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with this proposed amendment.

Comments regarding this proposed amendment may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or by email to info@tcfp.state.tx.us. Comments will be reviewed and discussed at a future Commission meeting.

This amendment is proposed under Texas Government Code, Chapter 419, Subchapter B, Regulating and Assisting Fire Fighters and Fire Departments.

Cross reference to statute: Texas Government Code, §419.035, Certification Examinations.

§451.5. Examination Requirements.

(a) Examination [~~The written examination~~] requirements of Chapter 439 of this title (relating to Examinations for Certification) must be met in order to receive Fire Officer I certification.

[~~(b) Performance skills must meet the requirements in Chapter 439.~~]

(b) [~~(c)~~] Individuals [~~No individual~~] will be permitted to take the Commission [~~commission~~] examination for Fire Officer I certification by documenting the following: Structure Fire Protection Personnel certification and Fire Service Instructor certification through the Commission or the equivalent IFSAC seals, and completing a Commission-approved Fire Officer I curriculum. [~~unless the individual documents completion of the Fire Fighter I and Fire Fighter II level training~~

~~as required by Chapter 1, Basic Fire Suppression, of the commission's Certification Curriculum Manual and holds, as a minimum, Fire Service Instructor I certification through the commission, or documents accreditation from International Fire Service Accreditation Congress as an Instructor I.~~]

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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Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
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For further information, please call: (512) 936-3838

SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE OFFICER II

37 TAC §451.205

The Texas Commission on Fire Protection (Commission) proposes amendments to Chapter 451, Fire Officer, Subchapter B, Minimum Standards for Fire Officer II, §451.205, Examination Requirements. The purpose of this proposed amendment is to remove the restriction requiring individuals to take a written test. This change would allow the Commission the latitude to administer a computer-based test. The change also restructures the last section to define the requirements that an individual must meet before they can take the test.

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal impact on state and local governments.

Mr. Soteriou has also determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be a better understanding of the prerequisites needed before an individual can take the Fire Officer II examination. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with this proposed amendment.

Comments regarding this proposed amendment may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or by email to info@tcfp.state.tx.us. Comments will be reviewed and discussed at a future Commission meeting.

This amendment is proposed under Texas Government Code, Chapter 419, Subchapter B, Regulating and Assisting Fire Fighters and Fire Departments.

Cross reference to statute: Texas Government Code, §419.035, Certification Examinations.

§451.205. Examination Requirements.

(a) Examination [~~The written examination~~] requirements of Chapter 439 of this title (relating to Examinations for Certification) must be met in order to receive Fire Officer II certification.

[~~(b) Performance skills must meet the requirements in Chapter 439.~~]

(b) [~~(c)~~] Individuals [~~No Individual~~] will be permitted to take the Commission [~~commission~~] examination for Fire Officer II certification by documenting the following: Structure Fire Protection Personnel certification, Fire Service Instructor certification and Fire Officer I certification through the Commission or the equivalent IFSAC seals, and completing a Commission-approved Fire Officer II curriculum. [~~unless the individual documents completion of the Fire Fighter I and Fire Fighter II level training as required by Chapter 1, Basic Fire Suppression, of the commission's Certification Curriculum Manual and holds, as a minimum, Fire Service Instructor I certification through the commission, or documents accreditation from the International Fire Service Accreditation Congress as an Instructor I.~~]

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 May 14, 2009.

TRD-200901911
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
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For further information, please call: (512) 936-3838

CHAPTER 453. MINIMUM STANDARDS FOR HAZARDOUS MATERIALS TECHNICIAN

37 TAC §453.5

The Texas Commission on Fire Protection (Commission) proposes an amendment to Chapter 453, Minimum Standards for Hazardous Materials Technician, §453.5, Examination Requirements. The purpose of this proposed amendment is to remove the restriction requiring individuals to take a written test. This change would allow the Commission to administer a computer-based test. The change also restructures the last section to define the requirements that an individual must meet before they can take the test.

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be a better understanding of the prerequisites needed before an individual can sit for the Hazardous Materials Technician examination.

Comments regarding this proposed amendment may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or by email to info@tcfp.state.tx.us. Comments will be reviewed and discussed at a future Commission meeting.

This amendment is proposed under Texas Government Code, Chapter 419, Subchapter B, Regulating and Assisting Fire Fighters and Fire Departments.

Cross reference to statute: Texas Government Code, §419.035, Certification Examinations.

§453.5. Examination Requirements.

(a) Examination [The written examination] requirements of Chapter 439 of this title (relating to Examinations for Certification) must be met in order to receive a Hazardous Materials Technician Certification.

[(b) Performance skills must meet the requirements in Chapter 439.]

(b) [(c)] Individuals [No individual] will be permitted to take the Commission examination for Hazardous Materials Technician by documenting [unless the individual documents] completion of the NFPA 472 Awareness and Operations level training and completing a Commission-approved Hazardous Materials Technician curriculum. [First Responder Awareness and Operations level training as required by Chapter 1, Basic Fire Suppression, of the Commission's Certification Curriculum Manual.]

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

Filed with the Office of the Secretary of State on May 12, 2009.

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Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: June 28, 2009
For further information, please call: (512) 936-3838

WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 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 withdraws the proposed new §§9.106 - 9.108 which appeared in the December 12, 2008, issue of the *Texas Register* (33 TexReg 10142).

Filed with the Office of the Secretary of State on May 14, 2009.

TRD-200901912
Ashley Harden
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: May 14, 2009
For further information, please call: (512) 475-0387

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 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER B. CUSTOMER SERVICE AND PROTECTION

16 TAC §25.43

The Public Utility Commission of Texas (commission) adopts the amendment of §25.43, relating to Provider of Last Resort (POLR), with changes to the proposed text as published in the November 21, 2008, issue of the *Texas Register* (33 TexReg 9359). The amendment modifies the framework for POLR service to reflect the experience gained from recent mass transitions of customers to POLR service during the summer of 2008 and accounts for changed circumstances in the competitive market. The rule will strengthen the POLR structure in order to better protect customers in a mass transition. This rule is a competition rule subject to judicial review as specified in Public Utility Regulatory Act (PURA) §39.001(e). This rule is adopted under Project Number 35769.

The key elements associated with the rule amendment are: 1) the enhancement of the volunteer POLR category; 2) the offering of market-based, month-to-month rate plans by volunteer and non-volunteer POLRs; 3) an increase in the number of non-volunteer POLRs; 4) a revision to the market clearing price for energy (MCPE) formula applied to the residential customer class; 5) an extension for residential customers who may be required to pay deposits, and the addition of protections for low-income customers; and 6) improvements to the customer notification process.

The commission received written comments from the Association of Retail Marketers (ARM); ARM and Reliant Joint Comments (Joint Commenters); Electric Reliability Council of Texas (ERCOT); First Choice Power (First Choice); Joint Transmission and Distribution Utilities (TDUs); National Energy Marketers Association (NEM); Office of Public Utility Counsel (OPC); Reliant Energy (Reliant); Texas Electric Association of Marketers (TEAM); Steering Committee of Cities Served by Oncor (Cities); Texas Industrial Energy Consumers (TIEC); Texas Ratepayers Organization to Save Energy and Texas Legal Services Center (Texas ROSE); TXU Energy (TXU); and Whaley Consulting on behalf of Retail Electric Providers (REPs) for Competitive Markets (RCM).

General Comments

RCM commented that under the current retail market design, exiting REPs' customers are transferred to POLR service and have to pay POLR rates that are higher than most rates offered in the market. RCM and Cities stated that from a customer's perspective, this is unfair and may be perceived as a serious design flaw, causing hardship to customers who have chosen to participate in the competitive market.

Texas ROSE stated that the POLR process is bureaucratic and overly burdensome, and prices have been too high. The proposed amendment to the rule does little to moderate POLR rates or to reduce the complexity of enrolling in POLR and then switching to another POLR provider, Texas ROSE stated. Further, Texas ROSE did not agree with the proposed replacement of the term "POLR" in favor of "continuous service." OPC and ERCOT also opposed changing the POLR terminology because of confusion it may cause among customers. Cities expressed appreciation for the re-examination of the POLR process in this rule. Cities questioned the value of a rule that the commission has attempted to bypass or mitigate since the first major REP failure (that of New Power) by urging POLR REPs to offer rates lower than the MCPE formula prescribed in the rule.

RCM stated that a simple way to address POLR service is to help REPs shed their customers prior to a default. RCM recommended that ERCOT establish a list that can be used by REPs willing to acquire customers in volume so that a failing REP can transfer its customer base to another REP prior to default. First Choice commented that the proposed rule should minimize the complexity and confusion associated with the transition of customers from a defaulting REP to a POLR. They stated that the successful implementation of the proposed rule depends in large part on the commission's ability to effectively enforce the rule in its final form. First Choice warned that the proposed rule, as written, does not include any mechanisms to enable such enforcement.

TIEC emphasized that in order to have reliable and robust POLR service, the new rule must authorize rates that are sufficient to cover the costs of serving transitioned customers, while also protecting the interests of those customers, who may be required to pay significantly increased electricity costs, often unexpectedly. The rule should strike balance between these two interests, TIEC argued, with rates based on the costs of providing POLR service. TIEC also pointed out that for a large non-residential customer, the most important function of POLR service rule is to provide suffic8ient notice of a REP default, and allow the customer to find a new REP before being transitioned to a POLR provider.

Commission Response

The commission worked diligently with all interested parties and ultimately drafted a consensus rule. The commission believes the revisions to the rule will address the concerns put forth by Cities, Texas Rose, and First Choice. The commission is adopting a rule that it believes will strengthen the mechanics and operations of the mass transition process. This rule seeks to balance the interests of all participants in the competitive market by putting in place protections for customers in the event of a REP default and a mass transition but doing so in a way that minimizes the cost to the competitive REP market. The commission believes this rule will strike a balance between the interests of Transmission and Distribution Utilities (TDUs), customers, and REPs.

The commission acknowledges Texas ROSE's, OPC's, and ERCOT's concerns regarding the terminology change from POLR to continuous service. The commission is not adopting the term "Continuous Service Provider" or CSP, and retains the term Provider of Last Resort (POLR or POLR provider) throughout the rule, in place of emergency service or continuous service. Nevertheless, the amended rule does incorporate the following modification to current POLR terminology: Non-volunteer POLRs are referred to as Large Service Providers (LSPs), and Volunteer POLRs are referred to as Volunteer Retail Electric Providers (VREPs).

The commission appreciates RCM's recommendation and the goal of avoiding a mass transition but the commission believes that there are numerous technical impediments to establishing a list that will enable REPs to shed load prior to a default.

The commission in responding to comments on this rule, uses those terms in place of the terms in the proposed rule.

In response to criticism that the rule did not work well in the Spring of 2008, TXU argued closer examination reveals that the POLR rule performed its most essential function, which is to keep customers' lights on. According to TXU, this was and is the fundamental purpose of the POLR rule: to ensure that even if a REP fails to honor its commitments, the REP's customers are not left without electricity. Moreover, TXU noted that the rule and its pricing formula balance the needs of transitioned customers and REPs that are compelled to provide service. TXU conceded that the POLR price was higher than anyone expected or would have liked, but the spike in price was caused by many of the same external factors that sparked REP failures, mainly unusually high temperatures during a time when a number of power plants and power lines were out of service for maintenance, along with high natural gas prices, and severe transmission congestion on two interfaces. TXU explained that the congestion problem has been essentially resolved, through changes in the way ERCOT manages it, but not in changes to the POLR rule.

TXU stated that the key failings of the current rule are entirely separate from the causes of the failures experienced during the Spring of 2008. First, the failed REPs were apparently permitted under then-applicable rules to apply customer deposits to customer balances. TXU opined that public policy considerations would seem to counsel protection of the customer and the POLR, ahead of the failed REP, but in this respect, the POLR rule (or one or more related commission rules), were not adequate in terms of protecting customer deposits. TXU proposed language to prohibit a failing REP from applying customer deposits to customer balances that are not overdue. Second, TXU argued that the rule inadequately addresses how customer deposits to the POLR or payment for service are used. TXU pointed out that this resulted in POLR providers experiencing millions of dollars in bad debt losses. TXU stated that this problem could be eased by either returning the customer's original deposit to the customer or by transferring the deposit to the POLR. Third, TXU said the rules inadequately address customer information. Better communication with transitioned customers, TXU argued, may help their perceptions of the service they receive under this rule, and could improve their ability to make timely and informed decisions when POLR transitions occur. TXU concluded that ensuring customers are properly informed would help address the debt problem.

Commission Response

The commission in this rule is attempting to strike a balance among customer, REP, TDU, and ERCOT interests. The commission shares the concerns raised by TXU and other commenters regarding bad debt accrued by POLRs. The question of how customer deposits are handled during a REP failure has been recently addressed by the commission in the REP certification rulemaking, Project Number 35767, *Rulemaking Relating to REP Certification.* Customer deposits are also addressed elsewhere in this preamble. In past transitions to POLR, notice to the customer has been an issue, because the customer may not have received advanced notice of the REP going out of business. The first "notice" the customer may have received was a request for a deposit from an unknown provider threatening disconnection if the customer did not pay the requested deposit within 10 days. The provisions of this rule address those concerns by strengthening provisions relating to customer information, notice, and communication to customers, which should reduce the tension between customers and POLRs.

The commission is also adopting provisions that should result in prices from the POLR providers that are either at the market rate at the time of a mass transition or are lower than the rates under the current rule. Providing a reasonable rate to customers when their REP is unable to serve them should also increase their understanding and acceptance of their transfer to a POLR provider and reduce instances of failure to pay the POLR provider's bill. The commission believes that customer education is an important component in assisting customers in a mass transition and ensuring that customer, REP, and TDU interests are protected. The commission agrees with TXU that the most essential function of the rule is to provide continuity of service for customers and believes it has preserved that feature of POLR service.

Question 1: The commission is considering a concept to provide a buffer to customers while they shop for a competitive retail electric offering following a mass transition event and to address bad debt incurred by emergency service providers. This concept would include the following elements:

(a) For an initial "limited period" (30 or 45 days) of time, a customer would be charged a specified rate that is lower than the emergency service rate set pursuant to the existing emergency service rule. The commission would post a rate for all emergency service providers on a monthly basis that would only be for mass transition customers.

(b) During that same time period, the customer would not be required to pay a deposit to the emergency service provider.

RCM supported the "buffer time period and lower rate proposal." According to RCM, ensuring that customers do not bear an undue burden of a default will help introduce a greater confidence in the competitive market. Joint Commenters proposed an alternative solution to provide service to residential and small non-residential customers that are transferred to large service providers

(LSPs); it would not apply to medium and large non-residential customers or to customers transferred to a VREP or Mandatory Retail Electric Provider (MREP).

The proposed plan would call for transitioned customers served by an LSP to pay a transitional service rate during a buffer period, which would begin on the day the LSP begins to provide POLR service and end on the last day of the first billing cycle in which the transitioned customer has at least 15 days of POLR service. Thus, the buffer period would last between 15 and 45 days. The Joint Commenter's proposed transitional service rate would equal the price floor calculation for POLR service to residential and small non-residential customers in the current rule, except that the MCPE adder would be reduced from 130% to 120%. The energy rate under this proposal would be:

*(one-year average of MCPE * 120% / 1000) + $0.06 + TDU charges.*

OPC commented it is generally opposed to Joint REPs proposal. First Choice did not support the concept proposed by the commission and expanded upon by Joint Commenters, stating that it was complicated and confusing, and that the commission should not engage in setting prices in a competitive market, as would be required under such a rule. First Choice proposed that POLRs place customers on a variable month-to-month plan with no cancellation fee that is available to all similarly situated customers, as most REPs currently offer variable month-to-month plans to acquire customers and to serve the electric needs of customers transitioning away from expired, fixed-price term plans. First Choice pointed out that because these month-to-month plans are responsive to market conditions, REPs have processes in place to adjust these price plans as market conditions dictate.

First Choice also stated that in the absence of customer data, the proposal would encourage POLRs to request deposits from all customers during mass transitions. First Choice said that it is less than optimal for all POLR customers to be confronted with a deposit request and stated that an electric bill payment database would provide POLR providers with the ability to pre-screen customers and assess deposits only from customers presenting poor payment patterns. First Choice suggested that the creation of a payment history database would achieve a reduction in bad debt for REPs and more affordable pricing for all consumers. First Choice stated that a large portion of the final bills generated by REPs are never paid and are subsequently written off as bad debt. First Choice proposed to use this database to post both positive and negative customer payment histories, thus eliminating the deposit requirement for many customers, including those in mass transition. First Choice asserted that a database would take the guess work out of determining whether to assess a deposit to a mass transitioned customer.

TXU commented that it supports the buffers contemplated in the proposed rule through the mandatory and voluntary provider mechanisms. TXU explained that because customers pay market month-to-month prices, this could create a buffer that would insulate customers from the POLR price, to the extent that the combined total capacity of these providers exceeds the load dropped by a failed REP. TXU did not oppose a buffer that provides a subsidized price for a limited period of time, but suggested there are several issues that would need to be addressed before it could be put in place. These issues relate to funding, costs, and allocation. TXU asserted that there is a significant policy question to address in order to socialize the costs of REP failure: if a customer chooses a REP whose price sounds too good to be true, and the price turns out not to cover the costs of providing service and the REP defaults, should customers that wisely chose a higher price help pay for the failure of the first customer's REP? TXU argued that socializing the risk of choosing a dubious REP threatens to steer customers towards dubious REPs and imposes the cost of those choices on everyone else. TXU compared this scenario to automobile insurers making customers who never get in accidents pay part of the premium for customers who do.

TXU suggested that increased customer education efforts can help customers make wise shopping decisions, avoid rates that are too good to be true, and make informed electric choices in a mass transition. TIEC agreed, and submitted that customers who select a higher-risk option should generally bear the costs associated with that choice. TIEC explained that to adopt a rule that shifts the costs of a REP failure to all customers would only encourage REPs and customers to continue making "risky" choices. TIEC commented that neither price insulation for transitioned customers nor bad debt reimbursement for the REP should be borne by other customers; rather, costs of a REP failure should be recovered from sources that are related to the cause of the costs. TIEC strongly opposed any uplift of these costs, saying it would penalize successful REPs and customers who paid a higher rate for diminished risk while encouraging greater risk taking on the part of customers and REPs.

TXU added that an arbitrary price would deprive customers of appropriate price signals, which would chill the urgency of moving off the POLR or interim plan. TXU offered that the path to a mature retail electric market must include market-based consequences and solutions whenever possible. TXU agreed with Cities that it is undesirable and inappropriate for the maximum POLR rate to be closer to a subjective and arbitrary price than to a cost-based rate.

TXU supported the aspects of this rule that would help protect the POLR from the bad debt experienced in connection with POLR transfers such as those in the Spring of 2008, while also relieving customers of the need to post an additional deposit. TXU noted that it suffered the loss of millions of dollars in providing service to transitioned customers. TXU referred to its comments in the REP certification rulemaking, where it suggested that REPs should be required to post collateral. The funds could be used to offset bad debt without creating the new funding mechanism contemplated in this preamble question.

NEM commented that the POLR pricing structure should be reflective of the nature of the service and the costs and risks a provider incurs in standing ready to service customers in a mass transition. NEM added that the pricing structure should not incent customers to voluntarily participate in the service akin to a competitive market offering. NEM also argued that if a buffer concept is adopted, it should not be implemented until other provisions relating to customer allocation and ceiling price are determined and the funding mechanism to reimburse LSPs for unrecovered costs is identified, approved, and available to meet emergencies.

OPC stated that it believed the buffer should be 30 to 45 days, specifying that the customer would then not need to pay a deposit. TEAM supported the buffer period concept, but suggested that it last for 30 rather than 45 days. Thirty days, TEAM argued, is the approximate length of a typical billing cycle, and provides transitioned customers with adequate time to find a new retail electric plan. TEAM argued that the 45-day proposal would undoubtedly cause confusion and increase customer complaints, because a customer could potentially receive a bill

with two rates: 15 days with the specific buffer period rate, and 16 days on the standard POLR rate.

TEAM stated that deposit-free service to mass transitioned customers during a buffer period follows both the current and proposed rule's purpose of ensuring continuity of service. Because of a lack of satisfactory credit or insufficient information, certain customers are at risk of losing electric service after a mass transition, TEAM added. However, customers with unsatisfactory credit pose significant bad debt risks to REPs. TEAM concluded that it is appropriate that REPs have the opportunity to assess deposits, and urged the commission to allow for deposits after the buffer period.

Commission Response

The commission in the REP certification rule adopted a requirement that REPs qualifying under §25.107(f)(1)(B) post a $500,000 letter of credit in order to be certified or maintain certification. Under that rule, the money will first be used to pay the deposits of low-income customers transferred to VREPs and second to pay the deposits of low income customers transferred to LSPs. The commission believes this provision will decrease the bad debt of POLR providers in a mass transition event, as the VREPs will receive funds, and the LSPs may receive funds, from the proceeds of the letter of credit of a REP whose failure occasioned the mass transition. By implementing this change, the commission seeks to protect the most vulnerable customers, those with a low income receiving a discount from the system benefit fund.

The commission acknowledges the comments on deposits and the buffer timeline provided by OPC, RCM, NEM, and TEAM. The commission notes the creativity of the Joint Commenters with respect to its proposed alternative buffer mechanism. The proposal was an excellent catalyst for discussions, which the commission believes was important for the development of the rule that it is adopting. The commission declines to adopt the buffer mechanism proposed by Joint Commenters in this rule, for reasons explained below. The commission believes the amended rule provides increased customer price protection through the enhancement to the volunteer and non-volunteer structures, which require VREPs to offer market-based rate plans as well as LSPs within a certain period of time as advocated by a number of commenters. The commission agrees with TXU that offering customers a market-based, month-to-month price acts as a buffer that will insulate customers from a high MCPE-based price. The commission also believes that the incentives for more REPs to serve as volunteer POLR providers and the expansion of the number of LSPs will spread risks across multiple REPs, thereby alleviating the financial impacts of acquiring customers in mass transition on short notice and spreading the risk of bad debt among more POLR providers.

The commission agrees with RCM that customers should not bear an undue burden of a default. The commission disagrees with TXU and TIEC that customers who select a higher-risk pricing plan should generally bear the costs associated with that choice if their provider unexpectedly ceases doing business. The competitive electric market is complex and, it is unfair to assume that all customers have the information to decide whether a pricing plan is "higher-risk." The commission certifies REPs based on criteria that it believes are required for success. Although the commission recently modified the rules to establish more stringent financial and technical standards for REPs with the goal of ensuring that the companies certified to provide electric service will have the financial and technical expertise to navigate the complexities of the retail electric market and weather the uncertainties related to wholesale prices, the commission recognizes that the retail electric business is competitive. In competitive markets, companies fail. If the commission is unable to identify a "high-risk" company and preclude that company from providing electric service to customers, it is unfair to ask the residential customer to bear the burden of doing so, especially when it is often difficult for residential and small commercial customers to assess the financial and technical strength of a REP. In the REP certification rulemaking, REPs were reluctant to provide and update information that would allow the public to assess their financial condition. Even if such information were readily available and up to date, most residential and many small commercial customers would have difficulty researching and evaluating the background and financial condition of REPs, especially given the complexity of the competitive retail electric market.

The commission appreciates the comments on the buffer proposal, but rejects that concept in favor of one that is more free market. In the event of a mass transition, pricing for residential and small commercial customers is addressed in two ways: first, by providing incentives for REPs to voluntarily serve customers at market-based rates; second, by modifying the POLR rate that LSPs may charge and by limiting the amount of time that LSPs may charge the POLR rate. In addition, the rule strengthens the customer protections related to deposits, which the commission expects will buffer the financial impacts of the transition by limiting the upfront costs to the customer.

The commission appreciates the interest in creating a customer database but concludes that the development of a database is better addressed in another project. Therefore, the commission has opened Project Number 36850, *Rulemaking Relating to Database for Customer Bill Payment Information,* to consider the development of a payment history database.

(c) The emergency service provider would be reimbursed for any bad debt incurred for emergency service during the time period and for the difference between the emergency service rate set pursuant to the existing emergency service rule and the temporary lower rate charged to the mass transition customers during the specified initial period.

The Joint Commenters drafted an alternative market solution in which they proposed that, rather than having a few REPs bear the costs of POLR service, a larger number of market participants should share those costs. They stated that having only REPs bear the cost of POLR service, as OPC suggested (using a fee collected on REP certification or amendment to certification), might create a barrier to new REPs entering the market. Under the Joint Commenters' proposal, an LSP would be reimbursed for the positive difference between the POLR service rate ((actual hourly MCPE for customer * 125% / 1000) +$0.06 + TDU fees) and the transitional service POLR rate. Reimbursement for this difference in rates, as well as for a portion of unpaid customer balances (bad debt), would be funded from a pool administered by ERCOT. ERCOT would fund the pool by assessing a POLR service fee to all qualified scheduling entities (QSEs) that represent competitive load and competitive resources in customer choice areas. The pool would be maintained at a level of $50 million with a one-year ramp-up to this value. Once this level was met, the POLR service fee would be suspended, and would be reactivated when reimbursements were made. If reimbursements to LSPs exceed the fund balance, an accelerated

fee schedule would be put in place until the target balance was achieved again.

TIEC stated that, once it was in place, the $50 million fund proposed by Joint Commenters would be insufficient to cover a large REP failure, leading to another round of funding to make the LSPs whole, then another to replenish the fund, causing wild swings in the POLR service fee. TIEC said such a fee would be discriminatory and prejudicial, because it would be assessed for commercial and industrial customers even though this customer class would enjoy no benefits from the fee. TIEC urged the commission to reject the Joint Commenters' proposal, but failing that, industrial and commercial customers should be exempt from the POLR service fee.

TIEC also raised concerns that the proposal by Joint Commenters is a substantial departure from the rule that was proposed by Staff. TIEC commented that because the proposed rule does not provide significant detail or proposed language for this concept, it is unclear how such a plan would be executed, what the cost would be, and how those costs would be recovered. TIEC stated that this concept could entail tremendous costs, and could seriously undermine the proper functioning of the competitive market. Removing costs through a discounted rate, deposit waivers, and a general waiver of any unpaid balances (bad debt) from customers and shifting costs to the market as a whole will promote poor contracting and encourage customers to be less vigilant in evaluating the economics of a potential REP. TIEC argued it could also encourage REPs to ignore these legitimate costs in their business models.

TIEC also opined that allowing transitioned customers to pay a temporarily reduced rate violated PURA §39.106(b), which requires a provider to charge a "fixed, non-discountable rate" to those customers by class. TIEC said that under PURA §39.151(e) the commission can authorize ERCOT to assess fees to cover its own costs, but that a POLR service fee would be outside of the scope of this authorization as the costs in question are not being generated by ERCOT. TIEC further stated that there was credit liability for ERCOT to administer such a fund, because it might have to disburse more than the fund held and then collect the difference. TIEC contended that the scope of the Joint Commenters' proposal may be such that it constitutes a notice issue under *Deffebach.*

Texas ROSE and First Choice also did not support the concept of a buffer period proposed by the Joint Commenters. Cities commented that the concept of a lower rate and deposit for a limited period is appealing, but expressed reservations regarding the proposal to compensate the provider for bad debt and the "price differential." OPC supported the concept, subject to finalization of the details and logistics. OPC specifically supported the prospect that customers would not have to pay a deposit and would have time to switch to a competitive product or a new REP prior to being assigned to an MCPE rate. TEAM stated it strongly supports reimbursement for any bad debt incurred by REPs serving mass transitioned customers, and until such a mechanism is in place, TEAM argued that no POLR should be required to offer service at a price that is potentially below cost. TEAM also alluded to the numerous costs associated with accepting a mass transition of customers, such as power purchases, additional billing costs, and additional customer service considerations.

TEAM opined that reimbursement would not promote greater risk-taking by REPs and customers, nor would it remove incentives for good business practices. Rather, the concept of reimbursement recognizes the real mass transition costs incurred by the REPs upon whom the commission places an obligation to serve. TEAM suggested that concerns about risky business behavior are better addressed in Project Number 35767, *Rulemaking Relating to the Certification of Retail Electric Providers.*

Commission Response

The commission agrees with commenters that significant issues remain unsettled relating to the proposal to impose the costs of mass transitions on electric market participants. The commission agrees with TIEC that this issue needs to be addressed in detail, and this rulemaking is not the appropriate vehicle. While the concept of ensuring low rates for residential customers while also protecting the competitive retail market against the bad debt experienced in the 2008 mass transitions appears at first blush to be attractive, the mechanism needed to make such a change is fraught with difficult legal, and policy issues that have not been properly vetted in this rulemaking. Further, the commission is mindful of the impact fees have on end-use customers and the perception they have on the competitive market.

(d) At the end of the limited period of time, the regular emergency service rate would go into effect.

Joint Commenters contended that using an annual MCPE average rather than the spot MCPE would yield a more stable price that is less sensitive to spot market volatility and provides customers with a known price that would change only annually. Furthermore, the lower MCPE adder may provide a lower rate than the current POLR rate, depending on the one-year average.

If transitioned customers continue to receive service from the LSP after expiration of the buffer period, Joint Commenters suggested that the rate revert to the standard POLR service rate as proposed in subsection (l)(2), but with 125% MCPE adder rather than the current 130%, or the proposed 120%. Joint Commenters suggested this 5% reduction in the MCPE adder in recognition of the reimbursement mechanism in their proposed alternative market structure. In its comments, Joint Commenters noted that in Project Number 31416, the commission indicated that the risk of providing POLR service, including the risk of bad debt, "is appropriately accounted for in the POLR rate formula." Joint Commenters did not quantify the bad debt risk.

OPC noted that ideally transitioned customers would have time to switch to a competitive product or a new REP before an MCPE rate would become effective. Texas ROSE stated that the POLR process could subrogate a customer's choice in REP and suggested that, until ERCOT can adequately modify its mass transition process, immediate measures be taken to identify and honor switches made by customers right after a mass transition.

Commission Response

The commission has chosen to enhance the volunteer tier, thus increasing the availability of market-based rates for the aforementioned reasons.

Regarding the comments by OPC and Texas ROSE, the commission believes that this rule provides adequate mechanisms for customers to switch to competitively priced-product with the POLR provider to which they are transitioned, or to another REP. The commission maintains that the timelines provided for in ERCOT's current mass transition process address the issues raised by Texas ROSE. Additionally, the commission is revising the timelines for switching in this rule, making it easier and faster for customers to choose a new provider.

Question 2: What is the appropriate source of funding to reimburse the continuous service providers for bad debt and the initial period rate differential?

TIEC submitted that the costs of a REP failure should be recovered from sources that have some relationship to the cause of those costs: the costs should not be shifted to other REPs or other customers.

TXU argued that its suggestions, in connection with the proposed certification rule, could provide the funding to cover some or all of the bad debt and customer deposit exposure. OPC argued that a fund collected through a fee on REP certifications and/or amendments would be the most appropriate funding source. Alternatively, ERCOT could collect the fees at the commission's direction. OPC pointed out that the exiting REPs create the need for the fund; and therefore, they should contribute to the fund. Joint Commenters did not support such a concept. ARM and Reliant believed that if an alternative solution is adopted, all market participants operating in the competitive market should fund the service. OPC's proposal would collect from only one limited part of the competitive market and could have the unintended consequence of reducing the number of market participants, because the POLR fee assessed on a REP for certification could prohibit it from entering the market.

OPC did not support using funds that would otherwise be appropriated as a low-income discount such as the system benefit fund (SBF). TXU generally agreed with OPC that the SBF should be used in ways that are consistent with the current purposes of the fund. TXU suggested that it may be appropriate to consider the use of some of the SBF to protect customers who are the most vulnerable to the potential financial ramifications of a mass transition. TEAM noted that the funding should be in a form that allows the costs to be socialized in a competitively neutral manner, and argued that the SBF would be a logical choice for this funding. Alternatively, TEAM stated it did not oppose funding of such a mechanism through an ERCOT charge.

Cities doubted the feasibility and appropriateness of socializing compensation to providers, arguing that this approach is fraught with complexity and dispute. Cities opined, and OPC agreed, that if a POLR subsidy is required, it should be based on the differences between the POLR's revenues and actual incurred costs, rather than deviations from a hypothetical pricing formula. Cities explained that this process would be similar to a utility rate case, which increases the complexity of this mechanism. However, they asserted that unless actual revenues and costs are the benchmark, the public has no assurance that the overall market prices are not inflated in order to subsidize excessive POLR profits. Joint Commenters disagreed with Cities' proposed method to determine the costs that are to be shared, because as Cities themselves pointed out, a process such as this would be overly complex and cumbersome, creating a tremendous administrative burden on REPs that are already compelled to provide POLR service.

Commission Response

The commission declines to adopt a proposal that shifts the costs of a mass transition to market participants. The commission further agrees with TXU and OPC that the SBF should only be used in ways that are consistent with PURA.

The commission agrees with TXU that vulnerable populations should be protected in a mass transition and has adopted deposit assistance provisions that should help the most vulnerable customers, low-income customers. The REP certification rule, §25.107(f)(6), establishes priorities for distribution of proceeds from the irrevocable stand-by letter of credit in the event of a REP default. Consistent with the priorities outlined in §25.107(f)(6), the commission is adopting a mechanism to ensure that low-income customers affected by a mass transition are given priority to the proceeds of the defaulting REP's irrevocable stand-by letter of credit. These customers are among those most likely to have difficulty making timely deposits in the event of a mass transition. As such, it is appropriate to use the letter of credit proceeds to assist such customers with their deposits when transitioning to another REP. These funds will first be used to provide a "reasonable deposit amount" for transitioned customers enrolled in the rate reduction program pursuant to §25.454.

During mass transition events, Staff designated by the Executive Director will determine the deposit amount per customer electric service identifier (ESI ID), up to $400, unless good cause exists to increase the amount. These deposit credits will be distributed first to any VREP, based on the number of low income customers they receive and second to LSPs, also based on the number of low income customers they receive. The reasonable deposit amount will be calculated at the time of the transition and is intended to encompass factors such as typical residential usage and current residential prices. This shall satisfy in full the customer's initial deposit obligation if the deposit credit to be distributed is sufficient to provide an amount equal to the reasonable deposit amount. VREPs and LSPs may request from a customer the difference between the reasonable deposit amount determined by the Executive Director Staff designee, and the money distributed from the letter of credit proceeds. For example, if the commission were to decide that a $300 deposit were reasonable, but the proceeds from the letter of credit only allowed the payment of a $200 deposit on behalf of the low-income customer, the VREP is allowed, but not required, to ask the customer for an additional $100. This difference shall be collected in accordance with §25.478(e)(3), which allows an eligible customer to pay its deposit in two equal installments, although the deposit credit shall be used toward the first installment. Ninety days after the transition date, VREPs and LSPs are allowed to request an additional deposit amount from transitioned customers, equal to the amount the VREP or LSP would have charged a customer in the same customer class and service area, in accordance with §25.478(e) at the time of the transition. For example, if the VREP was assessing a deposit of $400 to customers in the same customer class and service area, but the commission finds a reasonable deposit is $300, the VREP is allowed, but not required, to ask the customer for an additional $100 after 90 days. The commission believes that if the customer has stayed with the VREP for 90 days, the provider should be allowed to treat the customer in the same way it would treat all customers.

Question 3: Should the commission consider any other concepts or mechanisms to address these issues? If so, please describe.

TXU shared some of the concerns raised by TIEC and Cities with respect to the possible funding of the alternative proposal, and urged the commission to consider the suggestions made in connection with the REP certification rule regarding posting of collateral and the handling of deposits held by failed REPs as a potential means to provide funding to cover some or all of the bad debt and customer deposit exposure.

First Choice stated that there are two opportunities that would better address the issue of bad debt for all REPs, not just POLR providers, while facilitating the goal of protecting both customers and REPs during mass transition events. Because most of the

bad debt incurred in the market is a direct result of a customer's ability to either switch to, or request a move-out in order to initiate service with a new provider despite owing his or her current provider (and perhaps other providers as well) substantial sums of money, First Choice suggested that allowing REPs to delay the execution of a pending switch or move-out until all past due balances are paid in full would mitigate much of the bad debt that currently exists in the market. First Choice pointed out that customers who have been disconnected for non-payment would be required to pay all past due balances before a TDU would be asked to establish their service with another REP. Closing this gap in the market rules would substantially reduce REPs' operating costs, resulting in reduced prices to all consumers, including mass transition customers. This opportunity could be accompanied by a substantial REP-funded bill payment assistance program to be used as an extension to the current "One-time Bill Payment Assistance Program" that is designed to help customers that are having difficulty paying their electric bills. First Choice noted that to date that program remains unfunded. Joint Commenters did not agree with First Choice and argued these issues are outside the scope of this rulemaking project; and therefore, they should not be addressed here.

TXU suggested that the rule stipulate that ERCOT not include estimates of a REP's transitioned load in determining the amount of security ERCOT requires from load serving entities (LSEs). Joint Commenters agreed. ERCOT protocols require Qualified Scheduling Entities (QSEs) to meet certain creditworthiness requirements and maintain any minimum security amounts required by the Protocols, TXU explained. TXU added that the amount of security required is calculated pursuant to formulas that consider the total amount of load served. Because most REPs serve as their own QSEs, this security requirement is applicable to them; consequently, a large and sudden increase to its load due to a mass transition could greatly increase the security requirement of the REP. TXU stated that including transitioned load in the calculation of security could impose a significant liquidity constraint upon REPs providing a public service under this rule, because they would be required to obtain additional funds to meet the increased security requirement.

Cities opined that the proposed rule provisions for voluntary and mandatory service providers will allow the impacts of service to transitioned customers to be spread across multiple REPs, thereby alleviating the financial impacts of acquiring large amounts of unplanned power supply on short notice. Cities continued that requiring the prices to reflect standard service offers of the REP should provide a price that is within the range of retail market prices. Texas ROSE suggested that POLR prices and terms of service be posted on the Power to Choose website. Cities also noted that given the commission's ability to assign customers to mandatory REPs, it is unclear whether an LSP continues to be necessary.

Commission Response

The commission rejects the suggestions of TXU and Joint Commenters relating to security requirements during a mass transition. ERCOT currently has flexibility in its protocols to manage the security required by REPs in mass transition events and, although the commission agrees that a substantial increase in load can lead to additional collateral requirements by ERCOT, the commission declines in this rulemaking to impose specific security requirements on ERCOT during mass transition events. Regarding First Choice's suggestion on preventing switching when customers have unpaid bills, the commission agrees with Joint Commenters that these issues are outside the scope of this rulemaking project. The commission acknowledges that the bad debt arising both from mass transitions and normal operations is a serious issue for REPs and the competitive market, because such bad debt has the potential of increasing costs for all customers. It is addressing the issue, in the POLR context, by enhancing the notification, pricing, and deposit provisions in this rule, so that customers should be more likely to pay their bills from POLR providers.

Question 4: Regarding the structure proposed for the Mandatory Emergency Service Providers (MESPs), is the 2% of load the right amount? Should it be less than 2%? Should the number depend on the size of the REP?

Reliant reiterated its preference for the market solution proposed in its comments filed jointly with ARM and supported a system in which the five largest REPs would provide service, with market support to lower the price and deposit obligations for customers transitioned to POLR. Reliant explained that this market solution would make the mandatory threshold question moot, because there would not be any MREPs. Reliant offered that if the commission opts to pursue the tiered structure in the proposed rule, it could support a 2% threshold, with the measurement of 2% tailored to each customer class. Reliant suggested that for the residential, small non-residential, and medium non-residential classes, the proper metric is an ESI ID count; therefore the 2% should be applied to the number of ESI IDs served by the MREPs. TEAM commented that it believes the 2% load threshold contemplated in the proposed rule may be too low and OPC agreed. ERCOT noted that if the 2% calculation is based on the number of customers in a POLR area, that it may not be significant enough. TEAM suggested a threshold amount of 5% or above. TEAM explained that the administrative and back office costs are not dependent on the size of the entity, and at 2% a REP could incur a large cost to establish systems to serve as POLR yet never be allocated a sufficient number of customers to allow for the recovery of those costs.

TXU agreed that the MREP function should not impose an undue hardship on the REPs required to participate. TXU stated that some REPs have suggested that the requirement will change hedging strategies and costs and could thereby incrementally increase the cost of month-to-month plans. TXU also warned of the harm that could result if the percentage required becomes a slippery slope and is allowed to exceed the levels the REPs can handle. TXU suggested three modifications to the proposed 2% level of the mandatory tier. First, TXU suggested reducing the number of customers or percentage of load the MREP must take to 0.50%. Second, TXU recommended that the commission evaluate the impact on the affected REPs after the first time the MREPs are required to take customers. Third, based on that evaluation, the commission should either: eliminate the MREP category, reduce the percent MREPs are required to take, leave the amount the same, or increase the percent to an amount not to exceed 1.00%.

First Choice stated that a percentage should definitely not be less than 2%, but that for MREPs a threshold should be 3% or more of the total MWhs served in the TDU service area for a customer class for the 12-month period ending on March 31 of the year the non-volunteering REPs are designated. First Choice reiterated that it is essential that the non-volunteering REPs be sufficiently sized and experienced to handle mass transitions of POLR customers.

Commission Response

The commission was persuaded by the REPs arguments against the mandatory tier, as was originally proposed. The commission believes a combination of the incentives created in the volunteer tier, the expansion of the non-volunteer tier, and the associated market-based pricing is the preferable solution and, most importantly, it is a market-based solution. The volunteer tier provides a layer of protection for customers to aid in keeping as many as possible of them off MCPE-based pricing. The commission does, however, adopt a minimum threshold of 1% for VREPs to qualify for incentives under the new rule, in an effort to increase the number of customers served by VREPs in the event of a mass transition.

Question 5: With respect to the methodology proposed for MCPE, is 120% of MCPE appropriate during times of extremely high prices? Should there be a different percentage of MCPE when prices are very high? If so, what should be the maximum MCPE percentage?

Texas Rose stated that the POLR rate is too high. OPC stated that 5% should be the maximum multiplier, and is appropriate to cover the costs associated with the additional load the LSPs will gain. TEAM urged the commission to consider setting the price at 120% of MCPE, not to exceed a set amount of cents per kWh above MCPE. TEAM argued that when the MCPE is very low the commission should maintain the concept of a customer charge and a floor price to ensure that a POLR is not required to provide service without the opportunity to recover cost. NEM commented that the change to 120% is appropriate, but that the ceiling rate incorporating the MCPE should be uniform across all providers, the MCPE formula should be clarified, and the MCPE calculation should be a load-weighted average for the class, as opposed to a straight average. NEM opined that changing to a load-weighted average supports the reduction of the premium applied to MCPE. However, NEM stated that there may be instances in which 130% of MCPE continues to be an appropriate component, such as when market rates drop significantly.

Cities argued that 120% is excessive, especially during periods of extremely high prices. They opined that a 20% adder over the actual cost of power can only be characterized as a profit margin for the provider. Cities argued that a reasonable rate of profit should not be based on the commodity input prices and quantities, but on the capital investment of the owners, which more closely resembles a fixed cost. Cities suggested that a more reasonable version of the formula would reflect a power supply price based on MCPE per MWh plus a fixed dollar amount per MWh *(e.g.,* MCPE + $5/MWh).

TXU commented that there does not appear to be a reasoned basis for adjusting the percentage during times of high prices; Reliant and First Choice agreed. Reliant supported the MCPE methodology in the current rule which includes 130% with an energy floor, with no limit or other modification for extremely high prices. Reliant explained that consideration must be given to the costs associated with providing the service to customers, namely, a price that reflects the short-term market price for power, non-bypassable charges, and the risk of providing service for such a volatile and unpredictable load.

Reliant stated that the preamble questions imply that an LSP will experience a windfall during periods of high spot market energy prices if the MCPE multiplier used to calculate the rate for service is 120% or higher. Reliant asserted that this suggestion is unfounded and fails to acknowledge that an LSP needs to recover additional costs besides just energy, such as ancillary services and other load related charges, which tend to rise when the average MCPE rises. A reduced MCPE could result in the POLR not recovering all its costs, Reliant warned. While Reliant still supported a multiplier of 150% to MCPE, as supported by the Retail Market Coalition in Project Number 31416, *Evaluation of Default Service for Residential Customers and Review of Rules Relating to the Price to Beat and Provider of Last Resort,* Reliant could support 130% of MCPE. Reliant stated that if the commission were to adopt less than 130%, the policy objectives established in Project Number 31416 would be at risk. Cities disagreed, and stated that Reliant overlooked the fact that the non-bypassable charges, including "ERCOT administrative charges, nodal fees or surcharges, replacement reserve charges attributable to LSP load, and applicable taxes..." are included in the pricing formula. Cities added that ancillary service charges do tend to be higher in sustained periods of high energy prices, but this is not the same as rising in lockstep with the MCPE during extreme price spikes. Cities pointed out that most of the ancillary services are capacity related and tend to be somewhat less volatile than spot energy prices over time periods of intermediate length.

First Choice stated that it is best for customers to go directly to a generally available, variable, month-to-month plan that has no cancellation fee and has a contract term that does not exceed 31 days. This would not only simplify the process for the customer, it would eliminate the costly duplication of effort required when customers are first served by the POLR provider and then transitioned to a non-POLR provider and rate. However, if, the commission were to elect continuing pricing POLR service with MCPE, First Choice would support 130% as the multiplier.

Commission Response

The commission notes the suggestions from OPC, Team, and Cities regarding the multiplier to MCPE and suggested alternatives. Given the problems that arose during the Spring of 2008, the commission understands the concerns raised by OPC, Team, and Cities. At this time, the commission adopts 120% as the appropriate multiplier to MCPE pricing for residential customers, and 125% for non-residential customers for the pricing mechanism in subsection (l)(2). As noted by the commission during deliberations on the adoption of the current POLR rule in Project Number 31416, the commission is concerned with an MCPE multiplier that is so low that it might prevent a POLR provider from recovering its costs to serve customers.

REPs in a competitive market cannot provide electric service at a price below their cost or they too will fail. If this commission were to require REPs to provide service at a loss to POLR customers, the most efficient REPs would logically pass that loss on to their entire customer base in the form of price increases. When that happens, the competitive market loses some of the benefits of that REP's efficiency because of distortions created in the market by a POLR rate that is set too low to allow the provider to recover its costs. In spite of the laudable goal of keeping POLR prices low, the commission cannot sanction a proposal that will unnecessarily increase the cost of electricity in the competitive market. Conversely, the commission has concerns about the multiplier being too excessive. Based on the commission's review of the multipliers applied to the POLR formula during the 2008 mass transitions, the commission concludes that 120% strikes the proper balance between the needs of residential customers and REPs, and that 125% strikes the right balance for non-residential customers, as it can cost more to serve larger customers. Therefore, the commission declines to adopt a lower percentage during high price periods as suggested by OPC and Cities, or a higher percentage as put forth by First Choice, Reliant, and

TXU, because the perceived benefits associated with creating a standard for such a recalculation does not justify the complexity of developing and implementing such a standard. The commission agrees with Reliant, TXU, and NEM that the price floor should be used, to account for price anomalies in the MCPE, and because the low-income discount is tied to the price floor calculation. Removing the multiplier to the floor could have an unintended consequence of lowering the low-income discount for customers, therefore the commission uses a 125% multiplier in the calculation of the floor.

The commission agrees with First Choice that it is best for customers to be served using market-based, month-to-month plans, and adopts mechanisms in this rule to incent POLRs to offer market-based rate packages to customers in a mass transition.

Subsection (a) - Purpose

TXU suggested striking emergency and replacing it with interim in the title of this subsection, and throughout the remainder of the rule where appropriate.

Commission Response

The commission declines to adopt the term suggested by TXU. As noted above, while the commission explored the possibility of using an alternative terminology, the amended rule retains the term POLR, which is directly tied to the statute.

Subsection (b) - Application

NEM suggested that because there is a scheduled transition to new POLRs commencing with the 2009 two-year terms, the application of the proposed rules to current POLR providers would significantly change the costs, risks, and benefits of the service that the providers previously agreed to render; and, as such, it raises concerns with the adequacy of notice and due process. NEM urged the commission to adopt any POLR changes in a way that recognizes the practical impacts to REPs.

Commission Response

The commission acknowledges that there are considerations related to the implementation of the new rule, and that providers have already been selected for the 2009 term. The commission adopts modifications to the timing of the selection of POLR providers and has addressed this issue in subsections (h), (i), and (k).

Subsection (c) - Definitions

Texas ROSE argued that there is a statutory mandate that the POLR is obligated to serve any customer that requests service. Texas ROSE argued that if the commission changed the name of POLR service provided under PURA §39.106(g), it would still be required to provide POLR service under §39.106(b). Because the term is so specifically defined in the statute, Texas ROSE asked the commission to continue to call it POLR service. Texas ROSE emphasized that POLR has been used since the opening of the market and is familiar to many customers, and introducing a new term would confuse consumers and would not serve any useful purpose. The TDUs also commented that POLR is used in a variety of contexts in the market that would require additional changes to other commission documents and ERCOT guides and protocols.

In the event the term POLR is renamed, Reliant recommended adding the term "service" to the term "Emergency Area," the replacement for the term "POLR area." ERCOT commented that it believes the definition of MREP is too broad and may be confused with other non-emergency large quantity transitions that do not trigger POLR.

TIEC requested a definition be included to define POLR service. OPC and Reliant argued that the term "emergency" may unnecessarily alarm consumers. OPC proposed the term "transitional" instead. Reliant and TXU agreed, and added that the use of the term "emergency" is indicative of imminent peril to the public health, safety, or welfare, and could actually establish and/or reinforce negative perceptions and reactions to a process that was provided as a safety net to more than 45,000 customers in the summer of 2008. Reliant also pointed out that numerous sections of Substantive Rules, TDU Tariffs, REP scripting, and notices all refer to POLR service.

TXU supported changing the name of the service, but did not agree with the term "emergency," and submitted the term "transitional" or "interim." TXU added that the term should convey that the service is temporary and is intended as a stop gap only. If the commission does choose to rename POLR service, Reliant recommended "Temporary Back-Up Service Provider," "Temporary Continuity of Service," or "Continuous Service Provider."

Commission Response

The commission agrees with Texas ROSE that the statute refers to POLR and that introducing a new term could confuse customers and opts not to change the name in this rule. The commission adopts the term TDU area in place of emergency service area. The commission believes these terms better reflect the nature and intent of the adopted rule.

OPC argued that the term "Provider" could mean any REP or emergency service provider (ESP) and that the term ESP should be used throughout the rule, rather than provider. TXU suggested that instead of Provider, using the familiar label of REP, or REP modified as appropriate (Voluntary REP, Mandatory REP, and Interim REP). TXU also proposed renaming Continuous Service Area to Interim Area or Service Area. TXU noted that it really is not necessary to refer to voluntary and mandatory REPs as POLR or interim at all, because these REPs will offer competitive, month-to-month products from the onset of service, and the nature of that service is not necessarily interim or transitional.

TDUs suggested that the use of the term Provider will lead to confusion because it is a word that is frequently used generically in other contexts, and standing alone, it will not be clear whether it is being used as defined in this rule or in the generic sense. TDUs suggested that the term ESP be substituted for Provider, which refers to a VREP, MREP, or LSP in the proposed rule.

Commission Response

The commission agrees with OPC that the nature of POLR service is not interim or transitional, and as noted above, this rule requires VREPs to serve customers at market-based, month-to-month plans. The commission agrees with TDUs that the simple term "Provider" could be confusing, and therefore uses the term POLR provider throughout the rule, where appropriate. The commission specifies in other sections of the rule whether the language refers to only a VREP or LSP.

TDUs also expressed concern over the definition of the term "mass transition" because it is not clear what qualifies as a "large quantity" of transitioned customers. TDUs suggested the term be defined as customers transitioned pursuant to a transaction initiated by ERCOT that carries the mass transition (TS) code. TDUs explained that this transaction is already in use, and can be used by ERCOT when it initiates a customer switch based on

one of the conditions listed in subsection (o)(10) of the rule. Similarly, TDUs commented that the term "transitioned customer" should be clarified to mean a customer that takes service as the result of a mass transition, as distinguished from a customer who chooses POLR service pursuant to subsection (o)(1) of the rule. TDUs stressed that certain subsections of the rule apply only to customers involved in mass transition, and care should be taken throughout the rule to clearly indicate which customers a provision applies to. TDUs offered that in describing both customers that are mass transitioned and customers that request POLR service, the customers should be referred to collectively as "customers who take POLR service."

TDUs recommended that the definition of VREP should be changed to refer to a REP "designated" pursuant to subsection (i) of the rule, and the word "volunteered" should be removed.

Commission Response

The commission agrees with the TDUs that the term mass transition should be modified, and the term "volunteered" should be replaced with "designated," and adopts modifications to the rule accordingly. The commission also agrees with TDUs that customers who take POLR service include both transitioned customers and customers that request POLR service.

Subsection (d) - POLR service

Reliant suggested replacing the term "Provider" with LSP in a number of locations within this subsection and throughout the rule for clarification. Reliant commented that the term Provider refers to VREP, MREP, and LSP, and in some places is only applicable to LSP because the LSP has certain responsibilities.

Commission Response

The commission has not adopted the three-tier approach that it originally proposed. It does, however, agree with Reliant that certain parts of the rule will apply only to LSPs and has modified the rule to clarify which provisions apply only to LSPs.

Subsection (d)(4)(B)

TXU commented that the language in subsection (d)(4)(B) could be interpreted to require the REP itself to own call center facilities, and believes that the commission does not intend to impose this requirement and intends only that the REP have call center services available to customers.

Commission Response

The commission agrees with the clarification suggested by TXU, and has made changes in accordance with this recommendation.

Subsection (d)(4)(C)

TXU noted that subsection (d)(4)(C) includes a parenthetical that nothing but standard retail billing may be performed either by the REP or the REP's agent. TXU commented that it is not clear why this parenthetical is required, and it can suggest that other requirements, such as the call center availability, could be provided by the REP's agent. It proposed deleting this parenthetical statement.

Commission Response

The commission agrees with TXU that the parenthetical is confusing and has deleted this provision.

Subsection (d)(5)

TXU proposed two clarifying limitations to subsection (d)(5). The language of the proposed rule does not limit the REP's duty to provide billing and collection duties on a going forward basis or to the transitioned customers assigned to such REPs. Accordingly, TXU proposed changes to make these limitations explicit. Reliant commented that it is administratively more efficient to place on LSPs as opposed to all POLR Providers the requirement to bill and collect transition charges for REPs who have defaulted, rather than placing the obligation on all Providers.

Commission Response

The commission agrees with TXU and has modified the rule to make the limitations more explicit for this provision. The commission agrees with Reliant that the burden to collect from REPs who have defaulted should be placed only on LSPs and has modified the rule accordingly.

Subsection (e)(1) - Standards of service

Reliant suggested replacing the term provider with LSP in subsection (e)(1), so that only an LSP has the responsibility of serving customers that request service. NEM questioned whether it is necessary to include a provision for a customer to voluntarily request POLR service. NEM explained that customers requesting service is a completely different type of customer than a customer that is required to change REPs as part of a mass transition event. NEM suggested limiting the eligibility for POLR to customers in mass transition will allow REPs to better manage the costs and risk of providing service.

Commission Response

The commission declines to enact the suggestion by NEM that the rule should not apply to customers requesting service from a POLR provider. PURA requires POLRs to provide service to customers that request service. Further, the commission agrees with Reliant's suggestion that customers who are not part of a mass transition should be entitled to receive service from LSPs. VREPs are making a commitment to provide electric service at market-based rates in the event of a REP default. Therefore, the commission concludes that only LSPs should provide POLR service to customers who request it. The commission makes changes in accordance with the recommendation by Reliant.

Subsection (e)(2)

TXU recommended clarifying the requirement that all transitioned customers be treated uniformly in the same class and the same service area. Second, TXU commented that it is preferable to limit the applicability of the subsection (e)(2) to LSPs, because VREPs and MREPs will be serving transitioned customers on competitive plans. Reliant agreed, explaining that only LSPs would serve a customer in accordance with the "standard" Terms of Service. OPC supported modification. Reliant also suggested adding language to permit the LSP to transition residential customers to a market-based, month-to-month product that is listed on www.powertochoose.org.

Reliant also suggested deleting the requirement that ESI IDs transitioned to a competitive rate must be transitioned to a rate that is less than the POLR service rate at the time of the mass transition. To further the objective of placing more customers directly on market-based plans during a mass transition event, the commission should make it relatively simple for even the LSPs to choose to directly transition customers to market-based rates, and Reliant emphasized that the more barriers the rule places on LSPs to transition customers to market-based plans, rather than the POLR rate plan, the less likely it is that LSPs will exercise

that option. Reliant also offered language to clarify that the LSP is not required to transition all of the customers in the same class to the competitive retail product at the same time.

If the commission were to find it necessary to impose a rate comparison test before LSPs are allowed to transition customers to market-based plans, Reliant offered alternative language, so that if a comparison is required, the rule should provide clear standards for making the comparison.

TXU agreed with Reliant's suggestion to add language that would permit an LSP to transition residential customers to a market-based, month-to-month plan, without regard to the POLR service price. To the extent the transition is a benefit to the customer, TXU suggested that advanced notice to the customer of the transition should not be required. TXU also agreed that, if the commission decides to retain the price comparison for the LSP, the language should be modified to make clear the standards for the comparison. Finally, TXU also agreed with Reliant's suggestion that an abbreviated enrollment process be allowed with respect to customers who are only changing plans, not REPs. This would help customers move to more desirable plans more rapidly.

Commission Response

The commission is requiring LSPs that do not offer market-based, month-to-month products at the outset to transition customers off of the MCPE pricing specified in subsection (l)(2) in this rule. However, the commission disagrees with TXU and Reliant that those LSPs should be able to transition those customers without notice. The commission agrees with Reliant that this section should not require LSPs to transition customers to a rate that is less than MCPE rate at the time of the mass transition, because it is extremely difficult to conduct a rate comparison between a month-to-month plan, and the MCPE price. The commission adopts Reliant's language clarifying that the LSP is not required to transition customers to competitive retail products at the same time, because it may not be mechanically possible for a POLR to transition all customers at once. The commission finds that the speed at which a POLR can move the customers will differ from REP to REP, and may differ upon the number of customers the REP has to transition. Therefore, the commission accepts the language offered by Reliant to clarify this provision.

Subsection (e)(3)

TXU questioned whether the requirement that all marketing remind the customer that he or she has the right to switch to another provider or another product from the POLR ultimately benefits the consumer. TXU noted that LSPs serving customers on MCPE-based rates should be required to provide the customer with the notice of these facts. Additionally, TXU added, the commission or ERCOT should provide notice to the customer of these facts. TXU opined that this requirement for the VREPs and MREPs will put a strain on the marketing to these customers and could actually interfere with the goal of moving these customers off the MCPE product and back to a competitive product. TXU noted three reasons for this outcome. First, most marketing would not include these warnings; and therefore, REPs would be required to prepare separate marketing tailored to transitioned customers which would incur additional costs, undoubtedly to be reflected in the price charged to the customer. Second, the need to create tailored marketing will or may cause delay in getting the marketing to these transitioned customers, resulting in the customer remaining on the interim product for a longer period of time. Third, marketing that contains this somewhat unusual language may be less persuasive to customers, because most marketing does not urge the customer to consider competitors' products or even the marketer's alternative products before buying. In fact, TXU warned, it may make customers concerned enough to decline whatever offer is in the marketing material, pending a review of other products. TXU recommended that customers served by LSPs be informed of other products from that REP and other REPs, but that the disclosure requirement described here should not apply to all marketing of customers in transition.

Joint Commenters supported TXU's comments that would eliminate the requirement that all marketing materials include the reminder that the customer has the right to switch to another provider or product.

Reliant suggested that this subsection should apply only to LSPs serving at the subsection (l)(2) rate, and that it should refer to the enrollment process being developed in Project Number 35768, *Rulemaking Relating to General REP Requirements and Information Disclosures,* rather than the enrollment process described in §24.575, relating to Selection of a Retail Electric Provider.

Commission Response

The commission agrees with TXU and Joint Commenters that, because VREPs will be serving customers using market-based, month-to-month products, notification encouraging customers to leave those providers does not accomplish the intent of the rule, and makes changes accordingly.

The commission agrees with TXU that customers served by LSPs at the adopted subsection (l)(2) price (subsection (l)(2) in the proposed rule) should be informed as soon as possible of other products from that REP as well as other REPs. The commission agrees with Reliant that this requirement should apply only to LSPs serving customers at the rate in subsection (l)(2).

Subsection (f) - Customer information

Reliant suggested replacing Provider with LSP in subsection (f) to clarify that only the LSP should serve mass transition customers in accordance with the Standard Terms of Service. Reliant explained that as proposed in subsection (e), VREPs and MREPs would serve mass transition customers at market-based rates and therefore, they would appropriately provide the Terms of Service associated with those market-based plans. OPC supported the modification.

Commission Response

The commission agrees with Reliant's suggested language and has revised the rule accordingly to specify that only the LSP must serve customers in accordance with the Standard Terms of Service. VREPs would still be required to follow otherwise applicable terms of service requirements in the commission's rules.

Subsection (h)(1) - REP eligibility to serve as a POLR provider

TXU proposed that the reference to "beginning in January of the following year" in subsection (h)(1) be deleted. Reliant commented that rather than refer to a service area or a TDU service area, the language should reference an emergency service area, because this term is defined in subsection (c). Reliant further stated that the word "transitioned" should be deleted from the initial eligibility calculation to clarify that the calculation is based on market share, and not calculated based on customers transitioned to POLR service during some time period.

Commission Response

The commission is adopting modifications in this rule to account for the new selection process for VREPs and LSPs. The commission agrees with TXU that the reference to January should be removed. For reasons explained earlier in this preamble, the commission retains the term "TDU service area" in the proposed rule. The commission agrees with Reliant that the word transition should be deleted.

Subsection (h)(2)(B)

TXU and Reliant suggested language to clarify in subsection (h)(1)(B) how a REP's percentage of retail sales will be measured and recommended that the measurement be made in megawatt-hours. Reliant suggested adding back the phrase "numeric portion of the" to the paragraph; otherwise, it is likely that few REPs would qualify to serve as a POLR provider.

Commission Response

The commission agrees with Reliant and TXU that this provision should be clarified, and has modified the rule accordingly.

Subsection (h)(2)(E)

TXU suggested language to clarify that subsection (h)(2)(E) refers to an executed delivery service agreement with a TDU, rather than simply an "agreement" in the proposed rule.

Commission Response

The commission agrees with TXU and has revised the rule in accordance with this recommendation.

Subsection (i) - VREP list

Given the changes to the volunteer process and pricing, Reliant recommended that upon adoption of this rule, the commission renew the call for voluntary providers for the 2009-2010 term.

Commission Response

The commission agrees with Reliant that the commission should renew the call for VREPs for the remainder of the 2009-2010 term, and has modified the rule to reflect this change. This is addressed in subsections (h) and (i).

Subsection (i)(1)

TXU proposed that VREPs be allowed to specify the maximum amount of load they are willing to serve, instead of the maximum number of customers for all classes other than residential. Reliant stated that for the residential, small non-residential, and medium non-residential customer classes, a REP should specify the number of ESI IDs it is willing to take in each TDU territory. Reliant added that for the large non-residential class, VREPs should specify the maximum based on load.

Commission Response

The commission does not agree with TXU's proposal that VREPs be allowed to specify the amount of load they are willing to serve, because this does not comport with the assignment of customers at ERCOT during mass transitions of customers. Instead, the rule requires the VREP to specify the number of ESI IDs it is willing to serve for all customer classes, and has revised the rule accordingly. Reliant's proposal that for the large non-residential class, VREPs should specify the maximum they are willing to serve based on load is also inconsistent with the ERCOT process and is not adopted.

Subsection (i)(4)

TDUs recommended that language in subsection (i)(4) be changed to make clear that a VREP may increase or decrease the number of additional customers or load that it is volunteering to accept going forward, but that the VREP is not allowed to shed customers that have already been transitioned to it.

Commission Response

In order to facilitate REPs' participation as VREPs in the POLR program, the commission agrees that VREPs should be allowed to modify the number of ESI IDs that they can accept at any time. The commission also agrees with TDUs that a VREP should not be allowed to shed customers that have already been transitioned to it, and adopts the language proposed by the TDUs.

Subsection (i)(5)

TDUs recommended that in addition to ERCOT, TDUs should be able to raise issues with regard to the ability of a VREP to serve. If a REP is in default under the terms of the standard TDU Tariff for Retail Delivery Service ("TDU Tariff" or "Tariff"), the TDU no longer accepts switches to that REP. Thus, TDUs argued that, at a minimum, customers should no longer be transitioned to a VREP that is in default under the TDU Tariff. Joint Commenters disagreed, and stated that the TDUs have no statutory authority for such a role and the commission should deny the request to include such empowerment in the rule. TDUs argued that subsection (i)(5) should make clear that a disqualified REP must continue serving the customers that have previously been transferred to it. TXU suggested that the language be modified to make clear that a REP that is also a VREP may still acquire new ESI IDs through normal processes, but is simply prohibited from acquiring additional mass transitioned customers, in cases where the commission staff initiates a proceeding to disqualify a VREP.

Commission Response

The commission acknowledges the comment by TXU regarding a VREP's ability to acquire additional customers through normal channels in the event commission staff initiates a proceeding to disqualify a REP from being a POLR, and concludes that this rule does not need to address whether a REP serving as a VREP may acquire new customers. The commission agrees that TDUs should have the ability to raise issues regarding a REP's ability to serve as a POLR provider, and has modified the rule accordingly. The commission clarifies that, when a TDU provides information to the commission in this manner, it must provide the same information to the VREP. The commission disagrees with Joint Commenters' argument. Transferring customers to a REP that is unable to pay its bills to a TDU could be detrimental to the customers and the TDUs.

NEM suggested additional clarification be provided regarding the proposed three-tier structure, and questioned whether a mandatory category is necessary. ARM opposed the inclusion of the new MREP category. ARM contended that the addition of this tier is unnecessary, confusing, and ultimately harmful to the market. First Choice commented that it is confusing to have both a non-volunteer, mandatory POLR and a non-volunteer POLR or LSP. First Choice argued that having three types of service providers in a mass transition for each rate class would only add to customer confusion. First Choice supported the current structure of voluntary and default, non-voluntary providers and sees no benefit to dividing the non-voluntary pool. ARM argued that any benefits achieved in the market from the MREP category will be far outweighed by the detriments that ARM perceives will result if the rule is amended in this manner.

Texas Rose supported a POLR structure that would assign the POLR responsibility to the largest REP in a transmission and distribution service area and require the REP to charge residential consumers the same rate taken by a majority of its residential customers. First Choice suggested a similar structure, where POLR customers are transitioned to a designated provider and placed on a variable month-to-month plan with no cancellation fee. Joint Commenters opposed such plans, because the costs to serve transitioned customers are not reflected in rates that REPs offer as competitive month-to-month offers. According to Joint Commenters, REPs often make power purchases in the market in advance to support planned acquisition campaigns. To the extent a REP is suddenly overwhelmed by an influx of transitioned customers from a failed REP, the supply purchased for an acquisition campaign would not be sufficient to support service to the transitioned customers. Joint Commenters argued further that this is exactly why the existing rule allows pricing for POLR service to be based on spot energy prices (i.e., MCPE prices).

ARM offered several reasons to support its opposition to the MREP category. First, ARM questioned whether the MREPs will be justly compensated or will be subject to a regulatory taking. ARM also stated that the other two categories, the VREP and the LSP, are sufficient to carry out the task of providing service in the event of a mass transition. ARM suggested that this category could create confusion in terms of eligible REPs' anticipation of and preparation for providing service in the event of a mass transition. Whereas a non-volunteering POLR under the existing rule can anticipate with a large degree of certainty that it will be required to provide POLR service in the event of a mass transition of customers, under the proposed rule, that certainty is undermined by the 2% threshold calculation. For those REPs designated as MREPs but which do not qualify as LSPs, the calculation of the 2% threshold for each customer class in each POLR area may or may not result in an obligation to serve. REPs that qualify as both MREPs and VREPs may be required to charge a market-based rate for month-to-month service in one TDU territory, but be permitted to charge a different rate pursuant to proposed subsection (l)(2) to the same customer class in its capacity as an LSP in another TDU territory. ARM called this discriminatory price treatment troubling. ARM questioned why the size of the mass transition event would dictate whether the same REP is required, on the one hand, to charge the customer a market-based price at the outset, or is allowed to charge the customer a rate based on a specified formula on the other hand. ARM opined that the potential disparity in treatment of transitioned customers in terms of price will only exacerbate negative views of POLR service that presently exist.

ARM asserted that implementation of the mandatory tier would pose additional administrative burdens on ERCOT. Such an increase in the number of providers required to serve transitioned customers will require ERCOT to undertake certain operational modifications at an additional cost, for reasons that ARM did not believe are justified. ARM believed that if the mass transition event triggers the provision of POLR service by MREPs to one or more customer classes in one or more TDU areas, then a greater number of providers will need to immediately procure wholesale energy and ancillary services from the spot market to serve their unanticipated increase in load. ARM added that all of the REPs serving as MREPs will bear the administrative and financial burdens associated with the provision of POLR service, including the increased risk of bad debt that comes with any mass transition event. ARM noted that MREPs must offer a completely separate retail product out of necessity. While the proposed rule contemplates that MREPs can provide retail service using existing products, ARM explained that MREPs will need to reserve a product offering for transitioned customers in order to ensure they can accommodate those customers in the event of a mass transition.

ARM argued that the requirement to charge a market-based, month-to-month price to a transitioned customer is highly problematic. The MREP will need to access the wholesale market for additional power supply required to serve these additional customers. REPs, as a general rule, do not keep contingency excess power on hand for situations such as mass transitions. Further, ARM added that some REPs may strategically take long or short positions in the market, but any wholesale gain or loss associated with the long or short position falls squarely on the REP.

ARM pointed out that the MREP will need to resort to the balancing energy market to meet its sudden need for additional energy and ancillary services. The cost of such energy and services may easily exceed the embedded costs of those components in any of the competitive retail offerings the MREP currently makes available to customers. This scenario raises critical issues about whether it will result in just compensation for the REP.

Lastly, ARM argued that if an MREP is required to post the month-to-month service and market-based price that it uses to meet is POLR service obligation on the Power to Choose website, customers may interpret it as an advertisement of that service to anyone that requests it. While PURA §39.106 contemplates that a customer may request POLR service from a REP designated by the commission, the unreasonably discriminatory treatment of MREPs in this regard makes their inclusion in the proposed amendments all the more problematic, as a matter of law and policy, ARM argued.

TXU emphasized that MREPs would serve a vitally important function with little to no downside, as customers would be placed on current market-based, month-to-month plans, instead of going directly to the interim or POLR price. TXU agreed with First Choice that most REPs already have variable month-to-month plans that are used for competitively acquired customers as well as for customers who are transitioning away from expired, fixed-price term plans who have not responded to the REP's renewal efforts. These variable month-to-month price plans are responsive to market conditions and give REPs the ability to adjust these price plans as market conditions dictate.

TXU disagreed with ARM's proposal to eliminate the MREP mechanism. TXU disagreed with ARM's argument that the allocation to the MREPs improperly imposes additional burdens on ERCOT and noted that ERCOT did not raise this concern. TXU also disagreed with ARM's assumption that the proposed rule requires MREPs to acquire power at spot market prices but prohibits the MREP from charging prices that justly compensate the REP for the cost of the power. TXU commented that it understood the proposed rule to instead contemplate that an MREP would be called upon to use its capacity to add customers to an existing plan.

Commission Response

The commission does not address the assertions of ARM regarding the difficulty of the MREP category, as the commission has deleted that tier from this rule, instead accomplishing the objectives of that proposal by modifying the LSP tier and by modifying the voluntary tier to encourage more providers to offer market-based rates as VREPs. The commission does not entirely

agree with the arguments advanced by ARM regarding the difficulties in providing service as an MREP under the proposed rule. The commission also acknowledges the comments from TXU and First Choice indicate that the service could be viable. The commission believes the expansion of LSPs from five to up to 15 REPs will help to spread the responsibility (and risk) of POLR service among more REPs, which the MREP category was intended to achieve.

Subsection (j)(3)

TXU also suggested adding a due date for the Electricity Facts Label (EFL) required to be prepared and proposed making the EFL due January 31 of each year.

Commission Response

The commission agrees with TXU that a deadline should be added for the LSPs to file an EFL. The EFL should be filed by January of each year.

Subsection (j)(4) TXU stated that it supports requiring LSPs to provide customer information to the commission after a designated period of time if the customers are still receiving service based on MCPE, but suggested that the process be modified to lengthen the period of time from 15 to 30 days. Reliant agreed with TXU. TXU also suggested excluding from the list customers for whom a switch or other request has been submitted to get that customer off MCPE pricing required by the rule.

Commission Response

The purpose of the 15-day deadline was to prevent customers from being served by LSPs on an MCPE rate for more than a few days. Because the commission is adopting incentives for LSPs to serve customers using market-based products and requiring the LSPs to move those transitioned customers off MCPE pricing within a set period of time, the commission finds the 15-day requirement is no longer necessary.

Subsection (j)(5)

Reliant suggested changing "may" to "will" to comport with the language in subsection (q)(2) that states that if a LSP defaults or has its status revoked before the end of its term, after a review of the eligibility criteria, the next eligible REP will assume the duties of the former provider.

Commission Response

The commission agrees with Reliant and has modified the rule accordingly.

Subsection (k) - Transfer of customers to providers

NEM and OPC found the language describing the sequence of transfers in this subsection cumbersome and confusing. OPC offered language and suggested deleting subsection (l)(2). OPC also recommended clarification that customers that are transferred to VREPs or MREPs are on a market-based, month-to-month plan and will be treated as traditional competitive customers. OPC argued that this will reduce the stress of the customers scurrying to find a new REP or competitive product or going through the switching process, and will provide an incentive to the REPs providing volunteer service, as it will increase their customer base. OPC also noted that this treatment will also obviate the need for subsection (q) to apply to VREPs and MREPs.

TXU stressed that the MREP mechanism provides an important second level of protection or buffer against customers being exposed to MCPE prices. TXU explained that there are approximately 5.5 million residential customers in competitive areas, and an MREP requirement of only 1% would create an MREP aggregate capacity of 55,000 customers, more than the total number of customers affected by the REP failure experienced this past Spring. TXU argued that it does not see any reason to dispense of this buffer provision in the event of a large number of customers being transitioned. TXU proposed reducing the 2% level if it is too high, but does not recommend doing away with it altogether. TXU recommended changing this subsection to include MREP assignments in every mass transition in which the number of customers or load exceeds the cumulative capacity of the VREPs.

NEM reiterated that a mandatory provider may be unnecessary. NEM also suggested that customers in a mass transition first be allocated proportionally to VREPs up to the number of customers that each VREP has offered to serve. If there are remaining customers to be served, then those customers should be allocated proportionally to the five LSPs, up to a pre-determined, percentage-based limit of their existing customer base. Alternatively, NEM suggested that if the remaining customers cannot be allocated and the percentage limit on LSPs' customer bases be retained, then the remaining customers (after the allocation to VREPs) should be allocated proportionately to 10 LSPs. NEM explained that the additional five LSPs essentially would act in place of the proposed MREPs and would be the next five largest in rank order after the five designated LSPs. NEM argued that the larger base of 10 LSPs would mitigate against an undesired increase in market concentration, particularly if the emergency event was precipitated by a default by one of the five LSPs.

ERCOT expressed concern that the 2% maximum used for the number of customers in the POLR area for a class that MREPs serve may not be significant enough. ERCOT proposed that the maximum could be a fixed amount for customer size (such as any mass transition of more than 100,000 ESI IDs is considered "large" and would follow the process of being assigned to MREPs).

Commission Response

As discussed above, the commission declines to adopt the MREP category, so many of the suggestions offered are moot. The adopted rule, however, does expand the number of LSPs as suggested by NEM, because the commission agrees that the expansion of LSPs would act in place of the MREP category and would reduce the risk for each REP serving as an LSP. The adopted rule does not distinguish between the five largest LSPs and the remaining LSPs.

Subsection (k)(1)

TXU recommended a limit on assignment of customers so that the number of customers transitioned to VREPs does not exceed the number of customers VREPs have offered to serve. TXU also recommended that the rule specify the monthly usage level at which the VREPs' prices will be compared, for purposes of allocating customers to VREPs in ascending price per kilowatt-hour (kWh). TXU suggested 1,000 kWh/month.

Commission Response

The commission declines to adopt the suggestion by TXU that a limit be placed on MREPs because the MREP category is deleted from this rule. Because the adopted rule modifies the assignment of customers to VREPs in subsection (k), which requires random assignment, as opposed to by ascending price

per kWh as originally proposed, the recommended modification by TXU is no longer applicable.

Subsection (k)(2) and (k)(3)

TXU stated that subsection (k)(2) appeared to overlap with subsection (k)(3), and should include the non-discriminatory requirement in subsection (k)(4).

Commission Response

The commission agrees with TXU and has made a change to this subsection accordingly.

Subsection (l) - Rates

Texas ROSE argued that it supported a structure that would assign the POLR responsibility to the largest REP in a TDU service area, and would require the REP to charge residential consumers the same rate taken by the majority of its residential customers. Texas ROSE stated that the largest REPs should be required to serve as POLRs at a standard retail rate.

TEAM supported the language requiring REPs to charge their customers a market-based, month-to-month rate. NEM recommended that section (l) be modified to require that the ceiling rate be uniform across all types of POLRs. NEM was concerned that customers may be allocated to different POLRs and would be served at different rates. NEM opined this would amplify customer confusion and discontent surrounding the recent REP defaults. NEM argued Using a uniform ceiling rate would benefit REPs as well, because REPs have no leverage to prevent bad debt from customers if they are required to offer a standard market-based, month-to-month rate. NEM explained that at any given time, a POLR operating as a VREP or MREP may have a special promotional rate that it can offer a certain number of customers, but extending it to emergency customers may be cost-prohibitive. At the same time, REPs should be allowed the opportunity to price service below the ceiling rate, when it is within their means to do so, NEM stated.

TXU and Reliant recommended the pricing floor in the current rule be restored. TXU explained that the floor is intended to protect the competitive market from the POLR price. This is vitally important TXU explained, because the MCPE, and the associated POLR price in subsection (l)(2), can be very low during anomalous periods. TXU stressed that it is important to protect the competitive market from these anomalous price episodes.

Cities commented that the maximum rate allowed by the proposed pricing formula for LSPs will still be excessive. Cities provided estimates for the maximum price allowed by the proposed rule based upon the MCPE during May and June 2008, which demonstrated, in Cities' opinion, that the maximum price allowed in the rule would be substantially higher (126% to 144% higher) than retail market pricing if wholesale power prices spike during a mass transition. Cities argued that since high wholesale power prices are causally associated with REP defaults, its illustration of the impact of the pricing formula is very relevant. Cities offered an alternative for establishing a maximum rate based upon prevailing retail market prices for the month, rather than the formula used in the rule. For example, the maximum rate could be fixed at some percentage, such as 110% or 120% of the median one-month pricing offer for the relevant service area, based upon prices reported on the Power to Choose website.

Cities also opposed the customer charge component for LSPs. For a 1,000 kWh per month residential customer, the provider's customer charge would be $60. In comparison, integrated electric utilities in Texas typically collect a bundled customer charge less than $10 a month. Cities argued that the inflated customer cost component of $.06 cents per kWh explains most of the large differential between the POLR maximum price and prevailing retail market prices. If one assumes that the POLR customer costs were set at $17 per customer per month, the 26-52% differential between the formula rate and incumbent REP prices would decline 1 to 25%.

TXU disagreed with Cities' suggestion to use retail price data derived primarily from the effect of bilateral wholesale contracting in earlier periods to calculate the appropriate cost to provide POLR-type service.

Commission Response

The commission agrees that a market-based, month-to-month product is preferable to the MCPE price formula. This adopted rule requires VREPs to offer such a product to customers. The rule also requires LSPs to move transitioned customers to a similar product after a certain period of time, if an LSP declines to do so at the beginning of service. The commission concludes that because of varying market conditions and the unknown size of mass transitions, it may be necessary for an LSP to serve customers at the MCPE formula; therefore, it is retained in this rule. The commission agrees with TXU and Reliant that the price floor should be restored, and has made revisions to the rule accordingly. As explained previously, the low-income discount is tied to the formula for the price floor.

The commission agrees with Cities, in part, concerning the level of the MCPE rate and adopts the 120% formula in the proposed rule for residential customers only. For all other customers, the MCPE multiplier is 125%. The commission does not adopt the alternative pricing proposal put forth by Cities that is based on retail prices. Historical retail prices may not reflect current conditions in the wholesale market and thus may not adequately compensate LSPs for providing the service.

Subsection (l)(2)

TXU proposed using 15-minute interval data instead of hourly data in the calculation of the MCPE. This change would eliminate the need to define the term "actual hourly MCPE."

Commission Response

The commission retains the reference to hourly MCPE data for the residential class, and retains the reference to 15-minute interval data for all other customer classes.

Subsection (l)(2)(c)

TIEC commented that the rate for large non-residential customers in both the existing and the proposed rule results in excessive charges for transitioned customers, and allows the LSP to collect more than it needs to cover costs. In addition to the 120% multiplier, $7.25 floor, and the $6.00 per kW/month demand charge, the larger customers must pay a customer charge of nearly $3,000 per month. Cumulatively, TIEC explained, these charges are excessive and impose an unreasonable burden on industrial customers who are transitioned to LSPs. TIEC urged the commission to eliminate the demand charge from the proposed rule, arguing that this charge is not justified because the transitioned customer will already be paying the market price plus a large premium for the energy it consumes. While a demand charge makes sense when a customer has "reserved" power at a certain price, it does not make sense

when the REP is guaranteed to recover the costs of serving a customer from the energy charge alone.

Joint Commenters disagreed with TIEC's request to remove the demand charge, because inclusion of a demand charge provides a deterrent to customers switching back and forth between POLR service and competitive offers on the basis of price, using the POLR as an arbitrage opportunity. POLR service was never intended to be a competitive alternative and certainly should not be structured so that large non-residential customers could use POLR service to arbitrage the prices they pay for retail service. Joint Commenters argued that demand charges are a common rate design element for commercial and industrial customers. TXU also opposed TIEC's proposal to eliminate the demand charge for large industrial customers under the POLR rules unless it is replaced by another recovery mechanism to keep the POLR providers whole.

Commission Response

The commission agrees with Joint Commenters that the demand charge for large industrial customers should not be eliminated; and consistent with the commission's determination in the current POLR rule, a demand charge is a necessary component to the POLR rate. However, the commission believes that it should be prorated for transitioned customers, and has addressed this issue below.

On the other hand, customers that request service from an LSP (in contrast to those that are assigned an LSP during a mass transition event) will not have the demand charges prorated. While TIEC opined that the 120% multiplier is excessive, the commission believes a 125% multiplier is a reasonable rate to ensure that LSPs serving large non-residential customers are able to recover their costs, and it is a decrease from the 130% multiplier in the current rule. The commission concludes that a customer who consumes a lot of power in a short period of time, such as a high demand customer, is more costly to serve than one which uses the same amount of power over a longer period of time.

Subsection (l)(6)

TIEC noted that if demand charges will not be pro-rated for partial months when the transitioned customer switches to a new, permanent provider, then there is no incentive for customers to switch quickly to a new provider or enter into a long-term contract with the LSP. TIEC argued that this aspect of the rule is inconsistent with the ultimate goal of encouraging transitioned customers to enter into new service agreements as quickly as possible. TIEC explained that a 50 MW industrial customer would incur customer and demand charges of more than $270,000 if it were switched to an LSP for even a few hours. This is in addition to having to pay 120% of MCPE. This result is egregious, as the REP will not incur anything close to this level of cost in serving the large non-residential customer for only a brief period, and therefore TIEC requested that the commission add language to require LSPs to pro-rate any demand charges for the non-residential customer class based on the number of days that a customer takes POLR service.

Joint Commenters opposed TIEC's request that the rule be amended to require REPs that provide POLR service under the formula rates to prorate demand charges for the non-residential customer classes. Demand charges are based on the highest demand in the time period for which service is rendered. Therefore, the demand that is registered for the period that service is provided to the customer should be the demand charge applied to the customer's rate.

Joint Commenters explained that the importance of including a demand charge is made clear by considering a low load factor customer. Customers with a low load factor will typically have a peak demand that is not sustained for a large period of time and most usage will occur at demands far less than the peak demand. Therefore, usage for a low load factor customer will be much lower than usage for a high load factor if the peak demands of each customer are the same.

Joint Commenters stated that it is the actual demand being recorded that is charged, and there is no reason to prorate this charge for service that does not span a full month. According to Joint Commenters, TIEC is re-urging positions that the commission has soundly rejected in prior POLR rulemakings and should be rejected again.

Commission Response

As noted in the response above, the commission is adopting a rule that provides for demand charges for large customers to be prorated if they are customers transferred to an LSP during a mass transition event. In this adopted rule, the commission seeks to strike the right balance between POLR rates that are not punitive to retail customers while at the same time allow enough revenue for POLR providers to cover expected costs. Consistent with these objectives, the commission agrees with TIEC that a non-residential customer on a POLR rate should not have to pay a full month's customer and demand charges if the customer switches to a REP of choice before a full month of service has been provided.

Rather, the commission believes rates should reflect costs incurred by the POLR providers; therefore, it has modified the language in this subsection accordingly.

Subsection (o)

TDUs recommended that the provisions included under this subsection be broken out into three separate parts. TDUs explained that the duties and obligations that are included in current subsections (o)(2) through (o)(9) appear to apply regardless of whether the REP acquires the customer through a mass transition, or through the customer requesting service. Therefore, TDUs suggested these provisions be separated from subsection (o)(1), which applies only to customer requests for service, and to also separate them from subsections (o)(10) through (o)(16), which appear to apply only to mass transitions.

Commission Response

The commission acknowledges the comments by TDUs that subsection (o) is lengthy. Nonetheless, the commission concludes that the provisions in that subsection are appropriately organized and additional subsections are unnecessary.

TEAM stated that the commission should consider a mechanism that allows for quicker switching away from POLR service. TEAM offered several solutions, such as the TDU waiving the out-of-cycle meter read costs, with the TDU given recovery of the costs from the SBF or through a regulatory asset in base rates. TEAM added that given the oncoming deployment of advanced meters (AMS), the proposed rule should be written to recognize the deployment of that technology. OPC agreed with TEAM and strongly favored a system in which mass transitioned customers will be moved swiftly to competitive products.

Commission Response

The commission agrees with TEAM and has adopted a requirement in subsection (o) to require the TDU to waive out-of-cycle meter read charges and recover the costs through a regulatory asset. The commission agrees with TEAM that the coming deployment of AMS will also ease the burden for customers by reducing switching times. Additionally, with AMS deployment the costs of switching to a new REP and the costs of out-of-cycle meter reads will decrease over time, and will be addressed in other commission proceedings.

Subsection (o)(1) - Transition of customers to POLR Service Providers

Reliant recommended modifying this subsection (o)(1) to clarify that only LSPs will be required to serve customers requesting service.

Commission Response

As explained above, the commission agrees with Reliant that only LSPs should be required to serve customers requesting service and has modified the rule accordingly.

Subsection (o)(7)

TDUs recommended that POLRs only be required to obtain customer contact information from ERCOT, rather than from both ERCOT and the TDU. TDUs explained that the customer contact information in the TDU system may contradict that held by ERCOT, which is likely to be more accurate given the new reporting requirements incorporated in the proposed rule.

TXU also proposed changing subsection (o)(7) to make clear that the information a POLR provider is permitted to request pursuant to this section is limited to the information for the customers transitioned to that REP. Reliant stated that the language referring to a mass transition initiated by the provider should be deleted, because under the existing rule, POLR providers initiated transitions until July 1, 2007. The mass transition has been revised and is now initiated by ERCOT, and the language should therefore be deleted.

Commission Response

The commission disagrees with TDUs that POLRs should only be able to obtain contact information from ERCOT. Given the preponderance of poor customer data during the transitions in 2008, the commission concludes that the REPs shall be able to obtain contact information from TDUs. Therefore, the commission retains the language in this subsection. The commission agrees with TXU and Reliant and has modified the rule in accordance with these suggestions.

Subsection (o)(8)

TXU recommended a modification to reflect the fact that information referred to in subsection (o)(8) may not be available in Texas SET format.

Commission Response

The commission accepts TXU's modification and has reflected the change in the rule.

Subsection (o)(13)

TXU expressed concerns that a switch request scheduled for a date prior to the initiation of a mass transition would be negated until the next available switch date. TXU explained that customers who had chosen a new REP and are expecting a switch to that REP would instead be subjected to the mass transition. OPC and Texas ROSE agreed. Texas ROSE stated that an immediate fix is necessary to protect switches requested before a transition. TIEC requested that the commission revise this section to clarify that a customer will be allowed to switch to a new permanent provider even if the customers' request is made *after* a mass transition is initiated.

Commission Response

The commission agrees with these commenters that customers should be allowed to switch to a new permanent provider even if the request is made after a mass transition is initiated, and the mechanisms provided in subsection (o)(14), noted below, will enable this to occur.

Subsection (o)(14)

ERCOT, TXU, and the TDUs did not support a new transaction for POLR, and recommended removing this language. ERCOT argued that the market has developed the transactions and business processes to support transitions to POLR during the TX SET 3.0 project that went live in June 2007. TXU commented that a TX SET change would impose millions of dollars of costs on the market, and recommended that the commission direct ERCOT to instead explore ways to adapt existing transactions to avoid the additional cost. TDUs recommended further consideration before a new transaction is required. The market has already developed an electronic transaction that carries a flag indicating that it is a switch being initiated by ERCOT as part of a mass transition. This transaction is in use today, and development of a different transaction will require more than a year of work, and would be very costly.

Texas ROSE stressed the importance of streamlining the mass transition process. Texas ROSE emphasized that the processes at ERCOT are extremely important in providing seamless service to residential consumers. Last summer, consumers attempted to switch before the REP defaulted but their switch request was "trumped" in the ERCOT mass transition, sending them to POLR, Texas ROSE explained. These customers had to wait until their next meter reading date for their switch to be honored. If ERCOT would query its system for all switches in process for mass transition ESI IDs, this problem could be minimized.

Texas ROSE pointed out that problems from the previous POLR transitions included customers that were switched to POLR, that could not afford the high price, then signed up for services with another REP. Because the POLR did not receive a security deposit, some customers were disconnected by the POLR, even though they had affirmatively refused POLR service, and had attempted to switch to another REP. Texas ROSE argued that in a functioning competitive market, customers should be able to switch away from a defaulting provider and never be a POLR customer. Texas ROSE also stated that if it ERCOT is unable to create a new mass transition process that works better for consumers until 2010, a temporary "work around" solution should be created to identify and honor switches customers make right after a mass transition to avoid high POLR costs and to maintain continuous service.

TXU recommended the addition of a new paragraph to address the potential effects of estimated meter readings. Specifically, TXU argued, TDUs should be required to calculate the actual average daily use within 10 days of obtaining actual meter data. TXU suggested that if the actual daily usage is more than 50% greater or less than the estimated average daily usage sent to the exiting REP, the TDU should be required to cancel and re-bill both the exiting REP and the gaining REP. TDUs disagreed with TXU Energy's recommendation, and argued that the commis-

sion has previously declined to adopt these types of specific requirements for estimating procedures. TDUs explained there are many technical and logistical impacts to be considered, and this issue should be brought up in a different proceeding, in which all estimates can be addressed.

Commission Response

The commission agrees with the TDUs and directs ERCOT to explore ways to adapt existing transactions to avoid the additional cost of a new transaction. However, if after discussion with stakeholders, a determination is made that a new transaction is the only solution for this issue, then a transition shall be in place no later than 14 months from adoption of this rule. The commission finds that modifying the mechanisms at ERCOT and a new transaction will assuage the concerns noted by Texas ROSE.

The commission agrees with TXU that new language is needed to address the potential effects of estimated meter readings for mass transitioned customers, and has added language to subsection (o)(17) to address this issue. The language in subsection (o)(17) requires the TDUs to calculate the actual usage within 10 days of receiving actual meter data. The provision also states that if the average daily estimated usage sent to the exiting REP is more than 50% greater than or less than the average actual kWh usage per day, the TDU shall promptly cancel and re-bill both the exiting REP and the POLR using the average actually daily usage. The commission expects a greater level of accuracy for estimates in this market. The commission expects estimates to be accurate - and clarifies that the 50% provision does not set the standard in the market for the accuracy of estimates, but rather is the threshold at which estimate errors must be re-billed during mass transitions. The commission also notes that with the deployment of advanced metering, this calculation will become less of an issue for REPs as well as TDUs.

Subsection (o)(16)

ERCOT recommended adding language allowing REPs to use current market processes for dispute of TDU charges if they are charged in error for the out-of-cycle read. ERCOT noted that rates are confidential, and it does not have visibility into what rates customers may be charged by REPs. ERCOT explained that the process outlined in the Retail Market Guide allows REPs to dispute charges received by TDUs. ERCOT continued that this process has been in effect since July 1, 2007, and should be the tool that REPs and TDUs use to communicate when the fee for an out-of-cycle meter read charge should not be assessed.

Commission Response

The commission agrees with ERCOT and has modified the rule accordingly.

TEAM and OPC did not oppose the concept of a regulatory asset to recover the costs of out-of-cycle meter reads. Reliant opposed creating a regulatory asset to account for out-of-cycle meter reading charges associated with transitioning customers away from the defaulting REP, instead of continuing the current practice of charging the defaulting REP. Reliant stated that the defaulting REP should assume those charges rather than creating a regulatory asset for which the remaining REPs pay. TIEC opposed waiving the charge during a mass transition. Although these charges are typically small, if they are aggregated into a regulatory asset during a mass transition, the financial impact on TDU rates could be significant. TIEC argued that the costs of a REP default should be generally borne by the defaulting REP and the customers who selected the entity as their provider. Further, requiring customers with no relationship to a defaulting REP to pay for the costs of out-of-cycle meter reads would undermine the risks and rewards of customer choice. TIEC opined this would result in a "discounted" POLR service rate, and is a clear violation of PURA; therefore, transitioning customers should each be required to pay their respective meter-read charges.

TDUs recommended that TDU charges associated with a mass transition not be suppressed as proposed in subsection (o)(16) of the rule. There are two TDU charges that may be incurred in a mass transition. TDUs explained the first is a nominal fee that covers the cost of the out-of-cycle estimate or meter read that occurs when the TDU executes the mass transition and switches the customer to the new provider. This charge is currently billed to the defaulting REP and in almost every instance is not paid. They become part of the TDU's bad debt associated with the REP in default. TDUs pointed out that if the amendments to the REP certification rule that are currently proposed in Project Number 35767, *Project Relating to the Certification of a Retail Electric Provider,* are adopted, the unpaid charge would be collected in a regulatory asset by the TDU as part of bad debt and reviewed for reasonableness in the next rate case for collection. Therefore, the TDUs asserted that if the rule prohibited the failing REPs from billing the fee to the customer, there would be no need to suppress the fee because it would already be moved into a regulatory asset.

TDUs pointed out that the second TDU fee associated with a mass transition is not always incurred. When the customer who is mass transitioned seeks to leave the POLR, there is no fee associated with the switch if the customer transfers to the new REP, as of its normal meter read date. It is only if the customer switches outside of the normal billing cycle that an out-of-cycle meter read fee is charged to the REP that is gaining the customer. Suppressing this fee would be difficult, because the switch request does not identify the customer as being on POLR service, or having been mass transitioned. TDUs stated this is why there is currently no way for the TDU to know that fee suppression should apply without comparing a list of previously mass transitioned customers to every switch request every day. This would be an impossible task to accomplish manually; and therefore, each TDU would have to build a system to perform the query electronically.

According to the TDUs, further complicating matters is the fact that if a customer moves to the POLR's competitive rate, often there is no switch and thus no way to know that the fee suppression should no longer apply. Because the switching time period will vary by customer from a day or two to approximately a month, a process to handle this level of complexity would be extremely time consuming and costly to develop, and perhaps impossible. The TDUs recommended against suppressing this second fee.

Reliant supported the idea of suppressing out-of-cycle meter read charges for mass transitioned customers when the customer switches away from the POLR provider. However, Reliant acknowledged there are technical processing issues that need to be addressed and clarified to effectuate the commission's goal. Questions relating to the mechanics of achieving this goal such as the implementation costs, timing (how long the prohibition of the charge will be in effect following a mass transition), and whether normal transaction processing will be need to be addressed. Reliant suggested that a workshop is needed so that all participants can understand the process and work on a solution.

Finally, the TDUs requested the rule adopt the same language for creating the regulatory asset, as adopted in Project Number 35767 for the REP certification rule, in order to ensure that TDU auditors will allow creation of the asset.

Commission Response

The commission does not agree with TIEC that the costs of off-cycle meter reading charges should be borne by the customer forced into mass transition. The commission disagrees with TIEC that the financial impact of the regulatory asset will be significant. Reliant's suggestion that the TDU's recourse for the off-cycle charges be limited to recovery from the defaulting is impractical - historically, the defaulting REP exits the market without providing accurate customer information, if any, and owes money to various parties. It is highly unlikely that the TDU will be able to recover the charges from the defaulting REP. Because these charges are unpredictable and sporadic, the commission finds that the regulatory asset provision is the most cost-effective method to protect a TDU's financial integrity. Current practice allows customers who attempt to switch during a mass transition event to ask for an out-of-cycle switch. However, experience from the recent 2008 transitions and earlier events demonstrate that most customers are unaware of this option. Additionally, not all REPs are able to process out-of-cycle switches. Allowing for cost recovery through a TDU regulatory asset will prevent the customer from having to specifically request an out-of-cycle switch and pay an additional charge. The regulatory asset will also ensure that transitioned customers will not be charged for out-of-cycle meter reading charges in transitioning to the POLR provider, or when transitioning away from the POLR provider.

The commission agrees with Joint TDUs' recommended language to satisfy audit standards and make it clear that the regulatory asset is to be reviewed for reasonableness before it is included in rates. The commission modifies subsection (f)(3)(B) consistent with Joint TDUs' recommendation. In the REP certification rulemaking, the commission determined that the rule should be clear that the regulatory asset must be adjusted for bad debt charges that are already being recovered through the TDU's rate. Finally, the commission notes that cost recovery of a regulatory asset related to bad debt will be subject to review in a rate case pursuant to PURA §36.051.

Subsection (p)(1)(B)

TDUs recommended that the wording of subsection (p)(1)(B) be changed to correctly reflect that default occurs under the TDU Tariff without a commission order. TDUs explained that if the REP fails to pay delivery charges in accordance with the specified timelines, it is automatically in default. Therefore, TDUs argued it is inappropriate to say that the commission would issue an order "declaring" that the REP is in default, although the commission may issue an order recognizing that the default has occurred.

In addition, TDUs pointed out that under the TDU Tariff, if the defaulting REP fails to choose another option, the TDU is required to "immediately implement option (B)" of section 4.6.2.1(5), which requires the competitive retailer (REP) to transition customers to another competitive retailer or the POLR. TDUs concluded that ERCOT should initiate a mass transition upon receiving notice from the TDU that a transition is required pursuant to this TDU Tariff provision. Alternatively, TDUs offered that this section should provide that the transition should occur upon issuance of a commission order, recognizing that the REP is in default under the terms of the Tariff.

Commission Response

The commission acknowledges that if a REP fails to pay for delivery charges in accordance with the timelines set out in the TDU Tariff, the REP is automatically in default. The commission disagrees with TDU's suggestion that ERCOT should initiate a mass transition upon receiving notice from the TDU that a transition is required. The commission adopts language to allow TDUs to notify the commission in the event of a REP default under the TDU Tariff in subsections (h) and (i). While the commission has not initiated a mass transition, it believes it has the right to do so, by commission order.

Subsection (p)(2)

Reliant proposed deleting the word "provider" following "LSP" for consistency and deleting MREPs because MREPs include all eligible REPs and there will not be a "replacement" REP for a defaulting MREP, as is the case with the five largest REPs making up the LSP defaults.

Commission Response

The commission declines to adopt Reliant's suggestion, as it is not adopting the MREP category in this rule. POLR provider replaces the term LSP in this paragraph.

Subsection (p)(3)

Reliant proposed changing "Provider" to "LSP" throughout the rule, because Provider includes MREPs, VREPs, and LSPs. Reliant explained that only LSPs will serve customers on the MCPE-based priced formula in subsection (l)(2); and therefore, subsection (p) should apply only to those customers served by LSPs who may still be on the subsection (l)(2) rate. Reliant suggested further clarification so that the transfer at the end of a POLR term applies only to those customers still served under the pricing described in subsection (l)(2).

Commission Response

The commission agrees with the change offered by Reliant and has revised the rule accordingly.

Subsection (s) - Notice of Transition to POLR service

TEAM supported the change in notice in the proposed rule. TEAM highlighted that faster notification to customers of a mass transition will lead to customers making choices in the market and switching to new providers. TXU proposed language in the notice to the effect that the price determined under subsection (l) would apply only to REPs charging that price, the LSPs. Finally, TXU recommended adding language consistent with subsection (o)(16) that provides that customers will not be charged for out-of-cycle meter reads. TIEC requested clarification that this provision will apply when a customer is moved to a POLR during a mass transition.

Reliant suggested that the two-day requirement for notice to customers only apply to ERCOT, as it will take a REP serving as the new POLR provider more than two days to prepare and print the proper terms of service, EFLs, and welcome letters. Further, LSPs will need more time to decide whether to offer the MCPE-based pricing allowed by subsection (l)(2) or some other market-based plan and to fulfill the documentation requirements accordingly.

Commission Response

The commission agrees with Reliant that it may take longer than two days for a REP to prepare and send welcome letters, EFL,

and terms of service. However, the commission believes that the POLR provider should make every effort to send the notice to customers within two days. The commission retains the language, but notes that the REP has some flexibility in meeting this requirement for larger transitions.

Subsection (s)(1)

TEAM supported the requirement for a post-card notice containing the official commission seal. Reliant suggested adding "ERCOT" to clarify that the notice methods contemplated here apply only to ERCOT.

Commission Response

In response to TEAM, the adopted rule maintains inclusion of the official commission seal. The commission agrees with Reliant and has modified the rule accordingly.

Subsection (s)(3)(B)

Reliant recommended changing "non-volunteering provider," which includes MREPs and LSPs, to "LSP" only. Only the LSP will serve customers using the proposed subsection (l)(2) MCPE-based price formula, and so only LSPs should be providing notice to customers that the POLR price is generally higher than available competitive prices.

Commission Response

The commission agrees with Reliant and has modified the rule accordingly.

Subsection (s)(3)(E)

Reliant proposed removing the word "Standard" from the phrase "Standard Terms of Service" because VREPs and MREPs would send Terms of Service documentation consistent with the market-based plans to which they would transition customers. Reliant explained that only the LSP will send the Standard Terms of Service described in this rule, and only if it chooses to serve at the subsection (l)(2) price, rather than a market-based plan, as allowed for in proposed subsection (e).

Commission Response

The commission agrees with Reliant and has modified the rule accordingly.

Subsection (s)(3)(H)

Reliant suggested clarification that after enrolling in a competitive product, a mass transition customer is no longer considered a transitioned customer, but is considered a customer.

Commission Response

The commission agrees with Reliant and has modified the rule accordingly.

Subsection (s)(3)(I) and (J)

Reliant recommended modifications to recognize that only customers being served on the proposed subsection (l)(2) price formula should be informed of the need to switch to a competitive product or have their proprietary information made available to a competitive REP for marketing purposes.

Commission Response

The commission agrees with Reliant and has modified the rule accordingly.

Former subsection (v) - Reporting by REPs

TDUs applauded the proposal to require all REPs to frequently report customer contact information to ERCOT. In order to reinforce the seriousness of this obligation, the TDUs recommended that the requirement state explicitly that not only is "accurate" information required, but that "complete" information must be provided. Reliant suggested that REPs be allowed to report customers phone numbers, email addresses, and customer name *only* if available.

Commission Response

The commission agrees with TDUs' and Reliant's suggestions and has modified the rule accordingly, and this language is inserted into subsection (o)(6).

All comments, including any not specifically referenced herein, were fully considered by the commission.

This amendment is adopted under PURA, Texas Utilities Code Annotated (Vernon 2007 and Supp. 2008) §14.002, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §39.106, which requires that the commission designate retail electric providers of last resort; and PURA §39.101, which authorizes the commission to adopt and enforce rules that ensure retail electric customer protections that entitle a customer: to safe, reliable, and reasonably priced electricity, to be served by a provider of last resort that offers a commission-approved standard service package, to be protected from unfair, misleading, or deceptive practices, to other information or protections necessary to ensure high-quality service to customers including minimum service standards relating to customer deposits and extension of credit, switching fees, levelized billing programs, termination of service, and quality of service, and which requires the commission to ensure that its customer protection rules provide at least the same level of customer protection against potential abuses and the same quality of service that existed on December 31, 1999.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 17.004, 39.101, and 39.106.

§25.43. Provider of Last Resort (POLR).

(a) Purpose. The purpose of this section is to establish the requirements for Provider of Last Resort (POLR) service and ensure that it is available to any requesting retail customer and any retail customer who is transferred to another retail electric provider (REP) by the Electric Reliability Council of Texas (ERCOT) because the customer's REP failed to provide service to the customer or failed to meet its obligations to the independent organization.

(b) Application. The provisions of this section relating to the selection of REPs providing POLR service apply to all REPs that are serving retail customers in transmission and distribution utility (TDU) service areas. This section does not apply when an electric cooperative or a municipally owned utility (MOU) designates a POLR provider for its certificated service area. However, this section is applicable when an electric cooperative delegates its authority to the commission in accordance with subsection (q) of this section to select a POLR provider for the electric cooperative's service area. All filings made with the commission pursuant to this section, including filings subject to a claim of confidentiality, shall be filed with the commission's Filing Clerk in accordance with the commission's Procedural Rules, Chapter 22, Subchapter E, of this title (relating to Pleadings and other Documents).

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

(1) Basic firm service--Electric service that is not subject to interruption for economic reasons and that does not include value-added options offered in the competitive market. Basic firm service excludes, among other competitively offered options, emergency or back-up service, and stand-by service. For purposes of this definition, the phrase "interruption for economic reasons" does not mean disconnection for non-payment.

(2) Billing cycle--A period bounded by a start date and stop date that REPs and TDUs use to determine when a customer used electric service.

(3) Billing month--Generally a calendar accounting period (approximately 30 days) for recording revenue, which may or may not coincide with the period a customer's consumption is recorded through the customer's meter.

(4) Business day--As defined by the ERCOT Protocols.

(5) Large non-residential customer--A non-residential customer who had a peak demand in the previous 12-month period at or above one megawatt (MW).

(6) Large service provider (LSP)--A REP that is designated to provide POLR service pursuant to subsection (j) of this section.

(7) Market-based product--For purposes of this section, a rate for residential customers that is derived by applying a positive or negative multiplier to the rate described in subsection (l)(2) of this section is not a market-based product.

(8) Mass transition--The transfer of customers as represented by ESI IDs from a REP to one or more POLR providers pursuant to a transaction initiated by the independent organization that carries the mass transition (TS) code or other code designated by the independent organization.

(9) Medium non-residential customer--A non-residential retail customer who had a peak demand in the previous 12-month period of 50 kilowatt (kW) or greater, but less than 1,000 kW.

(10) POLR area--The service area of a TDU in an area where customer choice is in effect, except that the service area for AEP Texas Central Company shall be deemed to include the area served by Sharyland Utilities, L.P.

(11) POLR provider--A volunteer retail electric provider (VREP) or LSP that may be required to provide POLR service pursuant to this section.

(12) Residential customer--A retail customer classified as residential by the applicable TDU tariff or, in the absence of classification under a tariff, a retail customer who purchases electricity for personal, family, or household purposes.

(13) Transitioned customer--A customer as represented by ESI IDs that is served by a POLR provider as a result of a mass transition under this section.

(14) Small non-residential customer--A non-residential retail customer who had a peak demand in the previous 12-month period of less than 50 kW.

(15) Voluntary retail electric provider (VREP)--A REP that has volunteered to provide POLR service pursuant to subsection (i) of this section.

(d) POLR service.

(1) There are two types of POLR providers: VREPs and LSPs.

(2) For the purpose of POLR service, there are four classes of customers: residential, small non-residential, medium non-residential, and large non-residential.

(3) A VREP or LSP may be designated to serve any or all of the four customer classes in a POLR area.

(4) A POLR provider shall offer a basic, standard retail service package to customers it is designated to serve, which shall be limited to:

(A) Basic firm service;

(B) Call center facilities available for customer inquiries; and

(C) Benefits for low-income customers as provided for under PURA §39.903 relating to the System Benefit Fund.

(5) A POLR provider shall, in accordance with §25.108 of this title (relating to Financial Standards for Retail Electric Providers Regarding the Billing and Collection of Transition Charges), fulfill billing and collection duties for REPs that have defaulted on payments to the servicer of transition bonds or to TDUs.

(6) Each LSP's customer billing for residential customers taking POLR service under a rate prescribed by subsection (l)(2) of this section shall contain notice to the customer that other competitive products or services may be available from the LSP or another REP. The notice shall also include contact information for the LSP, and the Power to Choose website, and shall include a notice from the commission in the form of a bill insert or a bill message with the header "An Important Message from the Public Utility Commission Regarding Your Electric Service" addressing why the customer has been transitioned to a LSP, a description of the purpose and nature of POLR service, and explaining that more information on competitive markets can be found at www.powertochoose.org, or toll-free at 1-866-PWR-4-TEX (1-866-797-4839).

(e) Standards of service.

(1) An LSP designated to serve a class in a given POLR area shall serve any eligible customer requesting POLR service or assigned to the LSP pursuant to a mass transition in accordance with the Standard Terms of Service in subsection (f)(1) of this section for the provider customer's class. However, in lieu of providing terms of service to a transitioned customer under subsection (f) of this section and under a rate prescribed by subsection (l)(2) of this section an LSP may at its discretion serve the customer pursuant to a market-based month-to-month product, provided it serves all transitioned customers in the same class and POLR area pursuant to the product.

(2) A POLR provider shall abide by the applicable customer protection rules as provided for under Subchapter R of this chapter (relating to Customer Protection Rules for Retail Electric Service), except that if there is an inconsistency or conflict between this section and Subchapter R, the provisions of this section shall apply. However, for the medium non-residential customer class, the customer protection rules as provided for under Subchapter R of this chapter do not apply, except for §25.481 of this title (relating to Unauthorized Charges), §25.485(a) - (b) of this title (relating to Customer Access and Complaint Handling), and §25.495 of this title (relating to Unauthorized Change of Retail Electric Provider).

(f) Customer information.

(1) The Standard Terms of Service prescribed in subparagraphs (A) - (D) of this paragraph apply to POLR service provided by an LSP under a rate prescribed by subsection (l)(2) of this section.

(A) Standard Terms of Service, POLR Provider Residential Service:
Figure: 16 TAC §25.43(f)(1)(A) (No change.)

(B) Standard Terms of Service, POLR Provider Small Non-Residential Service:
Figure: 16 TAC §25.43(f)(1)(B) (No change.)

(C) Standard Terms of Service, POLR Provider Medium Non-Residential Service:
Figure: 16 TAC §25.43(f)(1)(C) (No change.)

(D) Standard Terms of Service, POLR Provider Large Non-Residential Service:
Figure: 16 TAC §25.43(f)(1)(D) (No change.)

(2) An LSP providing service under a rate prescribed by subsection (l)(2) of this section shall provide each new customer the applicable Standard Terms of Service. Such Standard Terms of Service shall be updated as required under §25.475(f) of this title (relating to General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial Customers).

(g) General description of POLR service provider selection process.

(1) All REPs shall provide information to the commission in accordance with subsection (h)(1) of this section. Based on this information, the commission's designated representative shall designate REPs that are eligible to serve as POLR providers in areas of the state in which customer choice is in effect, except that the commission shall not designate POLR providers in the service areas of MOUs or electric cooperatives unless an electric cooperative has delegated to the commission its authority to designate the POLR provider, in accordance with subsection (q) of this section.

(2) POLR providers shall serve two-year terms. The initial term for POLR service in areas of the state where retail choice is not in effect as of the effective date of the rule shall be set at the time POLR providers are initially selected in such areas.

(h) REP eligibility to serve as a POLR provider. In each even-numbered year, the commission shall determine the eligibility of certified REPs to serve as POLR providers for a term scheduled to commence in January of the next year. On a schedule to be determined by the commission, POLR providers shall be designated to complete the 2009-2010 period pursuant to the requirements of this section. REPs designated to provide service as of February 26, 2009 may continue providing such service pursuant to the requirements of this section as they existed prior to the 2009 re-adoption of this section, until such time as new POLR providers are required to provide service pursuant to the current requirements of this section. POLRs may serve customers on a market-based, month-to-month rate and provide notice pursuant to the provisions of this section as of this section's effective date.

(1) All REPs shall provide information to the commission necessary to establish their eligibility to serve as a POLR provider for the next term, except that for the 2009-2010 term, the information already provided for that term shall serve this purpose. Starting with the 2011-2012 term REPs shall file, by July 10th, of each even-numbered year, by service area, information on the classes of customers they provide service to, and for each customer class, the number of ESI IDs the REP serves and the retail sales in megawatt-hours for the annual period ending March 31 of the current year. The independent organization shall provide to the commission the total number of ESI ID and total MWh data for each class. All REPs shall also provide information on their technical capability and financial ability to provide service to additional customers in a mass transition. The commission's determination regarding eligibility of a REP to serve as POLR provider under the provisions of this section shall not be considered confidential information.

(2) Eligibility to be designated as a POLR provider is specific to each POLR area and customer class. A REP is eligible to be designated a POLR provider for a particular customer class in a POLR area, unless:

(A) A proceeding to revoke or suspend the REP's certificate is pending at the commission, the REP's certificate has been suspended or revoked by the commission, or the REP's certificate is deemed suspended pursuant to §25.107 of this title (relating to Certification of Retail Electric Providers (REPs));

(B) The sum of the numeric portion of the REP's percentage of ESI IDs served and percentage of retail sales by MWhs in the POLR area, for the particular class, is less than 1.0;

(C) The commission does not reasonably expect the REP to be able to meet the criteria set forth in subparagraph (B) of this paragraph during the entirety of the term;

(D) On the date of the commencement of the term, the REP or its predecessor will not have served customers in Texas for at least 18 months;

(E) The REP does not serve the applicable customer class, or does not have an executed delivery service agreement with the service area TDU;

(F) The REP is certificated as an Option 2 REP under §25.107 of this title;

(G) The REP's customers are limited to its own affiliates;

(H) A REP files an affidavit stating that it does not serve small or medium non-residential customers, except for the low-usage sites of the REP's large non-residential customers, or commonly owned or franchised affiliates of the REP's large non-residential customers and opts out of eligibility for either, or both of the small or medium non-residential customer classes; or

(I) The REP does not meet minimum financial, technical and managerial qualifications established by the commission under §25.107 of this title.

(3) For each term, the commission shall publish the names of all of the REPs eligible to serve as a POLR provider under this section for each customer class in each POLR area and shall provide notice to REPs determined to be eligible to serve as a POLR provider. A REP may challenge its eligibility determination within five business days of the notice of eligibility by filing with the commission additional documentation that includes the specific data, the specific calculation, and a specific explanation that clearly illustrate and prove the REP's assertion. Commission staff shall verify the additional documentation and, if accurate, reassess the REP's eligibility. Commission staff shall notify the REP of any change in eligibility status within 10 business days of the receipt of the additional documentation. A REP may then appeal to the commission through a contested case if the REP does not agree with the staff determination of eligibility. The contested status will not delay the designation of POLR providers.

(4) A standard form may be created by the commission for REPs to use in filing information concerning their eligibility to serve as a POLR provider.

(5) If ERCOT or a TDU has reason to believe that a REP is no longer capable of performing POLR responsibilities, ERCOT or the TDU shall make a filing with the commission detailing the basis for its concerns and shall provide a copy of the filing to the REP that is the

subject of the filing. If the filing contains confidential information, ERCOT or the TDU shall file the confidential information in accordance with §22.71 of this title (relating to Filing of Pleadings, Documents, and Other Materials). Commission staff shall review the filing, and shall request that the REP demonstrate that it still meets the qualifications to provide the service. The commission staff may initiate a proceeding with the commission to disqualify the REP from providing POLR service. No ESI IDs shall be assigned to a POLR provider after the commission staff initiates a proceeding to disqualify the POLR provider, unless the commission by order confirms the POLR provider's designation.

(i) VREP list. Based on the information provided in accordance with this subsection and subsection (h) of this section, the commission shall post the names of VREPs on its webpage, including the aggregate customer count offered by VREPs. A REP may submit a request to be a VREP no earlier than June 1, and no later than July 31, of each even-numbered year. This filing shall include a description of the REP's capabilities to serve additional customers as well as the REP's current financial condition in enough detail to demonstrate that the REP is capable of absorbing a mass transition of customers without technically or financially distressing the REP and the specific information set out in this subsection. The commission's determination regarding eligibility of a REP to serve as a VREP, under the provisions of this section, shall not be considered confidential information.

(1) A VREP shall provide to the commission the name of the REP, the appropriate contact person with current contact information, which customer classes the REP is willing to serve within each POLR area, and the number of ESI IDs the REP is willing to serve by customer class and POLR area in each transition event.

(2) A REP that has met the eligibility requirements of subsection (h) of this section and provided the additional information set out in this subsection is eligible for designation as a VREP.

(3) Commission staff shall make an initial determination of the REPs that are to serve as a VREP for each customer class in each POLR area and publish their names. A REP may challenge its eligibility determination within five business days of the notice of eligibility by submitting to commission staff additional evidence of its capability to serve as a VREP. Commission staff shall reassess the REP's eligibility and notify the REP of any change in eligibility status within 10 business days of the receipt of the additional documentation. A REP may then appeal to the commission through a contested case if the REP does not agree with the staff determination of eligibility. The contested status will not delay the designation of VREPs.

(4) A VREP may file a request at any time to be removed from the VREP list or to modify the number of ESI IDs that it is willing to serve as a VREP. If the request is to increase the number of ESI IDs, it shall provide information to demonstrate that it is capable of serving the additional ESI IDs, and the commission staff shall make an initial determination, which is subject to an appeal to the commission, in accordance with the timelines specified in paragraph (3) of this subsection. If the request is to decrease the number of ESI IDs, the request shall be effective five calendar days after the request is filed with the commission; however, after the request becomes effective the VREP shall continue to serve ESI IDs previously acquired through a mass transition event as well as ESI IDs the VREP acquires from a mass transition event that occurs during the five-day notice period. If in a mass transition a VREP is able to acquire more customers than it originally volunteered to serve, the VREP may work with commission staff and ERCOT to increase its designation. Changes approved by commission staff shall be communicated to ERCOT and shall be implemented for the current allocation if possible.

(5) ERCOT or a TDU may challenge a VREP's eligibility. If ERCOT has reason to believe that a REP is no longer capable of performing VREP responsibilities, ERCOT shall make a filing with the commission detailing the basis for its concerns and shall provide a copy of the filing to the REP that is the subject of the filing. If the filing contains confidential information, ERCOT or the TDU shall file it in accordance with §25.71 of this title (relating to General Procedures, Requirements and Penalties). Commission staff shall review the filing of ERCOT and if commission staff concludes that the REP should no longer provide VREP service, it shall request that the REP demonstrate that it still meets the qualifications to provide the service. The commission staff may initiate a proceeding with the commission to disqualify the REP from providing VREP service. No ESI IDs shall be assigned to a VREP after the commission staff initiates a proceeding to disqualify the VREP, unless the commission by order confirms the VREP's designation.

(j) LSPs. This subsection governs the selection and service of REPs as LSPs.

(1) The REPs eligible to serve as LSPs shall be determined based on the information provided by REPs in accordance with subsection (h) of this section.

(2) In each POLR area, for each customer class, the commission shall designate up to 15 LSPs. The eligible REPs that have the greatest market share based upon retail sales in megawatt-hours, by customer class and POLR area shall be designated as LSPs. Commission staff shall designate the LSPs by October 15th of each even-numbered year, based upon the data submitted to the commission under subsection (h) of this section. Designation as a VREP does not affect a REP's eligibility to also serve as a LSP.

(3) For the purpose of calculating the POLR rate for each customer class in each POLR area, an EFL shall be completed by the LSP that has the greatest market share in accordance with paragraph (2) of this subsection. The Electricity Facts Label (EFL) shall be supplied to commission staff electronically for placement on the commission webpage by January 1 of each year, and more often if there are changes to the non-bypassable charges. Where REP-specific information is required to be inserted in the EFL, the LSP supplying the EFL shall note that such information is REP-specific.

(4) An LSP serving transitioned residential and small non-residential customers under a rate prescribed by subsection (l)(2) of this section shall move such customers to a market-based month-to-month product, with pricing for such product to be effective no later than either the 61st day of service by the LSP or beginning with the customer's next billing cycle date following the 60th day of service by the LSP. For each transition event, all such transitioned customers in the same class and POLR area must be served pursuant to the same product terms, except for those customers specified in subparagraph (B) of this paragraph.

(A) The notice required by §25.475(d) of this title to inform the customers of the change to a market-based month-to-month product may be included with the notice required by subsection (s)(3) of this section or may be provided 14 days in advance of the change. If the §25.475(d) notice is included with the notice required by subsection (s)(3) of this section, the LSP may state that either or both the terms of service document and EFL for the market-based month-to-month product shall be provided at a later time, but no later than 14 days before their effective date.

(B) The LSP is not required to transfer to a market-based product any transitioned customer who is delinquent in payment of any charges for POLR service to such LSP as of the 60th day of service. If such a customer becomes current in payments to the LSP,

the LSP shall move the customer to a market-based month-to-month product as described in this paragraph on the next billing cycle that occurs five business days after the customer becomes current. If the LSP does not plan to move customers who are delinquent in payment of any charges for POLR service as of the 60th day of service to a market-based month-to-month product, the LSP shall inform the customer of that potential outcome in the notice provided to comply with §25.475(d) of this title.

(5) Upon a request from an LSP and a showing that the LSP will be unable to maintain its financial integrity if additional customers are transferred to it under this section, the commission may relieve an LSP from a transfer of additional customers. The LSP shall continue providing continuous service until the commission issues an order relieving it of this responsibility. In the event the requesting LSP is relieved of its responsibility, the commission staff designee shall, with 90 days notice, designate the next eligible REP, if any, as an LSP, based upon the criteria in this subsection.

(k) Mass transition of customers to POLR providers. The transfer of customers to POLR providers shall be consistent with this subsection.

(1) ERCOT shall first transfer customers to VREPs, up to the number of ESI IDs that each VREP has offered to serve for each customer class in the POLR area. ERCOT shall use the VREP list to assign ESI IDs to the VREPs in a non-discriminatory manner, before assigning customers to the LSPs. A VREP shall not be assigned more ESI IDs than it has indicated it is willing to serve pursuant to subsection (i) of this section. To ensure non-discriminatory assignment of ESI IDs to the VREPs, ERCOT shall:

(A) Sort ESI IDs by POLR area;

(B) Sort ESI IDs by customer class;

(C) Sort ESI IDs numerically;

(D) Sort VREPs numerically by randomly generated number; and

(E) Assign ESI IDs in numerical order to VREPs, in the order determined in subparagraph (D) of this paragraph, in accordance with the number of ESI IDs each VREP indicated a willingness to serve pursuant to subsection (i) of this section. If the number of ESI IDs is less than the total that the VREPs indicated that they are willing to serve, each VREP shall be assigned a proportionate number of ESI IDs, as calculated by dividing the number that each VREP indicated it was willing to serve by the total that all VREPs indicated they were willing to serve, multiplying the result by the total number of ESI IDs being transferred to the VREPs, and rounding to a whole number.

(2) If the number of ESI IDs exceeds the amount the VREPs are designated to serve, ERCOT shall assign remaining ESI IDs to LSPs in a non-discriminatory fashion, in accordance with their percentage of market share based upon retail sales in megawatt-hours, on a random basis within a class and POLR area, except that a VREP that is also an LSP that volunteers to serve at least 1% of its market share for a class of customers in a POLR area shall be exempt from the LSP allocation up to 1% of the class and POLR area. To ensure non-discriminatory assignment of ESI IDs to the LSPs, ERCOT shall:

(A) Sort the ESI IDs in excess of the allocation to VREPs, by POLR area;

(B) Sort ESI IDs in excess of the allocation to VREPs, by customer class;

(C) Sort ESI IDs in excess of the allocation to VREPs, numerically;

(D) Sort LSPs, except LSPs that volunteered to serve 1% of their market share as a VREP, numerically by MWhs served;

(E) Assign ESI IDs that represent no more than 1% of the total market for that POLR area and customer class less the ESI IDs assigned to VREPs that volunteered to serve at least 1% of their market share for each POLR area and customer class in numerical order to LSPs designated in subparagraph (D) of this paragraph, in proportion to the percentage of MWhs served by each LSP to the total MWhs served by all LSPs;

(F) Sort LSPs, including any LSPs previously excluded under subparagraph (D) of this paragraph; and

(G) Assign all remaining ESI IDs in numerical order to LSPs in proportion to the percentage of MWhs served by each LSP to the total MWhs served by all LSPs.

(3) Each mass transition shall be treated as a separate event.

(l) Rates applicable to POLR service.

(1) A VREP shall provide service to customers using a market-based, month-to-month product. The VREP shall use the same market-based, month-to-month product for all customers in a mass transition that are in the same class and POLR area.

(2) Subparagraphs (A) - (C) of this paragraph establish the maximum rate for POLR service charged by an LSP. An LSP may charge a rate less than the maximum rate if it charges the lower rate to all customers in a mass transition that are in the same class and POLR area.

(A) Residential customers. The LSP rate for the residential customer class shall be determined by the following formula: LSP rate (in $ per kWh) = (Non-bypassable charges + LSP customer charge + LSP energy charge) / kWh used Where:

(i) Non-bypassable charges shall be all TDU charges and credits for the appropriate customer class in the applicable service territory, and other charges including ERCOT administrative charges, nodal fees or surcharges, replacement reserve charges attributable to LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and kW used, where appropriate.

(ii) LSP customer charge shall be $0.06 per kWh.

(iii) LSP energy charge shall be the sum over the billing period of the actual hourly MCPEs for the customer multiplied by the level of kWh used multiplied by 120%.

(iv) "Actual hourly MCPE" is an hourly rate based on a simple average of the actual interval MCPE prices over the hour.

(v) "Level of kWh used" is based either on interval data or on an allocation of the customer's total actual usage to the hour based on a ratio of the sum of the ERCOT backcasted profile interval usage data over the hour to the total of the ERCOT backcasted profile interval usage data over the customer's entire billing period.

(vi) For each billing period, if the sum over the billing period of the actual hourly MCPEs for a customer multiplied by the level of kWh used falls below the simple average of the zonal MCPE prices over the 12-month period ending September 1 of the preceding year multiplied by the total kWh used over the customer's billing period, then the LSP energy charge shall be the simple average of the zonal MCPE prices over the 12-month period ending September 1 of the preceding year multiplied by the total kWh used over the customer's billing period multiplied by 125%. This methodology shall

apply until the commission issues an order suspending or modifying the operation of the floor after conducting an investigation.

(B) Small and medium non-residential customers. The LSP rate for the small and medium non-residential customer classes shall be determined by the following formula: LSP rate (in $ per kWh) = (Non-bypassable charges + LSP customer charge + LSP demand charge + LSP energy charge) / kWh used Where:

(i) Non-bypassable charges shall be all TDU charges and credits for the appropriate customer class in the applicable service territory, and other charges including ERCOT administrative charges, nodal fees or surcharges, replacement reserve charges attributable to LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and kW used, where appropriate.

(ii) LSP customer charge shall be $0.025 per kWh.

(iii) LSP demand charge shall be $2.00 per kW, per month, for customers that have a demand meter, and $50.00 per month for customers that do not have a demand meter.

(iv) LSP energy charge shall be the sum over the billing period of the actual hourly MCPEs, for the customer multiplied by the level of kWh used, multiplied by 125%.

(v) "Actual hourly MCPE" is an hourly rate based on a simple average of the actual interval MCPE prices over the hour.

(vi) "Level of kWh used" is based either on interval data or on an allocation of the customer's total actual usage to the hour based on a ratio of the sum of the ERCOT backcasted profile interval usage data over the hour to the total of the ERCOT backcasted profile interval usage data over the customer's entire billing period.

(vii) For each billing period, if the sum over the billing period of the actual hourly MCPEs for a customer multiplied by the level of kWh used falls below the simple average of the zonal MCPE prices over the 12-month period ending September 1 of the preceding year multiplied by the total kWh used over the customer's billing period, then the LSP energy charge shall be the simple average of the zonal MCPE prices over the 12-month period ending September 1 of the preceding year multiplied by the total kWh used over the customer's billing period multiplied by 125%. This methodology shall apply until the commission issues an order suspending or modifying the operation of the floor after conducting an investigation.

(C) Large non-residential customers. The LSP rate for the large non-residential customer class shall be determined by the following formula: LSP rate (in $ per kWh) = (Non-bypassable charges + LSP customer charge + LSP demand charge + LSP energy charge) / kWh used Where:

(i) Non-bypassable charges shall be all TDU charges and credits for the appropriate customer class in the applicable service territory, and other charges including ERCOT administrative charges, nodal fees or surcharges, replacement reserve charges attributable to LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and KW used, where appropriate.

(ii) LSP customer charge shall be $2,897.00 per month.

(iii) LSP demand charge shall be $6.00 per kW, per month.

(iv) LSP energy charge shall be the appropriate MCPE, determined on the basis of 15-minute intervals, for the customer multiplied by 125%, multiplied by the level of kilowatt-hours used. The energy charge shall have a floor of $7.25 per MWh.

(3) If in response to a complaint or upon its own investigation, the commission determines that a LSP failed to charge the appropriate rate prescribed by paragraph (2) of this subsection, and as a result overcharged its customers, the LSP shall issue refunds to the specific customers who were overcharged.

(4) On a showing of good cause, the commission may permit the LSP to adjust the rate prescribed by paragraph (2) of this subsection, if necessary to ensure that the rate is sufficient to allow the LSP to recover its costs of providing service. Notwithstanding any other commission rule to the contrary, such rates may be adjusted on an interim basis for good cause shown and after at least 10 business days' notice and an opportunity for hearing on the request for interim relief. Any adjusted rate shall be applicable to all LSPs charging the rate prescribed by paragraph (2) of this subsection to the specific customer class, within the POLR area that is subject to the adjustment.

(5) For transitioned customers, the customer and demand charges associated with the rate prescribed by paragraph (3) of this subsection shall be pro-rated for partial month usage if a large non-residential customer switches from the LSP to a REP of choice.

(m) Challenges to customer assignments. A POLR provider is not obligated to serve a customer within a customer class or a POLR area for which the REP is not designated as a POLR provider, after a successful challenge of the customer assignment. A POLR provider shall use the ERCOT market variance resolution tool to challenge a customer class assignment with the TDU. The TDU shall make the final determination based upon historical usage data and not premise type. If the customer class assignment is changed and a different POLR provider for the customer is determined appropriate, the customer shall then be served by the appropriate POLR provider. Back dated transactions may be used to correct the POLR assignment.

(n) Limitation on liability. The POLR providers shall make reasonable provisions to provide service under this section to customers who request POLR service, or are transferred to the POLR provider, individually or through a mass transition; however, liabilities not excused by reason of force majeure or otherwise shall be limited to direct, actual damages.

(1) Neither the customer nor the POLR provider shall be liable to the other for consequential, incidental, punitive, exemplary, or indirect damages. These limitations apply without regard to the cause of any liability or damage.

(2) In no event shall ERCOT or a POLR provider be liable for damages to any REP, whether under tort, contract or any other theory of legal liability, for transitioning or attempting to transition a customer from such REP to the POLR provider to carry out this section, or for marketing, offering or providing competitive retail electric service to a customer taking service under this section from the POLR provider.

(o) REP obligations in a transition of customers to POLR service.

(1) A customer may initiate service with an LSP by requesting such service at the rate prescribed by subsection (l)(2) of this section with any LSP that is designated to serve the requesting customer's customer class within the requesting customer's service area. An LSP cannot refuse a customer's request to make arrangements for POLR service, except as otherwise permitted under this title.

(2) The POLR provider is responsible for obtaining resources and services needed to serve a customer once it has been

notified that it is serving that customer. The customer is responsible for charges for service under this section at the rate in effect at that time.

(3) If a REP terminates service to a customer, or transitions a customer to a POLR provider, the REP is financially responsible for the resources and services used to serve the customer until it notifies the independent organization of the termination or transition of the service and the transfer to the POLR provider is complete.

(4) The POLR provider is financially responsible for all costs of providing electricity to customers from the time the transfer or initiation of service is complete until such time as the customer ceases taking service under this section.

(5) A defaulting REP whose customers are subject to a mass transition event shall return the customers' deposits within seven calendar days of the initiation of the transition.

(6) ERCOT shall create a single standard file format and a standard set of customer billing contact data elements that, in the event of a mass transition, shall be used by the exiting REP and the POLRs to send and receive customer billing contact information. The process, as developed by ERCOT shall be tested on a periodic basis. All REPs shall submit timely, accurate, and complete files, as required by ERCOT in a mass transition event, as well as for periodic testing. The commission shall establish a procedure for the verification of customer information submitted by REPs to ERCOT. ERCOT shall notify the commission if any REP fails to comply with the reporting requirements in this subsection.

(7) When customers are to be transitioned or assigned to a POLR provider, the POLR provider may request usage and demand data, and customer contact information including email, telephone number, and address from the appropriate TDU and from ERCOT, once the transition to the POLR provider has been initiated. Customer proprietary information provided to a POLR provider in accordance with this section shall be treated as confidential and shall only be used for mass transition related purposes.

(8) Information from the TDU and ERCOT to the POLR providers shall be provided in Texas SET format when Texas SET transactions are available. However, the TDU or ERCOT may supplement the information to the POLR providers in other formats to expedite the transition. The transfer of information in accordance with this section shall not constitute a violation of the customer protection rules that address confidentiality.

(9) A POLR provider may require a deposit from a customer that has been transitioned to the POLR provider to continue to serve the customer. Despite the lack of a deposit, the POLR provider is obligated to serve the customer transitioned or assigned to it, beginning on the service initiation date of the transition or assignment, and continuing until such time as any disconnection request is effectuated by the TDU. A POLR provider may make the request for deposit before it begins serving the customer, but the POLR provider shall begin providing service to the customer even if the service initiation date is before it receives the deposit - if any deposit is required. A POLR provider shall not disconnect the customer until the appropriate time period to submit the deposit has elapsed. For the large non-residential customer class, a POLR provider may require a deposit to be provided in three calendar days. For the residential customer class, the POLR provider may require a deposit to be provided after 15 calendar days of service if the customer received 10 days' notice that a deposit was required. For all other customer classes, the POLR provider may require a deposit to be provided in 10 calendar days. The POLR provider may waive the deposit requirement at the customer's request if deposits are waived in a non-discriminatory fashion. If the POLR provider obtains sufficient data, it shall determine whether a residential customer has satisfactory credit based on the criteria the POLR provider routinely applies to its other residential customers. If the customer has satisfactory credit, the POLR provider shall not request a deposit from the residential customer.

(A) At the time of a mass transition, the Executive Director or staff designated by the Executive Director shall distribute available proceeds from an irrevocable stand-by letter of credit in accordance with the priorities established in §25.107(f)(6) of this title. These funds shall first be used to provide deposit payment assistance for transitioned customers enrolled in the rate reduction program pursuant to §25.454 of this title (relating to Rate Reduction Program). The Executive Director or staff designee shall, at the time of a transition event, determine the reasonable deposit amount up to $400 per customer ESI ID, unless good cause exists to increase the level of the reasonable deposit amount above $400. Such reasonable deposit amount may take into account factors such as typical residential usage and current retail residential prices, and, if fully funded, shall satisfy in full the customers' initial deposit obligation to the VREP or LSP.

(B) The Executive Director or the staff designee shall distribute available proceeds pursuant to §25.107(f)(6) of this title to VREPs proportionate to the number of customers they received in the mass transition, who at the time of the transition are enrolled in the rate reduction program pursuant to §25.454 of this title, up to the reasonable deposit amount set by the Executive Director or staff designee. If funds remain available after distribution to the VREPs, the remaining funds shall be distributed to the appropriate LSPs by dividing the amount remaining by the number of low income customers allocated to LSPs, up to the reasonable deposit amount set by the Executive Director or staff designee.

(C) If the funds distributed in accordance with §25.107(f)(6) of this title do not equal the reasonable deposit amount determined, the VREP and LSP may request from the customer payment of the difference between the reasonable deposit amount and the amount distributed. Such difference shall be collected in accordance with §25.478(e)(3) of this title (relating to Credit Requirements and Deposits) that allows an eligible customer to pay its deposit in two equal installments provided that:

(i) The amount distributed shall be considered part of the first installment and the VREP or LSP shall not request an additional first deposit installment amount if the amount distributed is at least 50% of the reasonable deposit amount; and

(ii) A VREP or LSP may not request payment of any remaining difference between the reasonable deposit amount and the distributed deposit amount sooner than 40 days after the transition date.

(D) Notwithstanding §25.478(d) of this title, 90 days after the transition date, the VREP or LSP may request payment of an amount that results in the total deposit held being equal to what the VREP or LSP would otherwise have charged a customer in the same customer class and service area in accordance with §25.478(e) of this title, at the time of the transition.

(10) On the occurrence of one or more of the following events, ERCOT shall initiate a mass transition to POLR providers, of all of the customers served by a REP:

(A) Termination of the Load Serving Entity (LSE) or Qualified Scheduling Entity (QSE) Agreement for a REP with ERCOT;

(B) Issuance of a commission order recognizing that a REP is in default under the TDU Tariff for Retail Delivery Service;

(C) Issuance of a commission order de-certifying a REP;

(D) Issuance of a commission order requiring a mass transition to POLR providers;

(E) Issuance of a judicial order requiring a mass transition to POLR providers; and

(F) At the request of a REP, for the mass transition of all of that REP's customers.

(11) A REP shall not use the mass transition process in this section as a means to cease providing service to some customers, while retaining other customers. A REP's improper use of the mass transition process may lead to de-certification of the REP.

(12) ERCOT may provide procedures for the mass transition process, consistent with this section.

(13) A mass transition under this section shall not override or supersede a switch request made by a customer to switch an ESI ID to a new REP of choice, if the request was made before a mass transition is initiated. If a switch request has been made but is scheduled for any date after the next available switch date, the switch shall be made on the next available switch date.

(14) Customers who are mass transitioned shall be identified for a period of 60 calendar days. The identification shall terminate at the first completed switch or at the end of the 60-day period, whichever is first. If necessary, ERCOT system changes or new transactions shall be implemented no later than 14 months from the effective date of this section to communicate that a customer was acquired in a mass transition and is not charged the out-of-cycle meter read pursuant to paragraph (16) of this subsection. To the extent possible, the systems changes should be designed to ensure that the 60-day period following a mass transition, when a customer switches away from a POLR provider, the switch transaction is processed as an unprotected, out-of-cycle switch, regardless of how the switch was submitted.

(15) In the event of a transition to a POLR provider or away from a POLR provider to a REP of choice, the switch notification notice detailed in §25.474(l) of this title (relating to Selection of Retail Electric Provider) is not required.

(16) In a mass transition event, the ERCOT initiated transactions shall request an out-of-cycle meter read for the associated ESI IDs for a date two calendar days after the calendar date ERCOT initiates such transactions to the TDU. If an ESI ID does not have the capability to be read in a fashion other than a physical meter read, the out-of-cycle meter read may be estimated. An estimated meter read for the purpose of a mass transition to a POLR provider shall not be considered a break in a series of consecutive months of estimates, but shall not be considered a month in a series of consecutive estimates performed by the TDU. A TDU shall create a regulatory asset for the TDU fees associated with a mass transition of customers to a POLR provider pursuant to this subsection. Upon review of reasonableness and necessity, a reasonable level of amortization of such regulatory asset shall be included as a recoverable cost in the TDU's rates in its next rate case or such other rate recovery proceeding as deemed necessary. The TDU shall not bill as a discretionary charge, the costs included in this regulatory asset, which shall consist of the following:

(A) fees for out-of-cycle meter reads associated with the mass transition of customers to a POLR provider; and

(B) fees for the first out-of-cycle meter read provided to a customer who transfers away from a POLR provider, when the out-of-cycle meter read is performed within 60 calendar days of the date of the mass transition and the customer is identified as a transitioned customer.

(17) In the event the TDU estimates a meter read for the purpose of a mass transition, the TDU shall perform a true-up evaluation of each ESI ID after an actual meter reading is obtained. Within 10 days after the actual meter reading is obtained, the TDU shall calculate the actual average kWh usage per day for the time period from the most previous actual meter reading occurring prior to the estimate for the purpose of a mass transition to the most current actual meter reading occurring after the estimate for the purpose of mass transition. If the average daily estimated usage sent to the exiting REP is more than 50% greater than or less than the average actual kWh usage per day, the TDU shall promptly cancel and re-bill both the exiting REP and the POLR using the average actually daily usage.

(p) Termination of POLR service provider status.

(1) The commission may revoke a REP's POLR status after notice and opportunity for hearing:

(A) If the POLR provider fails to maintain REP certification;

(B) If the POLR provider fails to provide service in a manner consistent with this section;

(C) The POLR provider fails to maintain appropriate financial qualifications; or

(D) For other good cause.

(2) If an LSP defaults or has its status revoked before the end of its term, after a review of the eligibility criteria, the commission staff designee shall, as soon as practicable, designate the next eligible REP, if any, as an LSP, based on the criteria in subsection (j) of this section.

(3) At the end of the POLR service term, the outgoing LSP shall continue to serve customers who have not selected another REP.

(q) Electric cooperative delegation of authority. An electric cooperative that has adopted customer choice may select to delegate to the commission its authority to select POLR providers under PURA §41.053(c) in its certificated service area in accordance with this section. After notice and opportunity for comment, the commission shall, at its option, accept or reject such delegation of authority. If the commission accepts the delegation of authority, the following conditions shall apply:

(1) The board of directors shall provide the commission with a copy of a board resolution authorizing such delegation of authority;

(2) The delegation of authority shall be made at least 30 calendar days prior to the time the commission issues a publication of notice of eligibility;

(3) The delegation of authority shall be for a minimum period corresponding to the period for which the solicitation shall be made;

(4) The electric cooperative wishing to delegate its authority to designate an continuous provider shall also provide the commission with the authority to apply the selection criteria and procedures described in this section in selecting the POLR providers within the electric cooperative's certificated service area; and

(5) If there are no competitive REPs offering service in the electric cooperative certificated area, the commission shall automatically reject the delegation of authority.

(r) Reporting requirements. Each LSP that serves customers under a rate prescribed by subsection (l)(2) of this section shall file the following information with the commission on a quarterly basis beginning January of each year in a project established by the commission for the receipt of such information. Each quarterly report shall be filed within 30 calendar days of the end of the quarter.

(1) For each month of the reporting quarter, each LSP shall report the total number of new customers acquired by the LSP under this section and the following information regarding these customers:

(A) The number of customers eligible for the rate reduction program pursuant to §25.454 of this title;

(B) The number of customers from whom a deposit was requested pursuant to the provisions of §25.478 of this title, and the average amount of deposit requested;

(C) The number of customers from whom a deposit was received, including those who entered into deferred payment plans for the deposit, and the average amount of the deposit;

(D) The number of customers whose service was physically disconnected pursuant to the provisions of §25.483 of this title (relating to Disconnection of Service) for failure to pay a required deposit; and

(E) Any explanatory data or narrative necessary to account for customers that were not included in either subparagraph (C) or (D) of this paragraph.

(2) For each month of the reporting quarter each LSP shall report the total number of customers to whom a disconnection notice was issued pursuant to the provisions of §25.483 of this title and the following information regarding those customers:

(A) The number of customers eligible for the rate reduction program pursuant to §25.454 of this title;

(B) The number of customers who entered into a deferred payment plan, as defined by §25.480(j) of this title (relating to Bill Payment and Adjustments) with the LSP;

(C) The number of customers whose service was physically disconnected pursuant to §25.483 of this title;

(D) The average amount owed to the LSP by each disconnected customer at the time of disconnection; and

(E) Any explanatory data or narrative necessary to account for customers that are not included in either subparagraph (B) or (C) of this paragraph.

(3) For the entirety of the reporting quarter, each LSP shall report, for each customer that received POLR service, the TDU and customer class associated with the customer's ESI ID, the number of days the customer received POLR service, and whether the customer is currently the LSP's customer.

(s) Notice of transition to POLR service to customers. When a customer is moved to POLR service, the customer shall be provided notice of the transition by ERCOT, the REP transitioning the customer, and the POLR provider. The ERCOT notice shall be provided within two days of the time ERCOT and the transitioning REP know that the customer shall be transitioned and customer contact information is available. If ERCOT cannot provide notice to customers within two days, it shall provide notice as soon as practicable. The POLR provider shall provide the notice required by paragraph (3) of this subsection to commission staff at least 48 hours before it is provided to customers, and shall provide the notice to transitioning customers as soon as practicable. The POLR provider shall email the notice to the commission staff members designated for receipt of the notice.

(1) ERCOT notice methods shall include a post-card, containing the official commission seal with language and format approved by the commission. ERCOT shall notify transitioned customers with an automated phone-call and email to the extent the information to contact the customer is available pursuant to subsection (o)(6) of this section. ERCOT shall study the effectiveness of the notice methods used and report the results to the commission.

(2) Notice by the REP from which the customer is transferred shall include:

(A) The reason for the transition;

(B) A contact number for the REP;

(C) A statement that the customer shall receive a separate notice from the POLR provider that shall disclose the date the POLR provider shall begin serving the customer;

(D) Either the customer's deposit plus accrued interest, or a statement that the deposit shall be returned within seven days of the transition;

(E) A statement that the customer can leave the assigned service by choosing a competitive product or service offered by the POLR provider, or another competitive REP, as well as the following statement: "If you would like to see offers from different retail electric providers, please access www.powertochoose.org, or call toll-free 1-866-PWR-4-TEX (1-866-797-4839) for a list of providers in your area;"

(F) For residential customers, notice from the commission in the form of a bill insert or a bill message with the header "An Important Message from the Public Utility Commission Regarding Your Electric Service" addressing why the customer has been transitioned to another REP, the continuity of service purpose, the option to choose a different competitive provider, and information on competitive markets to be found at www.powertochoose.org, or toll-free at 1-866-PWR-4-TEX (1-866-797-4839);

(G) If applicable, a description of the activities that the REP shall use to collect any outstanding payments, including the use of consumer reporting agencies, debt collection agencies, small claims court, and other remedies allowed by law, if the customer does not pay or make acceptable payment arrangements with the REP; and

(H) Notice to the customer that after being transitioned to POLR service, the customer may accelerate a switch to another REP by requesting a special or out-of-cycle meter read.

(3) Notice by the POLR provider shall include:

(A) The date the POLR provider began or shall begin serving the customer and a contact number for the POLR provider;

(B) A description of the POLR provider's rate for service. In the case of a notice from an LSP that applies the pricing of subsection (l)(2) of this section, a statement that the price is generally higher than available competitive prices, that the price is unpredictable, and that the exact rate for each billing period shall not be determined until the time the bill is prepared;

(C) The deposit requirements of the POLR provider and any applicable deposit waiver provisions and a statement that, if the customer chooses a different competitive product or service offered by the POLR provider, a REP affiliated with the POLR provider, or another competitive REP, a deposit may be required;

(D) A statement that the additional competitive products or services may be available through the POLR provider, a REP affiliated with the POLR provider, or another competitive REP, as well as the following statement: "If you would like to choose a different retail electric provider, please access www.powertochoose.org, or call toll-free 1-866-PWR-4-TEX (1-866-797-4839) for a list of providers in your area;"

(E) The applicable Terms of Service and Electricity Facts Label (EFL); and

(F) For residential customers that are served by an LSP under a rate prescribed by subsection (l)(2) of this section, a notice to the customer that after being transitioned to service from a POLR provider, the customer may accelerate a switch to another REP by requesting a special or out-of-cycle meter read.

(t) Market notice of transition to POLR service. ERCOT shall notify all affected Market Participants and the Retail Market Subcommittee (RMS) email listserv of a mass transition event within the same day of an initial mass-transition call after the call has taken place. The notification shall include the exiting REP's name, total number of ESI IDs, and estimated load.

(u) Disconnection by a POLR provider. The POLR provider must comply with the applicable customer protection rules as provided for under Subchapter R of this chapter, except as otherwise stated in this section. To ensure continuity of service, service under this section shall begin when the customer's transition to the POLR provider is complete. A customer deposit is not a prerequisite for the initiation of service under this section. Once service has been initiated, a customer deposit may be required to prevent disconnection. Disconnection for failure to pay a deposit may not occur until after the proper notice and after that appropriate payment period detailed in §25.478 of this title has elapsed, except where otherwise noted in this section.

(v) Deposit payment assistance. Customers enrolled in the rate reduction program pursuant to §25.454 of this title shall receive POLR deposit payment assistance when proceeds are available in accordance with §25.107(f)(6) of this title.

(1) Using the most recent Low-Income Discount Administrator (LIDA) enrolled customer list, the Executive Director or staff designee shall work with ERCOT to determine the number of customer ESI IDs enrolled on the rate reduction program that shall be assigned to each VREP, and if necessary, each LSP.

(2) The commission staff designee shall distribute the deposit payment assistance monies to the appropriate POLRs on behalf of customers as soon as practicable.

(3) The Executive Director or staff designee shall use best efforts to provide written notice to the appropriate POLRs of the following on or before the second calendar day after the transition:

(A) a list of the ESI IDs enrolled on the rate reduction program that have been or shall be transitioned to the applicable POLR; and

(B) the amount of deposit payment assistance that shall be provided on behalf of a POLR customer enrolled on the rate reduction program.

(4) Amounts credited as deposit payment assistance pursuant to this section shall be refunded to the customer in accordance with §25.478(j) of this title.

This agency 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 May 15, 2009.

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Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
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PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 402. CHARITABLE BINGO ADMINISTRATIVE RULES

SUBCHAPTER D. LICENSING REQUIREMENTS

16 TAC §402.402

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §402.402 (Registry of Bingo Workers), without changes to the proposed text as published in the March 6, 2009, issue of the *Texas Register* (34 TexReg 1545).

The purpose of the proposed amendments is to remove reference to a "primary" operator and to clarify the consequences of failing to renew a worker's registration timely and the consequences of submission of an incomplete worker registry application. Additionally, the proposed amendments include an explanation of when fingerprint cards are required, the option of requesting a hearing when found non-qualified to be listed on the registry, and when a worker whose listing on the registry has been denied or revoked may reapply. Finally, the proposed amendments set forth a definition for "usher", and language has been added at subsection (b) to specify that any person that carries out or performs the functions of a caller, cashier, manager, operator, usher, or salesperson, as defined in subsection (a), must be listed on the Registry of Approved Bingo Workers.

A public comment hearing was held on March 18, 2009. No individuals were present at the public hearing. The Commission received no written comments during the public comment period.

The amendments are adopted under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under Texas Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

This agency 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 May 18, 2009.

TRD-200901939

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
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Proposal publication date: March 6, 2009
For further information, please call: (512) 344-5012

TITLE 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

SUBCHAPTER C. DISCIPLINARY GUIDELINES

22 TAC §281.65

The Texas State Board of Pharmacy adopts amendments to §281.65, concerning Schedule of Administrative Penalties. The amendments are adopted without changes to the proposed text as published in the March 27, 2009, issue of the *Texas Register* (34 TexReg 2071).

The amendments increase the administrative penalties for allowing individuals to work in a pharmacy without a pharmacy technician registration or with a delinquent pharmacy technician registration.

No comments were received.

The amendments are adopted under §551.002, §554.051, §565.051, and §568.035 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §565.051 as authorizing the agency to discipline a license holder or applicant for a license or renewal of a license. The Board interprets §568.035 as authorizing the agency to discipline an applicant or registrant.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

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

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Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
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For further information, please call: (512) 305-8028

CHAPTER 283. LICENSING REQUIREMENTS FOR PHARMACISTS

22 TAC §283.4, §283.6

The Texas State Board of Pharmacy adopts amendments to §283.4, concerning Internship Requirements, and §283.6, concerning Preceptor Requirements and Ratio of Preceptors to Pharmacist-Interns. The amendments are adopted without changes to the proposed text as published in the March 27, 2009, issue of the *Texas Register* (34 TexReg 2072).

The amendments clarify the requirements for a change of name or change of address for pharmacist interns, clarify the charge for a duplicate or amended certificate for pharmacist interns and preceptors, eliminate the requirement that a preceptor have one year of experience in the type of internship practice setting and only require the preceptor to have a year of experience as a licensed pharmacist, and eliminate the ratio of preceptors to pharmacist-interns in Texas college or school of pharmacy programs.

Comments were received from Texas Tech University, School of Pharmacy. The comments expressed concern regarding the elimination of the requirement that a preceptor have at least one year of experience in the type of internship practice setting and recommended that the requirement remain in the rules. The Board disagrees with the comment in that the schools/colleges may set more stringent standards for preceptors if the schools/colleges believe it is necessary.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these rules: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

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

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For further information, please call: (512) 305-8028

CHAPTER 291. PHARMACIES

SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.1, §291.3

The Texas State Board of Pharmacy adopts amendments to §291.1, concerning Pharmacy License Application, and §291.3, concerning Required Notifications. The amendments are adopted without changes to the proposed text as published in

the March 27, 2009, issue of the *Texas Register* (34 TexReg 2073).

The amendments clarify that pharmacies are required to notify patients when a pharmacy is changing locations, clarify that pharmacies are required to report the loss of controlled substances and dangerous drugs due to forged prescriptions, and delete the option of providing a notarized statement signed by the lessee and lessor certifying the existence of a lease as a part of the application for a pharmacy license.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these rules: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

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

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Gay Dodson, R.Ph.
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Texas State Board of Pharmacy
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For further information, please call: (512) 305-8028

SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

22 TAC §291.33, §291.34

The Texas State Board of Pharmacy (Board) adopts amendments to §291.33, concerning Operational Standards, and §291.34, concerning Records. The amendments are adopted with changes to the proposed text and will be republished. The proposed amendments were published in the March 27, 2009, issue of the *Texas Register* (34 TexReg 2073).

The amendments allow for the secure storage, management, and purchase/delivery of prescription medications during and after pharmacy hours from an automated storage and distribution device, and clarify that an original prescription may only be dispensed if the prescription is authorized by the prescriber.

Comments for §291.33: The National Association of Drug Stores (NACDS) commented that the rule should be clarified to state that an automated storage and distribution device may be used when the pharmacy is open and when the pharmacy closed. The Board agrees with this comment and added language to clarify that an automated storage and distribution device may be used when the pharmacy is open and when it is closed. NACDS, H.E.B, and Asteres, Inc., commented that the rules should not specify that the automated storage and distribution device be located in the pharmacy but allow the device to be located adjacent to the pharmacy. The Board disagrees with this comment. The device needs to be located with access to the device from within the pharmacy in order to provide adequate protection for the prescription drugs. NACDS commented that the rules should allow the device to deliver new prescriptions if the pharmacy ensures that appropriate patient counseling is provided for new prescriptions. The Board disagrees with this comment so that patients are able to receive patient counseling on new prescriptions. NACDS, H.E.B., and Asteres commented that schedule III - V controlled substances should be allowed to be delivered in the device. The Board disagrees with this comment in order to provide adequate security for controlled substances. NACDS commented that the testing documentation should not be required to be made available for inspection by the Board. The Board disagrees with this comment and believes the testing documentation needs to be available in order to ensure the device is operating correctly. Asteres commented that the rules should allow for flexibility as to where calls are routed and the rules should not require a direct connection to another pharmacy but instead state that a telephone and telephone number be available for another pharmacy. The Board agrees with this comment and added language to allow pharmacies to use a telephone and telephone number as an alternative.

Comments for §291.34: NACDS expressed concerns regarding the requirement that the prescription be dispensed according to what is indicated on the original prescription stating that this would prevent pharmacists from obtaining authorization from a prescriber to deviate from an original prescription. The Board agrees with this comment and added language to clarify the requirements.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.33. Operational Standards.

(a) Licensing requirements.

(1) A Class A pharmacy shall register annually or biennially with the board on a pharmacy license application provided by the board, following the procedures specified in §291.1 of this title (relating to Pharmacy License Application).

(2) A Class A pharmacy which changes ownership shall notify the board within ten days of the change of ownership and apply for a new and separate license as specified in §291.3 of this title (relating to Required Notifications).

(3) A Class A pharmacy which changes location and/or name shall notify the board within ten days of the change and file for an amended license as specified in §291.3 of this title.

(4) A Class A pharmacy owned by a partnership or corporation which changes managing officers shall notify the board in writing of the names of the new managing officers within ten days of the change, following the procedures in §291.3 of this title.

(5) A Class A pharmacy shall notify the board in writing within ten days of closing, following the procedures in §291.5 of this title (relating to Closed Pharmacies).

(6) A separate license is required for each principal place of business and only one pharmacy license may be issued to a specific location.

(7) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for the issuance and renewal of a license and the issuance of an amended license.

(8) A Class A pharmacy, licensed under the provisions of the Act, §560.051(a)(1), which also operates another type of pharmacy which would otherwise be required to be licensed under the Act, §560.051(a)(2) concerning Nuclear Pharmacy (Class B), is not required to secure a license for such other type of pharmacy; provided, however, such licensee is required to comply with the provisions of §291.51 of this title (relating to Purpose), §291.52 of this title (relating to Definitions), §291.53 of this title (relating to Personnel), §291.54 of this title (relating to Operational Standards), and §291.55 of this title (relating to Records), contained in Nuclear Pharmacy (Class B), to the extent such sections are applicable to the operation of the pharmacy.

(9) A Class A (community) pharmacy engaged in the compounding of non-sterile pharmaceuticals shall comply with the provisions of §291.131 of this title (relating to Pharmacies Compounding Non-Sterile Preparations).

(10) A Class A (community) pharmacy engaged in the compounding of sterile pharmaceuticals shall comply with the provisions of §291.133 of this title (relating to Pharmacies Compounding Sterile Preparations).

(11) A Class A (Community) pharmacy engaged in the provision of remote pharmacy services, including storage and dispensing of prescription drugs, shall comply with the provisions of §291.121 of this title (relating to Remote Pharmacy Services).

(12) Class A (Community) pharmacy engaged in centralized prescription dispensing and/or prescription drug or medication order processing shall comply with the provisions of §291.123 of this title (relating to Centralized Prescription Drug or Medication Order Processing) and/or §291.125 of this title (relating to Centralized Prescription Dispensing).

(b) Environment.

(1) General requirements.

(A) The pharmacy shall be arranged in an orderly fashion and kept clean. All required equipment shall be clean and in good operating condition.

(B) A Class A pharmacy shall have a sink with hot and cold running water within the pharmacy, exclusive of restroom facilities, available to all pharmacy personnel and maintained in a sanitary condition.

(C) A Class A pharmacy which serves the general public shall contain an area which is suitable for confidential patient counseling.

(i) Such counseling area shall:

(I) be easily accessible to both patient and pharmacists and not allow patient access to prescription drugs;

(II) be designed to maintain the confidentiality and privacy of the pharmacist/patient communication.

(ii) In determining whether the area is suitable for confidential patient counseling and designed to maintain the confidentiality and privacy of the pharmacist/patient communication, the board may consider factors such as the following:

(I) the proximity of the counseling area to the check-out or cash register area;

(II) the volume of pedestrian traffic in and around the counseling area;

(III) the presence of walls or other barriers between the counseling area and other areas of the pharmacy; and

(IV) any evidence of confidential information being overheard by persons other than the patient or patient's agent or the pharmacist or agents of the pharmacist.

(D) The pharmacy shall be properly lighted and ventilated.

(E) The temperature of the pharmacy shall be maintained within a range compatible with the proper storage of drugs; the temperature of the refrigerator shall be maintained within a range compatible with the proper storage of drugs requiring refrigeration.

(F) Animals, including birds and reptiles, shall not be kept within the pharmacy and in immediately adjacent areas under the control of the pharmacy. This provision does not apply to fish in aquariums, guide dogs accompanying disabled persons, or animals for sale to the general public in a separate area that is inspected by local health jurisdictions.

(2) Security.

(A) Each pharmacist while on duty shall be responsible for the security of the prescription department, including provisions for effective control against theft or diversion of prescription drugs, and records for such drugs.

(B) The prescription department shall be locked by key, combination or other mechanical or electronic means to prohibit unauthorized access when a pharmacist is not on-site except as provided in subparagraphs (C) and (D) of this paragraph and paragraph (3) of this subsection. The following is applicable:

(i) If the prescription department is closed at any time when the rest of the facility is open, the prescription department must be physically or electronically secured. The security may be accomplished by means such as floor to ceiling walls; walls, partitions, or barriers at least 9 feet 6 inches high; electronically monitored motion detectors; pull down sliders; or other systems or technologies that will secure the pharmacy from unauthorized entrance when the pharmacy is closed. Pharmacies licensed prior to June 1, 2009, shall be exempt from this provision unless the pharmacy changes location. Change of location shall include the relocation of the pharmacy within the licensed address. A pharmacy licensed prior to June 1, 2009 that files a change of ownership but does not change location shall be exempt from the provisions.

(ii) Effective, June 1, 2009, the pharmacy's key, combination, or other mechanical or electronic means of locking the pharmacy may not be duplicated without the authorization of the pharmacist-in-charge or owner.

(iii) Effective, June 1, 2009, at a minimum, the pharmacy must have a basic alarm system with off-site monitoring and perimeter and motion sensors. The pharmacy may have additional security by video surveillance camera systems.

(C) Prior to authorizing individuals to enter the prescription department, the pharmacist-in-charge or owner may designate persons who may enter the prescription department to perform functions, other than dispensing functions or prescription processing, documented by the pharmacist-in-charge including access to the prescription department by other pharmacists, pharmacy personnel

and other individuals. The pharmacy must maintain written documentation of authorized individuals other than individuals employed by the pharmacy who accessed the prescription department when a pharmacist is not on-site.

(D) Only persons designated either by name or by title including such titles as "relief" or "floater" pharmacist, in writing by the pharmacist-in-charge may unlock the prescription department except in emergency situations. An additional key to or instructions on accessing the prescription department may be maintained in a secure location outside the prescription department for use during an emergency or as designated by the pharmacist-in-charge for entry by another pharmacist.

(E) Written policies and procedures for the pharmacy's security shall be developed and implemented by the pharmacist-in-charge and/or the owner of the pharmacy. Such polices and procedures may include quarterly audits of controlled substances commonly abused or diverted; perpetual inventories for the comparison of the receipt, dispensing, and distribution of controlled substances; monthly reports from the pharmacy's wholesaler(s) of controlled substances purchased by the pharmacy; opening and closing procedures; product storage and placement; and central management oversight.

(3) Temporary absence of pharmacist.

(A) On-site supervision by pharmacist.

(i) If a pharmacy is staffed by only one pharmacist, the pharmacist may leave the prescription department for short periods of time without closing the prescription department and removing pharmacy technicians, pharmacy technician trainees, and other pharmacy personnel from the prescription department provided the following conditions are met:

(I) at least one pharmacy technician remains in the prescription department;

(II) the pharmacist remains on-site at the licensed location of the pharmacy and is immediately available;

(III) the pharmacist reasonably believes that the security of the prescription department will be maintained in his or her absence. If in the professional judgment of the pharmacist, the pharmacist determines that the prescription department should close during his or her absence, then the pharmacist shall close the prescription department and remove the pharmacy technicians, pharmacy technician trainees, and other pharmacy personnel from the prescription department during his or her absence; and

(IV) a notice is posted which includes the following information:

(-a-) the pharmacist is on a break and the time the pharmacist will return; and

(-b-) pharmacy technicians may begin the processing of prescription drug orders or refills brought in during the pharmacist's absence, but the prescription or refill may not be delivered to the patient or the patient's agent until the pharmacist verifies the accuracy of the prescription.

(ii) During the time a pharmacist is absent from the prescription department, only pharmacy technicians who have completed the pharmacy's training program may perform the following duties, provided a pharmacist verifies the accuracy of all acts, tasks, and functions performed by the pharmacy technicians prior to delivery of the prescription to the patient or the patient's agent:

(I) initiating and receiving refill authorization requests;

(II) entering prescription data into a data processing system;

(III) taking a stock bottle from the shelf for a prescription;

(IV) preparing and packaging prescription drug orders (i.e., counting tablets/capsules, measuring liquids and placing them in the prescription container);

(V) affixing prescription labels and auxiliary labels to the prescription container; and

(VI) prepackaging and labeling prepackaged drugs.

(iii) Upon return to the prescription department, the pharmacist shall:

(I) conduct a drug regimen review as specified in subsection (c)(2) of this section; and

(II) verify the accuracy of all acts, tasks, and functions performed by the pharmacy technicians prior to delivery of the prescription to the patient or the patient's agent.

(iv) An agent of the pharmacist may deliver a previously verified prescription to the patient or his or her agent provided a record of the delivery is maintained containing the following information:

(I) date of the delivery;

(II) unique identification number of the prescription drug order;

(III) patient's name;

(IV) patient's phone number or the phone number of the person picking up the prescription; and

(V) signature of the person picking up the prescription.

(v) Any prescription delivered to a patient when a pharmacist is not in the prescription department must meet the requirements for a prescription delivered to a patient as described in subsection (c)(1)(F) of this section.

(vi) During the times a pharmacist is absent from the prescription department a pharmacist intern shall be considered a registered pharmacy technician and may perform only the duties of a registered pharmacy technician.

(vii) In pharmacies with two or more pharmacists on duty, the pharmacists shall stagger their breaks and meal periods so that the prescription department is not left without a pharmacist on duty.

(B) Pharmacist is off-site.

(i) The prescription department must be secured with procedures for entry during the time that a pharmacy is not under the continuous on-site supervision of a pharmacist and the pharmacy is not open for pharmacy services.

(ii) Pharmacy technicians and pharmacy technician trainees may not perform any duties of a pharmacy technician or pharmacy technician trainee during the time that the pharmacist is off-site.

(iii) A pharmacy may use an automated storage and distribution device as specified in subsection (i) of this section for pick-up of a previously verified prescription by a patient or patient's agent, provided the following conditions are met:

(I) a notice is posted which includes the following information:

(-a-) the pharmacist is off-site and not present in the pharmacy;

(-b-) no new prescriptions may be prepared at the pharmacy but previously verified prescriptions may be delivered to the patient or the patient's agent; and

(-c-) the date/time when the pharmacist will return.

(II) the pharmacy must maintain documentation of the absences of the pharmacist(s); and

(III) the prescription department is locked and secured to prohibit unauthorized entry.

(iv) An agent of the pharmacist may deliver a previously verified prescription to a patient or patient's agent during short periods of time when a pharmacist is off-site, provided the following conditions are met:

(I) short periods of time may not exceed two consecutive hours in a 24 hour period;

(II) a notice is posted which includes the following information:

(-a-) the pharmacist is off-site and not present in the pharmacy;

(-b-) no new prescriptions may be prepared at the pharmacy but previously verified prescriptions may be delivered to the patient or the patient's agent; and

(-c-) the date/time when the pharmacist will return.

(III) the pharmacy must maintain documentation of the absences of the pharmacist(s); and

(IV) the prescription department is locked and secured to prohibit unauthorized entry.

(v) During the time a pharmacist is absent from the prescription department and is off-site, a record of prescriptions delivered must be maintained and contain the following information:

(I) date and time of the delivery;

(II) unique identification number of the prescription drug order;

(III) patient's name;

(IV) patient's phone number or the phone number of the person picking up the prescription; and

(V) signature of the person picking up the prescription.

(vi) Any prescription delivered to a patient when a pharmacist is not on-site at the pharmacy must meet the requirements for a prescription delivered to a patient as described in subsection (c)(1)(F) of this section.

(c) Prescription dispensing and delivery.

(1) Patient counseling and provision of drug information.

(A) To optimize drug therapy, a pharmacist shall communicate to the patient or the patient's agent, information about the prescription drug or device which in the exercise of the pharmacist's professional judgment the pharmacist deems significant, such as the following:

(i) the name and description of the drug or device;

(ii) dosage form, dosage, route of administration, and duration of drug therapy;

(iii) special directions and precautions for preparation, administration, and use by the patient;

(iv) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;

(v) techniques for self monitoring of drug therapy;

(vi) proper storage;

(vii) refill information; and

(viii) action to be taken in the event of a missed dose.

(B) Such communication:

(i) shall be provided with each new prescription drug order;

(ii) shall be provided for any prescription drug order dispensed by the pharmacy on the request of the patient or patient's agent;

(iii) shall be communicated orally in person unless the patient or patient's agent is not at the pharmacy or a specific communication barrier prohibits such oral communication;

(iv) effective, June 1, 2010, shall be documented by recording the initials or identification code of the pharmacist providing the counseling in the prescription dispensing record on either the original hard-copy prescription. in the pharmacy's data processing system or in an electronic logbook; and

(v) shall be reinforced with written information relevant to the prescription and provided to the patient or patient's agent. The following is applicable concerning this written information.

(I) Written information must be in plain language designed for the consumer and printed in an easily readable font size comparable to but no smaller than ten-point Times Roman.

(II) When a compounded product is dispensed, information shall be provided for the major active ingredient(s), if available.

(III) For new drug entities, if no written information is initially available, the pharmacist is not required to provide information until such information is available, provided:

(-a-) the pharmacist informs the patient or the patient's agent that the product is a new drug entity and written information is not available;

(-b-) the pharmacist documents the fact that no written information was provided; and

(-c-) if the prescription is refilled after written information is available, such information is provided to the patient or patient's agent.

(C) Only a pharmacist may verbally provide drug information to a patient or patient's agent and answer questions concerning prescription drugs. Non-pharmacist personnel may not ask questions of a patient or patient's agent which are intended to screen and/or limit interaction with the pharmacist.

(D) Nothing in this subparagraph shall be construed as requiring a pharmacist to provide consultation when a patient or patient's agent refuses such consultation. The pharmacist shall document such refusal for consultation.

(E) In addition to the requirements of subparagraphs (A) - (D) of this paragraph, if a prescription drug order is delivered to the patient at the pharmacy, the following is applicable.

(i) So that a patient will have access to information concerning his or her prescription, a prescription may not be delivered to a patient unless a pharmacist is in the pharmacy, except as provided in subsection (b)(3) of this section.

(ii) Any prescription delivered to a patient when a pharmacist is not in the pharmacy must meet the requirements described in subparagraph (F) of this paragraph.

(iii) A Class A pharmacy shall make available for use by the public a current or updated edition of the United States Pharmacopeia Dispensing Information, Volume II (Advice to the Patient), or another source of such information designed for the consumer.

(F) In addition to the requirements of subparagraphs (A) - (D) of this paragraph, if a prescription drug order is delivered to the patient or his or her agent at the patient's residence or other designated location, the following is applicable.

(i) The information specified in subparagraph (A) of this paragraph shall be delivered with the dispensed prescription in writing.

(ii) If prescriptions are routinely delivered outside the area covered by the pharmacy's local telephone service, the pharmacy shall provide a toll-free telephone line which is answered during normal business hours to enable communication between the patient and a pharmacist.

(iii) The pharmacist shall place on the prescription container or on a separate sheet delivered with the prescription container in both English and Spanish the local and if applicable, toll-free telephone number of the pharmacy and the statement: "Written information about this prescription has been provided for you. Please read this information before you take the medication. If you have questions concerning this prescription, a pharmacist is available during normal business hours to answer these questions at (insert the pharmacy's local and toll-free telephone numbers)."

(iv) The pharmacy shall maintain and use adequate storage or shipment containers and use shipping processes to ensure drug stability and potency. Such shipping processes shall include the use of appropriate packaging material and/or devices to ensure that the drug is maintained at an appropriate temperature range to maintain the integrity of the medication throughout the delivery process.

(v) The pharmacy shall use a delivery system which is designed to assure that the drugs are delivered to the appropriate patient.

(G) Except as specified in subparagraph (B) of this paragraph, in the best interest of the public health and to optimize drug therapy, upon delivery of a refill prescription, a pharmacist shall ensure that the patient or patient's agent is offered information about the refilled prescription. Either a pharmacist or other pharmacy personnel shall inform the patient or patient's agent that a pharmacist is available to discuss the patient's prescription and provide information.

(H) A pharmacy shall post a sign no smaller than 8.5 inches by 11 inches in clear public view at all locations in the pharmacy where a patient may pick up prescriptions. The sign shall contain the following statement in a font that is easily readable: "Do you have questions about your prescription? Ask the pharmacist." Such notification shall be in both English and Spanish.

(I) The provisions of this paragraph do not apply to patients in facilities where drugs are administered to patients by a person required to do so by the laws of the state (i.e., nursing homes).

(2) Pharmaceutical care services.

(A) Drug regimen review.

(i) For the purpose of promoting therapeutic appropriateness, a pharmacist shall, prior to or at the time of dispensing a prescription drug order, review the patient's medication record. Such review shall at a minimum identify clinically significant:

(I) known allergies;

(II) rational therapy-contraindications;

(III) reasonable dose and route of administration;

(IV) reasonable directions for use;

(V) duplication of therapy;

(VI) drug-drug interactions;

(VII) drug-food interactions;

(VIII) drug-disease interactions;

(IX) adverse drug reactions; and

(X) proper utilization, including overutilization or underutilization.

(ii) Upon identifying any clinically significant conditions, situations, or items listed in clause (i) of this subparagraph, the pharmacist shall take appropriate steps to avoid or resolve the problem including consultation with the prescribing practitioner. The pharmacist shall document such occurrences.

(iii) The drug regimen review may be conducted by remotely accessing the pharmacy's electronic data base from outside the pharmacy by an individual Texas licensed pharmacist employee of the pharmacy, provided the pharmacy establishes controls to protect the privacy of the patient and the security of confidential records.

(B) Other pharmaceutical care services which may be provided by pharmacists include, but are not limited to, the following:

(i) managing drug therapy as delegated by a practitioner as allowed under the provisions of the Medical Practices;

(ii) administering immunizations and vaccinations under written protocol of a physician;

(iii) managing patient compliance programs;

(iv) providing preventative health care services; and

(v) providing case management of patients who are being treated with high-risk or high-cost drugs, or who are considered "high risk" due to their age, medical condition, family history, or related concern.

(3) Generic Substitution.

(A) General requirements.

(i) In accordance with Chapter 562 of the Act, a pharmacist may dispense a generically equivalent drug product if:

(I) the generic product costs the patient less than the prescribed drug product;

(II) the patient does not refuse the substitution; and

(III) the practitioner does not certify on the prescription form that a specific prescribed brand is medically necessary as specified in a dispensing directive described in subparagraph (C) of this paragraph.

(ii) If the practitioner has prohibited substitution through a dispensing directive in compliance with subparagraph (C) of this paragraph, a pharmacist shall not substitute a generically equivalent drug product unless the pharmacist obtains verbal or written authorization from the practitioner and notes such authorization on the original prescription drug order.

(B) Prescription format for written prescription drug orders.

(i) A written prescription drug order issued in Texas may:

(I) be on a form containing a single signature line for the practitioner; and

(II) contain the following reminder statement on the face of the prescription: "A generically equivalent drug product may be dispensed unless the practitioner hand writes the words 'Brand Necessary' or 'Brand Medically Necessary' on the face of the prescription."

(ii) A pharmacist may dispense a prescription that is not issued on the form specified in clause (i) of this subparagraph, however, the pharmacist may dispense a generically equivalent drug product unless the practitioner has prohibited substitution through a dispensing directive in compliance with subparagraph (C)(i) of this paragraph.

(iii) The prescription format specified in clause (i) of this subparagraph does not apply to the following types of prescription drug orders:

(I) prescription drug orders issued by a practitioner in a state other than Texas;

(II) prescriptions for dangerous drugs issued by a practitioner in the United Mexican States or the Dominion of Canada; or

(III) prescription drug orders issued by practitioners practicing in a federal facility provided they are acting in the scope of their employment.

(iv) In the event of multiple prescription orders appearing on one prescription form, the practitioner shall clearly identify to which prescription(s) the dispensing directive(s) apply. If the practitioner does not clearly indicate to which prescription(s) the dispensing directive(s) apply, the pharmacist may substitute on all prescriptions on the form.

(C) Dispensing directive.

(i) Written prescriptions.

(I) A practitioner may prohibit the substitution of a generically equivalent drug product for a brand name drug product by writing across the face of the written prescription, in the practitioner's own handwriting, the phrase "brand necessary" or "brand medically necessary."

(II) The dispensing directive shall:

(-a-) be in a format that protects confidentiality as required by the Health Insurance Portability and Accountability Act of 1996 (29 U.S.C. §1181 et seq.) and its subsequent amendments; and

(-b-) comply with federal and state law, including rules, with regard to formatting and security requirements.

(III) The dispensing directive specified in this paragraph may not be preprinted, rubber stamped, or otherwise reproduced on the prescription form.

(IV) After, June 1, 2002, a practitioner may prohibit substitution on a written prescription only by following the dispensing directive specified in this paragraph. Two-line prescription forms, check boxes, or other notations on an original prescription drug order which indicate "substitution instructions" are not valid methods to prohibit substitution, and a pharmacist may substitute on these types of written prescriptions.

(V) A written prescription drug order issued prior to June 1, 2002, but presented for dispensing on or after June 1, 2002, shall follow the substitution instructions on the prescription.

(ii) Verbal Prescriptions.

(I) If a prescription drug order is transmitted to a pharmacist orally, the practitioner or practitioner's agent shall prohibit substitution by specifying "brand necessary" or "brand medically necessary." The pharmacists shall note any substitution instructions by the practitioner or practitioner's agent, on the file copy of the prescription drug order. Such file copy may follow the one-line format indicated in subparagraph (B)(i) of this paragraph, or any other format that clearly indicates the substitution instructions.

(II) If the practitioner's or practitioner's agent does not clearly indicate that the brand name is medically necessary, the pharmacist may substitute a generically equivalent drug product.

(III) To prohibit substitution on a verbal prescription reimbursed through the medical assistance program specified in 42 C.F.R., §447.331:

(-a-) the practitioner or the practitioner's agent shall verbally indicate that the brand is medically necessary; and

(-b-) the practitioner shall mail or fax a written prescription to the pharmacy which complies with the dispensing directive for written prescriptions specified in clause (i) of this subparagraph within 30 days.

(iii) Electronic prescription drug orders.

(I) To prohibit substitution, the practitioner or practitioner's agent shall note "brand necessary" or "brand medically necessary" on the electronic prescription drug order.

(II) If the practitioner or practitioner's agent does not clearly indicate on the electronic prescription drug order that the brand is medically necessary, the pharmacist may substitute a generically equivalent drug product.

(III) To prohibit substitution on an electronic prescription drug order reimbursed through the medical assistance program specified in 42 C.F.R., §447.331, the practitioner shall fax a copy of the original prescription drug order which complies with the requirements of a written prescription drug order specified in clause (i) of this subparagraph within 30 days.

(iv) Prescriptions issued by out-of-state, Mexican, Canadian, or federal facility practitioners.

(I) The dispensing directive specified in this subsection does not apply to the following types of prescription drug orders:

(-a-) prescription drug orders issued by a practitioner in a state other than Texas;

(-b-) prescriptions for dangerous drugs issued by a practitioner in the United Mexican States or the Dominion of Canada; or

(-c-) prescription drug orders issued by practitioners practicing in a federal facility provided they are acting in the scope of their employment.

(II) A pharmacist may not substitute on prescription drug orders identified in subclause (I) of this clause unless the practitioner has authorized substitution on the prescription drug order. If the practitioner has not authorized substitution on the written prescription drug order, a pharmacist shall not substitute a generically equivalent drug product unless:

(-a-) the pharmacist obtains verbal or written authorization from the practitioner (such authorization shall be noted on the original prescription drug order); or

(-b-) the pharmacist obtains written documentation regarding substitution requirements from the State Board of Pharmacy in the state, other than Texas, in which the prescription drug order was issued. The following is applicable concerning this documentation.

(-1-) The documentation shall state that a pharmacist may substitute on a prescription drug order issued in such other state unless the practitioner prohibits substitution on the original prescription drug order.

(-2-) The pharmacist shall note on the original prescription drug order the fact that documentation from such other state board of pharmacy is on file.

(-3-) Such documentation shall be updated yearly.

(D) Refills.

(i) Original substitution instructions. All refills, including prescriptions issued prior to June 1, 2001, shall follow the original substitution instructions or dispensing directive, unless otherwise indicated by the practitioner or practitioner's agent.

(ii) Narrow therapeutic index drugs.

(I) The board, in consultation with the Texas State Board of Medical Examiners, has determined that no drugs shall be included on a list of narrow therapeutic index drugs as defined in §562.013, Occupations Code.

(-a-) The board has specified in §309.7 of this title (relating to Dispensing Responsibilities) that for drugs listed in the publication, pharmacists shall use as a basis for determining generic equivalency, Approved Drug Products with Therapeutic Equivalence Evaluations and current supplements published by the Federal Food and Drug Administration, within the limitations stipulated in that publication. Pharmacists may only substitute products that are rated therapeutically equivalent in the Approved Drug Products with Therapeutic Equivalence Evaluations and current supplements.

(-b-) Practitioners may prohibit substitution through a dispensing directive in compliance with subparagraph (C) of this paragraph.

(II) The board shall reconsider the contents of the list if the Federal Food and Drug Administration determines a new equivalence classification which indicates that certain drug products are equivalent but special notification to the patient and practitioner is required when substituting these products.

(4) Substitution of dosage form.

(A) As specified in §562.002 of the Act, a pharmacist may dispense a dosage form of a drug product different from that prescribed, such as a tablet instead of a capsule or liquid instead of tablets, provided:

(i) the patient consents to the dosage form substitution;

(ii) the pharmacist notifies the practitioner of the dosage form substitution; and

(iii) the dosage form so dispensed:

(I) contains the identical amount of the active ingredients as the dosage prescribed for the patient;

(II) is not an enteric-coated or time release product;

(III) does not alter desired clinical outcomes;

(B) Substitution of dosage form may not include the substitution of a product that has been compounded by the pharmacist unless the pharmacist contacts the practitioner prior to dispensing and obtains permission to dispense the compounded product.

(5) Therapeutic Drug Interchange. A switch to a drug providing a similar therapeutic response to the one prescribed shall not be made without prior approval of the prescribing practitioner. This paragraph does not apply to generic substitution. For generic substitution, see the requirements of paragraph (3) of this subsection.

(A) The patient shall be notified of the therapeutic drug interchange prior to, or upon delivery, of the dispensed prescription to the patient. Such notification shall include:

(i) a description of the change;

(ii) the reason for the change;

(iii) whom to notify with questions concerning the change; and

(iv) instructions for return of the drug if not wanted by the patient.

(B) The pharmacy shall maintain documentation of patient notification of therapeutic drug interchange which shall include:

(i) the date of the notification;

(ii) the method of notification;

(iii) a description of the change; and

(iv) the reason for the change.

(6) Prescription containers.

(A) A drug dispensed pursuant to a prescription drug order shall be dispensed in a child-resistant container unless:

(i) the patient or the practitioner requests the prescription not be dispensed in a child-resistant container; or

(ii) the product is exempted from requirements of the Poison Prevention Packaging Act of 1970.

(B) A drug dispensed pursuant to a prescription drug order shall be dispensed in an appropriate container as specified on the manufacturer's container.

(C) Prescription containers or closures shall not be reused. However, if a patient or patient's agent has difficulty reading or understanding a prescription label, a prescription container may be reused provided:

(i) the container is designed to provide audio-recorded information about the proper use of the prescription medication;

(ii) the container is reused for the same patient;

(iii) the container is cleaned; and

(iv) a new safety closure is used each time the prescription container is reused.

(7) Labeling.

(A) At the time of delivery of the drug, the dispensing container shall bear a label in plain language and printed in an easily readable font size, unless otherwise specified, with at least the following information:

(i) name, address and phone number of the pharmacy;

(ii) unique identification number of the prescription that is printed in an easily readable font size comparable to but no smaller than ten-point Times Roman;

(iii) date the prescription is dispensed;

(iv) initials or an identification code of the dispensing pharmacist;

(v) name of the prescribing practitioner;

(vi) name of the patient or if such drug was prescribed for an animal, the species of the animal and the name of the owner that is printed in an easily readable font size comparable to but no smaller than ten-point Times Roman;

(vii) instructions for use that is printed in an easily readable font size comparable to but no smaller than ten-point Times Roman;

(viii) quantity dispensed;

(ix) appropriate ancillary instructions such as storage instructions or cautionary statements such as warnings of potential harmful effects of combining the drug product with any product containing alcohol;

(x) if the prescription is for a Schedules II - IV controlled substance, the statement "Caution: Federal law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed";

(xi) if the pharmacist has selected a generically equivalent drug pursuant to the provisions of the Act, Chapters 562 and 563, the statement "Substituted for Brand Prescribed" or "Substituted for 'Brand Name'" where "Brand Name" is the actual name of the brand name product prescribed;

(xii) the name of the advanced practice nurse or physician assistant, if the prescription is carried out or signed by an advanced practice nurse or physician assistant in compliance with Subtitle B, Chapter 157, Occupations Code; and

(xiii) the name and strength of the actual drug product dispensed that is printed in an easily readable font size comparable to but no smaller than ten-point Times Roman, unless otherwise directed by the prescribing practitioner.

(I) The name shall be either:

(-a-) the brand name; or

(-b-) if no brand name, then the generic name and name of the manufacturer or distributor of such generic drug. (The name of the manufacturer or distributor may be reduced to an abbreviation or initials, provided the abbreviation or initials are sufficient to identify the manufacturer or distributor. For combination drug products or non-sterile compounded drug products having no brand name, the principal active ingredients shall be indicated on the label.)

(II) Except as provided in clause (xi) of this subparagraph, the brand name of the prescribed drug shall not appear on the prescription container label unless it is the drug product actually dispensed.

(B) If the prescription label required in subparagraph (A) of this paragraph is printed in a type size smaller than ten-point Times Roman, the pharmacy shall provide the patient written information containing the information specified in subparagraph (A) of this paragraph in an easily readable font size comparable to but no smaller than ten-point Times Roman.

(C) The label is not required to include the initials or identification code of the dispensing pharmacist specified in subparagraph (A) of this paragraph if the identity of the dispensing pharmacist is recorded in the pharmacy's data processing system. The record of the identity of the dispensing pharmacist shall not be altered in the pharmacy's data processing system.

(D) The dispensing container is not required to bear the label specified in subparagraph (A) of this paragraph if:

(i) the drug is prescribed for administration to an ultimate user who is institutionalized in a licensed health care institution (e.g., nursing home, hospice, hospital);

(ii) no more than a 34-day supply or 100 dosage units, whichever is less, is dispensed at one time;

(iii) the drug is not in the possession of the ultimate user prior to administration;

(iv) the pharmacist-in-charge has determined that the institution:

(I) maintains medication administration records which include adequate directions for use for the drug(s) prescribed;

(II) maintains records of ordering, receipt, and administration of the drug(s); and

(III) provides for appropriate safeguards for the control and storage of the drug(s); and

(v) the dispensing container bears a label that adequately:

(I) identifies the:

(-a-) pharmacy by name and address;

(-b-) unique identification number of the prescription;

(-c-) name and strength of the drug dispensed;

(-d-) name of the patient;

(-e-) name of the prescribing practitioner and, if applicable, the name of the advanced practice nurse or physician assistant who signed the prescription drug order; and

(II) sets forth the directions for use and cautionary statements, if any, contained on the prescription drug order or required by law.

(d) Equipment and supplies. Class A pharmacies dispensing prescription drug orders shall have the following equipment and supplies:

(1) typewriter or comparable equipment;

(2) refrigerator;

(3) adequate supply of child-resistant, light-resistant, tight, and if applicable, glass containers;

(4) adequate supply of prescription, poison, and other applicable labels;

(5) appropriate equipment necessary for the proper preparation of prescription drug orders; and

(6) metric-apothecary weight and measure conversion charts.

(e) Library. A reference library shall be maintained which includes the following in hard-copy or electronic format:

(1) current copies of the following:

(A) Texas Pharmacy Act and rules;

(B) Texas Dangerous Drug Act and rules;

(C) Texas Controlled Substances Act and rules; and

(D) Federal Controlled Substances Act and rules (or official publication describing the requirements of the Federal Controlled Substances Act and rules);

(2) at least one current or updated reference from each of the following categories:

(A) patient information:

(i) United States Pharmacopeia Dispensing Information, Volume II (Advice to the Patient); or

(ii) a reference text or information leaflets which provide patient information;

(B) drug interactions: a reference text on drug interactions, such as Drug Interaction Facts. A separate reference is not required if other references maintained by the pharmacy contain drug interaction information including information needed to determine severity or significance of the interaction and appropriate recommendations or actions to be taken;

(C) a general information reference text, such as:

(i) Facts and Comparisons with current supplements;

(ii) United States Pharmacopeia Dispensing Information Volume I (Drug Information for the Healthcare Provider);

(iii) Clinical Pharmacology;

(iv) American Hospital Formulary Service with current supplements; or

(v) Remington's Pharmaceutical Sciences; and

(3) basic antidote information and the telephone number of the nearest Regional Poison Control Center.

(f) Drugs.

(1) Procurement and storage.

(A) The pharmacist-in-charge shall have the responsibility for the procurement and storage of drugs, but may receive input from other appropriate staff relative to such responsibility.

(B) Prescription drugs and devices and nonprescription Schedule V controlled substances shall be stored within the prescription department or a locked storage area.

(C) All drugs shall be stored at the proper temperature, as defined in the USP/NF and §291.15 of this title (relating to Storage of Drugs).

(2) Out-of-date drugs or devices.

(A) Any drug or device bearing an expiration date shall not be dispensed beyond the expiration date of the drug or device.

(B) Outdated drugs or devices shall be removed from dispensing stock and shall be quarantined together until such drugs or devices are disposed of properly.

(3) Nonprescription Schedule V controlled substances.

(A) Schedule V controlled substances containing codeine, dihydrocodeine, or any of the salts of codeine or dihydrocodeine may not be distributed without a prescription drug order from a practitioner.

(B) A pharmacist may distribute nonprescription Schedule V controlled substances which contain no more than 15 milligrams of opium per 29.5729 ml or per 28.35 Gm provided:

(i) such distribution is made only by a pharmacist; a nonpharmacist employee may not distribute a nonprescription Schedule V controlled substance even if under the supervision of a pharmacist; however, after the pharmacist has fulfilled professional and legal responsibilities, the actual cash, credit transaction, or delivery may be completed by a nonpharmacist:

(ii) not more than 240 ml (eight fluid ounces), or not more than 48 solid dosage units of any substance containing opium, may be distributed to the same purchaser in any given 48-hour period without a prescription drug order;

(iii) the purchaser is at least 18 years of age; and

(iv) the pharmacist requires every purchaser not known to the pharmacist to furnish suitable identification (including proof of age where appropriate).

(C) A record of such distribution shall be maintained by the pharmacy in a bound record book. The record shall contain the following information:

(i) true name of the purchaser;

(ii) current address of the purchaser;

(iii) name and quantity of controlled substance purchased;

(iv) date of each purchase; and

(v) signature or written initials of the distributing pharmacist.

(4) Class A Pharmacies may not sell, purchase, trade or possess prescription drug samples, unless the pharmacy meets all of the following conditions:

(A) the pharmacy is owned by a charitable organization described in the Internal Revenue Code of 1986, or by a city, state or county government;

(B) the pharmacy is a part of a health care entity which provides health care primarily to indigent or low income patients at no or reduced cost;

(C) the samples are for dispensing or provision at no charge to patients of such health care entity; and

(D) the samples are possessed in compliance with the federal Prescription Drug Marketing Act of 1986.

(g) Prepackaging of drugs.

(1) Drugs may be prepackaged in quantities suitable for internal distribution only by a pharmacist or by supportive personnel under the direction and direct supervision of a pharmacist.

(2) The label of a prepackaged unit shall indicate:

(A) brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(B) facility's lot number;

(C) expiration date; and

(D) quantity of the drug, if the quantity is greater than one.

(3) Records of prepackaging shall be maintained to show:

(A) name of the drug, strength, and dosage form;

(B) facility's lot number;

(C) manufacturer or distributor;

(D) manufacturer's lot number;

(E) expiration date;

(F) quantity per prepackaged unit;

(G) number of prepackaged units;

(H) date packaged;

(I) name, initials, or electronic signature of the prepacker; and

(J) signature, or electronic signature of the responsible pharmacist.

(4) Stock packages, repackaged units, and control records shall be quarantined together until checked/released by the pharmacist.

(h) Customized patient medication packages.

(1) Purpose. In lieu of dispensing two or more prescribed drug products in separate containers, a pharmacist may, with the consent of the patient, the patient's caregiver, or the prescriber, provide a customized patient medication package (patient med-pak).

(2) Definition. A patient med-pak is a package prepared by a pharmacist for a specific patient comprising a series of containers and containing two or more prescribed solid oral dosage forms. The patient med-pak is so designed or each container is so labeled as to indicate the day and time, or period of time, that the contents within each container are to be taken.

(3) Label.

(A) The patient med-pak shall bear a label stating:

(i) the name of the patient;

(ii) the unique identification number for the patient med-pak itself and a separate unique identification number for each of the prescription drug orders for each of the drug products contained therein;

(iii) the name, strength, physical description or identification, and total quantity of each drug product contained therein;

(iv) the directions for use and cautionary statements, if any, contained in the prescription drug order for each drug product contained therein;

(v) if applicable, a warning of the potential harmful effect of combining any form of alcoholic beverage with any drug product contained therein;

(vi) any storage instructions or cautionary statements required by the official compendia;

(vii) the name of the prescriber of each drug product;

(viii) the date of preparation of the patient med-pak and the beyond-use date assigned to the patient med-pak (which such beyond-use date shall not be later than 60 days from the date of preparation);

(ix) the name, address, and telephone number of the pharmacy;

(x) the initials or an identification code of the dispensing pharmacist; and

(xi) any other information, statements, or warnings required for any of the drug products contained therein.

(B) If the patient med-pak allows for the removal or separation of the intact containers therefrom, each individual container shall bear a label identifying each of the drug product contained therein.

(C) The dispensing container is not required to bear the label specified in subparagraph (A) of this paragraph if:

(i) the drug is prescribed for administration to an ultimate user who is institutionalized in a licensed health care institution (e.g., nursing home, hospice, hospital);

(ii) no more than a 34-day supply or 100 dosage units, whichever is less, is dispensed at one time;

(iii) the drug is not in the possession of the ultimate user prior to administration;

(iv) the pharmacist-in-charge has determined that the institution:

(I) maintains medication administration records which include adequate directions for use for the drug(s) prescribed;

(II) maintains records of ordering, receipt, and administration of the drug(s); and

(III) provides for appropriate safeguards for the control and storage of the drug(s); and

(v) the dispensing container bears a label that adequately:

(I) identifies the:

(-a-) pharmacy by name and address;

(-b-) unique identification number of the prescription;

(-c-) name and strength of each drug product dispensed;

(-d-) name of the patient;

(-e-) name of the prescribing practitioner of each drug product and if applicable, the name of the advanced practice nurse or physician assistant who signed the prescription drug order; and

(II) for each drug product sets forth the directions for use and cautionary statements, if any, contained on the prescription drug order or required by law.

(4) Labeling. The patient med-pak shall be accompanied by a patient package insert, in the event that any drug contained therein is required to be dispensed with such insert as accompanying labeling. Alternatively, such required information may be incorporated into a

single, overall educational insert provided by the pharmacist for the total patient med-pak.

(5) Packaging. In the absence of more stringent packaging requirements for any of the drug products contained therein, each container of the patient med-pak shall comply with official packaging standards. Each container shall be either not reclosable or so designed as to show evidence of having been opened.

(6) Guidelines. It is the responsibility of the dispensing pharmacist when preparing a patient med-pak, to take into account any applicable compendial requirements or guidelines and the physical and chemical compatibility of the dosage forms placed within each container, as well as any therapeutic incompatibilities that may attend the simultaneous administration of the drugs.

(7) Recordkeeping. In addition to any individual prescription filing requirements, a record of each patient med-pak shall be made and filed. Each record shall contain, as a minimum:

(A) the name and address of the patient;

(B) the unique identification number for the patient med-pak itself and a separate unique identification number for each of the prescription drug orders for each of the drug products contained therein;

(C) the name of the manufacturer or distributor and lot number for each drug product contained therein;

(D) information identifying or describing the design, characteristics, or specifications of the patient med-pak sufficient to allow subsequent preparation of an identical patient med-pak for the patient;

(E) the date of preparation of the patient med-pak and the beyond-use date that was assigned;

(F) any special labeling instructions; and

(G) the initials or an identification code of the dispensing pharmacist.

(i) Automated devices and systems.

(1) Automated compounding or counting devices. If a pharmacy uses automated compounding or counting devices:

(A) the pharmacy shall have a method to calibrate and verify the accuracy of the automated compounding or counting device and document the calibration and verification on a routine basis;

(B) the devices may be loaded with bulk or unlabeled drugs only by a pharmacist or by pharmacy technicians under the direction and direct supervision of a pharmacist;

(C) the label of an automated compounding or counting device container shall indicate the brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(D) records of loading bulk or unlabeled drugs into an automated compounding or counting device shall be maintained to show:

(i) name of the drug, strength, and dosage form;

(ii) manufacturer or distributor;

(iii) manufacturer's lot number;

(iv) expiration date;

(v) date of loading;

(vi) name, initials, or electronic signature of the person loading the automated compounding or counting device; and

(vii) signature or electronic signature of the responsible pharmacist; and

(E) the automated compounding or counting device shall not be used until a pharmacist verifies that the system is properly loaded and affixes his or her signature to the record specified in subparagraph (D) of this paragraph.

(2) Automated pharmacy dispensing systems. This paragraph becomes effective September 1, 2000.

(A) Authority to use automated pharmacy dispensing systems. A pharmacy may use an automated pharmacy dispensing system to fill prescription drug orders provided that:

(i) the pharmacist-in-charge is responsible for the supervision of the operation of the system;

(ii) the automated pharmacy dispensing system has been tested by the pharmacy and found to dispense accurately. The pharmacy shall make the results of such testing available to the Board upon request; and

(iii) the pharmacy will make the automated pharmacy dispensing system available for inspection by the board for the purpose of validating the accuracy of the system.

(B) Quality assurance program. A pharmacy which uses an automated pharmacy dispensing system to fill prescription drug orders shall operate according to a written program for quality assurance of the automated pharmacy dispensing system which:

(i) requires continuous monitoring of the automated pharmacy dispensing system; and

(ii) establishes mechanisms and procedures to test the accuracy of the automated pharmacy dispensing system at least every six months and whenever any upgrade or change is made to the system and documents each such activity.

(C) Policies and procedures of operation.

(i) When an automated pharmacy dispensing system is used to fill prescription drug orders, it shall be operated according to written policies and procedures of operation. The policies and procedures of operation shall establish requirements for operation of the automated pharmacy dispensing system and shall describe policies and procedures that:

(I) include a description of the policies and procedures of operation;

(II) provide for a pharmacist's review, approval, and accountability for the transmission of each original or new prescription drug order to the automated pharmacy dispensing system before the transmission is made;

(III) provide for access to the automated pharmacy dispensing system for stocking and retrieval of medications which is limited to licensed healthcare professionals or pharmacy technicians acting under the supervision of a pharmacist;

(IV) require prior to use, that a pharmacist checks, verifies, and documents that the automated pharmacy dispensing system has been accurately filled each time the system is stocked;

(V) provide for an accountability record to be maintained which documents all transactions relative to stocking and removing medications from the automated pharmacy dispensing system;

(VI) require a prospective drug regimen review is conducted as specified in subsection (c)(2) of this section; and

(VII) establish and make provisions for documentation of a preventative maintenance program for the automated pharmacy dispensing system.

(ii) A pharmacy which uses an automated pharmacy dispensing system to fill prescription drug orders shall, at least annually, review its written policies and procedures, revise them if necessary, and document the review.

(D) Recovery Plan. A pharmacy which uses an automated pharmacy dispensing system to fill prescription drug orders shall maintain a written plan for recovery from a disaster or any other situation which interrupts the ability of the automated pharmacy dispensing system to provide services necessary for the operation of the pharmacy. The written plan for recovery shall include:

(i) planning and preparation for maintaining pharmacy services when an automated pharmacy dispensing system is experiencing downtime;

(ii) procedures for response when an automated pharmacy dispensing system is experiencing downtime;

(iii) procedures for the maintenance and testing of the written plan for recovery; and

(iv) procedures for notification of the Board, each patient of the pharmacy, and other appropriate agencies whenever an automated pharmacy dispensing system experiences downtime for more than two days of operation or a period of time which significantly limits the pharmacy's ability to provide pharmacy services.

(3) Final check of prescriptions dispensed using an automated pharmacy dispensing system. For the purpose of §291.32(b)(2) of this title (relating to Personnel), a pharmacist must perform the final check of all prescriptions prior to delivery to the patient to ensure that the prescription is dispensed accurately as prescribed.

(A) This final check shall be considered accomplished if:

(i) a check of the final product is conducted by a pharmacist after the automated system has completed the prescription and prior to delivery to the patient; or

(ii) the following checks are conducted by a pharmacist:

(I) if the automated pharmacy dispensing system contains bulk stock drugs, a pharmacist verifies that those drugs have been accurately stocked as specified in paragraph (2)(C)(i)(IV) of this subsection; and

(II) a pharmacist checks the accuracy of the data entry of each original or new prescription drug order entered into the automated pharmacy dispensing system.

(B) If the final check is accomplished as specified in subparagraph (A)(ii) of this paragraph, the following additional requirements must be met.

(i) The dispensing process must be fully automated from the time the pharmacist releases the prescription to the automated system until a completed, labeled prescription ready for delivery to the patient is produced.

(ii) The pharmacy has conducted initial testing and has a continuous quality assurance program which documents that the automated pharmacy dispensing system dispenses accurately as specified in paragraph (2)(A) and (B) of this subsection.

(iii) The automated pharmacy dispensing system documents and maintains:

(I) the name(s), initials, or identification code(s) of each pharmacist responsible for the checks outlined in subparagraph (A)(ii) of this paragraph; and

(II) the name(s), initials, or identification code(s) and specific activity(ies) of each pharmacist or pharmacy technician who performs any other portion of the dispensing process.

(iv) The pharmacy establishes mechanisms and procedures to test the accuracy of the automated pharmacy dispensing system at least every month rather than every six months as specified in paragraph (2)(B) of this subsection.

(4) Automated checking device.

(A) For the purpose of this subsection, an automated checking device is a fully automated device which confirms, after dispensing but prior to delivery to the patient, that the correct drug and strength has been labeled with the correct label for the correct patient.

(B) For the purpose of §291.32(b)(2) of this title, the final check of a dispensed prescription shall be considered accomplished using an automated checking device provided:

(i) a check of the final product is conducted by a pharmacist prior to delivery to the patient or the following checks are performed by a pharmacist:

(I) the prepackaged drug used to fill the order is checked by a pharmacist who verifies that the drug is labeled and packaged accurately; and

(II) a pharmacist checks the accuracy of each original or new prescription drug order.

(ii) the prescription is dispensed, labeled, and made ready for delivery to the patient in compliance with Class A (Community) Pharmacy rules; and

(iii) prior to delivery to the patient:

(I) the automated checking device confirms that the correct drug and strength has been labeled with the correct label for the correct patient; and

(II) a pharmacist performs all other duties required to ensure that the prescription has been dispensed safely and accurately as prescribed.

(C) If the final check is accomplished as specified in subparagraph (B) of this paragraph, the following additional requirements must be met.

(i) The pharmacy has conducted initial testing of the automated checking device and has a continuous quality assurance program which documents that the automated checking device accurately confirms that the correct drug and strength has been labeled with the correct label for the correct patient.

(ii) The pharmacy documents and maintains:

(I) the name(s), initials, or identification code(s) of each pharmacist responsible for the checks outlined in subparagraph (B)(i) of this paragraph; and

(II) the name(s) initials, or identification code(s) and specific activity(ies) of each pharmacist or pharmacy technician who perform any other portion of the dispensing process.

(iii) The pharmacy establishes mechanisms and procedures to test the accuracy of the automated checking device at least monthly.

(5) Automated storage and distribution device. A pharmacy may use an automated storage and distribution device to deliver a previously verified prescription to a patient or patient's agent when the pharmacy is open or when the pharmacy is closed as specified in subsection (b)(3)(B)(iii) of this section, provided:

(A) the device is used to deliver refills of prescription drug orders and shall not be used to deliver new prescriptions as defined by §291.31(26) of this title (Relating to Definitions);

(B) the automated storage and distribution device may not be used to deliver a controlled substance;

(C) drugs stored in the automated storage and distribution device are stored at proper temperatures;

(D) the patient or patient's agent is given the option to use the system;

(E) the patient or patient's agent has access to a pharmacist for questions regarding the prescription at the pharmacy where the automated storage and distribution device is located, by a telephone available at the pharmacy that connects directly to another pharmacy, or by a telephone available at the pharmacy and a posted telephone number to reach another pharmacy;

(F) the pharmacist-in-charge is responsible for the supervision of the operation of the system;

(G) the automated storage and distribution device has been tested by the pharmacy and found to dispense prescriptions accurately. The pharmacy shall make the results of such testing available to the board upon request;

(H) the automated storage and distribution device may be loaded with previously verified prescriptions only by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist;

(I) the pharmacy will make the automated storage and distribution device available for inspection by the board;

(J) the automated storage and distribution device is located within the pharmacy building whereby pharmacy staff has access to the device from within the prescription department and patients have access to the device from outside the prescription department. The device may not be located on an outside wall of the pharmacy and may not be accessible from a drive-thru;

(K) the automated storage and distribution device is secure from access and removal of prescription drug orders by unauthorized individuals;

(L) the automated storage and distribution device has adequate security system to prevent unauthorized access and to maintain patient confidentiality; and

(M) the automated storage and distribution device records a digital image of the individual accessing the device to pick-up a prescription and such record is maintained by the pharmacy for two years.

§291.34. Records.

(a) Maintenance of records.

(1) Every inventory or other record required to be kept under the provisions of §291.31 of this title (relating to Definitions), §291.32 of this title (relating to Personnel), §291.33 of this title (relating to Operational Standards), §291.34 of this title (relating to Records), and §291.35 of this title (relating to Official Prescription Requirements), contained in Community Pharmacy (Class A) shall be:

(A) kept by the pharmacy and be available, for at least two years from the date of such inventory or record, for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies; and

(B) supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy. If the pharmacy maintains the records in an electronic format, the requested records must be provided in a mutually agreeable electronic format if specifically requested by the board or its representative. Failure to provide the records set out in this section, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(2) Records of controlled substances listed in Schedules I and II shall be maintained separately from all other records of the pharmacy.

(3) Records of controlled substances, other than prescription drug orders, listed in Schedules III - V shall be maintained separately or readily retrievable from all other records of the pharmacy. For purposes of this subsection, readily retrievable means that the controlled substances shall be asterisked, red-lined, or in some other manner readily identifiable apart from all other items appearing on the record.

(4) Records, except when specifically required to be maintained in original or hard-copy form, may be maintained in an alternative data retention system, such as a data processing system or direct imaging system provided:

(A) the records maintained in the alternative system contain all of the information required on the manual record; and

(B) the data processing system is capable of producing a hard copy of the record upon the request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies.

(b) Prescriptions.

(1) Professional responsibility.

(A) Pharmacists shall exercise sound professional judgment with respect to the accuracy and authenticity of any prescription drug order they dispense. If the pharmacist questions the accuracy or authenticity of a prescription drug order, he/she shall verify the order with the practitioner prior to dispensing.

(B) Prior to dispensing a prescription, pharmacists shall determine, in the exercise of sound professional judgment, that the prescription is a valid prescription. A pharmacist may not dispense a prescription drug if the pharmacist knows or should have known that the prescription was issued on the basis of an Internet-based or telephonic consultation without a valid patient-practitioner relationship.

(C) Subparagraph (B) of this paragraph does not prohibit a pharmacist from dispensing a prescription when a valid patient-practitioner relationship is not present in an emergency situation (e.g. a practitioner taking calls for the patient's regular practitioner).

(2) Written prescription drug orders.

(A) Practitioner's signature.

(i) Except as noted in clause (ii) of this subparagraph, written prescription drug orders shall be:

(I) manually signed by the practitioner; or

(II) electronically signed by the practitioner using a system which electronically replicates the practitioner's manual signature on the written prescription, provided:

(-a-) that security features of the system require the practitioner to authorize each use; and

(-b-) the prescription is printed on paper that is designed to prevent unauthorized copying of a completed prescription and to prevent the erasure or modification of information written on the prescription by the prescribing practitioner. (For example, the paper contains security provisions against copying that results in some indication on the copy that it is a copy and therefore render the prescription null and void.)

(ii) Prescription drug orders for Schedule II controlled substances shall be issued on an official prescription form as required by the Texas Controlled Substances Act, §481.075, and be manually signed by the practitioner.

(iii) A practitioner may sign a prescription drug order in the same manner as he would sign a check or legal document, e.g. J.H. Smith or John H. Smith.

(iv) Rubber stamped or otherwise reproduced signatures may not be used except as authorized in clause (i) of this subparagraph.

(v) The prescription drug order may not be signed by a practitioner's agent but may be prepared by an agent for the signature of a practitioner. However, the prescribing practitioner is responsible in case the prescription drug order does not conform in all essential respects to the law and regulations.

(B) Prescription drug orders written by practitioners in another state.

(i) Dangerous drug prescription orders. A pharmacist may dispense a prescription drug order for dangerous drugs issued by practitioners in a state other than Texas in the same manner as prescription drug orders for dangerous drugs issued by practitioners in Texas are dispensed.

(ii) Controlled substance prescription drug orders.

(I) A pharmacist may dispense prescription drug order for controlled substances in Schedule II issued by a practitioner in another state provided:

(-a-) the prescription is filled in compliance with a written plan approved by the Director of the Texas Department of Public Safety in consultation with the Board, which provides the manner in which the dispensing pharmacy may fill a prescription for a Schedule II controlled substance;

(-b-) the prescription drug order is an original written prescription issued by a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, who has a current federal Drug Enforcement Administration (DEA) registration number, and who may legally prescribe Schedule II controlled substances in such other state; and

(-c-) the prescription drug order is not dispensed after the end of the seventh day after the date on which the prescription is issued.

(II) A pharmacist may dispense prescription drug orders for controlled substances in Schedule III, IV, or V issued by a physician, dentist, veterinarian, or podiatrist in another state provided:

(-a-) the prescription drug order is a written, oral, or telephonically or electronically communicated prescription, as allowed by the DEA issued by a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, who has a current federal DEA registration number, and who may legally prescribe Schedule III, IV, or V controlled substances in such other state;

(-b-) the prescription drug order is not dispensed or refilled more than six months from the initial date of issuance and may not be refilled more than five times; and

(-c-) if there are no refill instructions on the original prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the original prescription drug order have been dispensed, a new prescription drug order is obtained from the prescribing practitioner prior to dispensing any additional quantities of controlled substances.

(C) Prescription drug orders written by practitioners in the United Mexican States or the Dominion of Canada.

(i) Controlled substance prescription drug orders. A pharmacist may not dispense a prescription drug order for a Schedule II, III, IV, or V controlled substance issued by a practitioner in the Dominion of Canada or the United Mexican States.

(ii) Dangerous drug prescription drug orders. A pharmacist may dispense a dangerous drug prescription issued by a person licensed in the Dominion of Canada or the United Mexican States as a physician, dentist, veterinarian, or podiatrist provided:

(I) the prescription drug order is an original written prescription; and

(II) if there are no refill instructions on the original written prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the original written prescription drug order have been dispensed, a new written prescription drug order shall be obtained from the prescribing practitioner prior to dispensing any additional quantities of dangerous drugs.

(D) Prescription drug orders carried out or signed by an advanced practice nurse or physician assistant.

(i) A pharmacist may dispense a prescription drug order which is carried out or signed by an advanced practice nurse or physician assistant provided the advanced practice nurse or physician assistant is practicing in accordance with Subtitle B, Chapter 157, Occupations Code.

(ii) Each practitioner shall designate in writing the name of each advanced practice nurse or physician assistant authorized to carry out or sign a prescription drug order pursuant to Subtitle B, Chapter 157, Occupations Code. A list of the advanced practice nurses or physician assistants designated by the practitioner must be maintained in the practitioner's usual place of business. On request by a pharmacist, a practitioner shall furnish the pharmacist with a copy of the written authorization for a specific advanced practice nurse or physician assistant.

(E) Prescription drug orders for Schedule II controlled substances. No Schedule II controlled substance may be dispensed without a written prescription drug order of a practitioner on an official prescription form as required by the Texas Controlled Substances Act, §481.075.

(3) Verbal prescription drug orders.

(A) A verbal prescription drug order from a practitioner or a practitioner's designated agent may only be received by a pharmacist or a pharmacist-intern under the direct supervision of a pharmacist.

(B) A practitioner shall designate in writing the name of each agent authorized by the practitioner to communicate prescriptions verbally for the practitioner. The practitioner shall maintain at the practitioner's usual place of business a list of the designated agents. The practitioner shall provide a pharmacist with a copy of the practitioner's written authorization for a specific agent on the pharmacist's request.

(C) A pharmacist may not dispense a verbal prescription drug order for a dangerous drug or a controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States unless the practitioner is also licensed in Texas.

(4) Electronic prescription drug orders. For the purpose of this subsection, prescription drug orders shall be considered the same as verbal prescription drug orders.

(A) An electronic prescription drug order may be transmitted by a practitioner or a practitioner's designated agent:

(i) directly to a pharmacy; or

(ii) through the use of a data communication device provided:

(I) the confidential prescription information is not altered during transmission; and

(II) confidential patient information is not accessed or maintained by the operator of the data communication device other than for legal purposes under federal and state law.

(B) A practitioner shall designate in writing the name of each agent authorized by the practitioner to electronically transmit prescriptions for the practitioner. The practitioner shall maintain at the practitioner's usual place of business a list of the designated agents. The practitioner shall provide a pharmacist with a copy of the practitioner's written authorization for a specific agent on the pharmacist's request.

(C) A pharmacist may not dispense an electronic prescription drug order for a:

(i) Schedule II controlled substance, except as authorized for faxed prescriptions in §481.074, Health and Safety Code; or

(ii) dangerous drug or controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States unless the practitioner is also licensed in Texas.

(5) Original prescription drug order records.

(A) Original prescriptions may be dispensed only in accordance with the prescriber's authorization as indicated on the original prescription drug order including clarifications to the order given to the pharmacist by the practitioner or the practitioner's agent and recorded on the prescription.

(B) Original prescriptions shall be maintained by the pharmacy in numerical order and remain legible for a period of two years from the date of filling or the date of the last refill dispensed.

(C) If an original prescription drug order is changed, such prescription order shall be invalid and of no further force and effect; if additional drugs are to be dispensed, a new prescription drug order with a new and separate number is required.

(D) Original prescriptions shall be maintained in three separate files as follows:

(i) prescriptions for controlled substances listed in Schedule II;

(ii) prescriptions for controlled substances listed in Schedules III - V; and

(iii) prescriptions for dangerous drugs and nonprescription drugs.

(E) Original prescription records other than prescriptions for Schedule II controlled substances may be stored on microfilm, microfiche, or other system which is capable of producing a direct image of the original prescription record, e.g., digitalized imaging system. If original prescription records are stored in a direct imaging system, the following is applicable:

(i) the record of refills recorded on the original prescription must also be stored in this system;

(ii) the original prescription records must be maintained in numerical order and separated in three files as specified in subparagraph (D) of this paragraph; and

(iii) the pharmacy must provide immediate access to equipment necessary to render the records easily readable.

(6) Prescription drug order information.

(A) All original prescriptions shall bear:

(i) name of the patient, or if such drug is for an animal, the species of such animal and the name of the owner;

(ii) address of the patient, provided, however, a prescription for a dangerous drug is not required to bear the address of the patient if such address is readily retrievable on another appropriate, uniformly maintained pharmacy record, such as medication records;

(iii) name, and if for a controlled substance, the address and DEA registration number of the practitioner;

(iv) name and strength of the drug prescribed;

(v) quantity prescribed;

(vi) directions for use;

(vii) intended use for the drug unless the practitioner determines the furnishing of this information is not in the best interest of the patient; and

(viii) date of issuance.

(B) All original electronic prescription drug orders shall bear:

(i) name of the patient, if such drug is for an animal, the species of such animal, and the name of the owner;

(ii) address of the patient, provided, however, a prescription for a dangerous drug is not required to bear the address of the patient if such address is readily retrievable on another appropriate, uniformly maintained pharmacy record, such as medication records;

(iii) name, and if for a controlled substance, the address and DEA registration number of the practitioner;

(iv) name and strength of the drug prescribed;

(v) quantity prescribed;

(vi) directions for use;

(vii) indications for use, unless the practitioner determines the furnishing of this information is not in the best interest of the patient;

(viii) date of issuance;

(ix) a statement which indicates that the prescription has been electronically transmitted (e.g., Faxed to or electronically transmitted to);

(x) name, address, and electronic access number of the pharmacy to which the prescription was transmitted;

(xi) telephone number of the prescribing practitioner;

(xii) date the prescription drug order was electronically transmitted to the pharmacy, if different from the date of issuance of the prescription; and

(xiii) if transmitted by a designated agent, the full name of the designated agent.

(C) All original written prescriptions carried out or signed by an advanced practice nurse or physician assistant in accordance with Subtitle B, Chapter 157, Occupations Code, shall bear:

(i) name and address of the patient;

(ii) name, address, telephone number, and if the prescription is for a controlled substance, the DEA number of the supervising practitioner;

(iii) name, identification number, original signature and if the prescription is for a controlled substance, the DEA number of the advanced practice nurse or physician assistant;

(iv) address and telephone number of the clinic at which the prescription drug order was carried out or signed;

(v) name, strength, and quantity of the drug;

(vi) directions for use;

(vii) indications for use, if appropriate;

(viii) date of issuance; and

(ix) number of refills authorized.

(D) At the time of dispensing, a pharmacist is responsible for documenting the following information on either the original hard-copy prescription or in the pharmacy's data processing system:

(i) unique identification number of the prescription drug order;

(ii) initials or identification code of the dispensing pharmacist;

(iii) effective January 1, 2009, initials or identification code of the pharmacy technician or pharmacy technician trainee performing data entry of the prescription, if applicable;

(iv) quantity dispensed, if different from the quantity prescribed;

(v) date of dispensing, if different from the date of issuance;

(vi) brand name or manufacturer of the drug product actually dispensed, if the drug was prescribed by generic name or if a drug product other than the one prescribed was dispensed pursuant to the provisions of the Act, Chapters 562 and 563; and

(vii) effective June 1, 2010, for each new prescription the initials or identification code of the pharmacist responsible for providing counseling.

(7) Refills.

(A) Refills may be dispensed only in accordance with the prescriber's authorization as indicated on the original prescription drug order.

(B) If there are no refill instructions on the original prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the original prescription drug order have been dispensed, authorization from the prescribing practitioner shall be obtained prior to dispensing any refills.

(C) Refills of prescription drug orders for dangerous drugs or nonprescription drugs.

(i) Prescription drug orders for dangerous drugs or nonprescription drugs may not be refilled after one year from the date of issuance of the original prescription drug order.

(ii) If one year has expired from the date of issuance of an original prescription drug order for a dangerous drug or nonprescription drug, authorization shall be obtained from the prescribing practitioner prior to dispensing any additional quantities of the drug.

(D) Refills of prescription drug orders for Schedules III - V controlled substances.

(i) Prescription drug orders for Schedules III - V controlled substances may not be refilled more than five times or after six months from the date of issuance of the original prescription drug order, whichever occurs first.

(ii) If a prescription drug order for a Schedule III, IV, or V controlled substance has been refilled a total of five times or if six months have expired from the date of issuance of the original prescription drug order, whichever occurs first, a new and separate prescription drug order shall be obtained from the prescribing practitioner prior to dispensing any additional quantities of controlled substances.

(E) If a pharmacist is unable to contact the prescribing practitioner after a reasonable effort, a pharmacist may exercise his professional judgment in refilling a prescription drug order for a drug, other than a controlled substance listed in Schedule II, without the authorization of the prescribing practitioner, provided:

(i) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(ii) the quantity of prescription drug dispensed does not exceed a 72-hour supply;

(iii) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without such authorization and that authorization of the practitioner is required for future refills;

(iv) the pharmacist informs the practitioner of the emergency refill at the earliest reasonable time;

(v) the pharmacist maintains a record of the emergency refill containing the information required to be maintained on a prescription as specified in this subsection;

(vi) the pharmacist affixes a label to the dispensing container as specified in §291.33(c)(7) of this title; and

(vii) if the prescription was initially filled at another pharmacy, the pharmacist may exercise his professional judgment in refilling the prescription provided:

(I) the patient has the prescription container, label, receipt or other documentation from the other pharmacy which contains the essential information;

(II) after a reasonable effort, the pharmacist is unable to contact the other pharmacy to transfer the remaining prescription refills or there are no refills remaining on the prescription;

(III) the pharmacist, in his professional judgment, determines that such a request for an emergency refill is appropriate and meets the requirements of clause (i) of this subparagraph; and

(IV) the pharmacist complies with the requirements of clauses (ii) - (vi) of this subparagraph.

(F) If a natural or manmade disaster has occurred that prohibits the pharmacist from being able to contact the practitioner, a pharmacist may exercise his professional judgment in refilling a prescription drug order for a drug, other than a controlled substance listed in Schedule II, without the authorization of the prescribing practitioner, provided:

(i) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(ii) the quantity of prescription drug dispensed does not exceed a 30-day supply;

(iii) the governor has declared a state of disaster;

(iv) the board, through the executive director, has notified pharmacies that pharmacists may dispense up to a 30-day supply of prescription drugs;

(v) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without such authorization and that authorization of the practitioner is required for future refills;

(vi) the pharmacist informs the practitioner of the emergency refill at the earliest reasonable time;

(vii) the pharmacist maintains a record of the emergency refill containing the information required to be maintained on a prescription as specified in this subsection;

(viii) the pharmacist affixes a label to the dispensing container as specified in §291.33(c)(7) of this title; and

(ix) if the prescription was initially filled at another pharmacy, the pharmacist may exercise his professional judgment in refilling the prescription provided:

(I) the patient has the prescription container, label, receipt or other documentation from the other pharmacy which contains the essential information;

(II) after a reasonable effort, the pharmacist is unable to contact the other pharmacy to transfer the remaining prescription refills or there are no refills remaining on the prescription;

(III) the pharmacist, in his professional judgment, determines that such a request for an emergency refill is appropriate and meets the requirements of clause (i) of this subparagraph; and

(IV) the pharmacist complies with the requirements of clauses (ii) - (viii) of this subparagraph.

(c) Patient medication records.

(1) A patient medication record system shall be maintained by the pharmacy for patients to whom prescription drug orders are dispensed.

(2) The patient medication record system shall provide for the immediate retrieval of information for the previous 12 months which is necessary for the dispensing pharmacist to conduct a prospective drug regimen review at the time a prescription drug order is presented for dispensing.

(3) The pharmacist-in-charge shall assure that a reasonable effort is made to obtain and record in the patient medication record at least the following information:

(A) full name of the patient for whom the drug is prescribed;

(B) address and telephone number of the patient;

(C) patient's age or date of birth;

(D) patient's gender;

(E) any known allergies, drug reactions, idiosyncrasies, and chronic conditions or disease states of the patient and the identity of any other drugs currently being used by the patient which may relate to prospective drug regimen review;

(F) pharmacist's comments relevant to the individual's drug therapy, including any other information unique to the specific patient or drug; and

(G) a list of all prescription drug orders dispensed (new and refill) to the patient by the pharmacy during the last two years. Such list shall contain the following information:

(i) date dispensed;

(ii) name, strength, and quantity of the drug dispensed;

(iii) prescribing practitioner's name;

(iv) unique identification number of the prescription; and

(v) name or initials of the dispensing pharmacists.

(4) A patient medication record shall be maintained in the pharmacy for two years. If patient medication records are maintained in a data processing system, all of the information specified in this subsection shall be maintained in a retrievable form for two years and information for the previous 12 months shall be maintained on-line. Effective January 1, 2009, a patient medication record must contain documentation of any modification, change, or manipulation to a patient profile.

(5) Nothing in this paragraph shall be construed as requiring a pharmacist to obtain, record, and maintain patient information other than prescription drug order information when a patient or patient's agent refuses to provide the necessary information for such patient medication records.

(d) Prescription drug order records maintained in a manual system.

(1) Original prescriptions shall be maintained in three files as specified in subsection (b)(5)(C) of this section.

(2) Refills.

(A) Each time a prescription drug order is refilled, a record of such refill shall be made:

(i) on the back of the prescription by recording the date of dispensing, the written initials or identification code of the dispensing pharmacist, effective January 1, 2009, the initials or identification code of the pharmacy technician or pharmacy technician trainee preparing the prescription label, if applicable, and the amount dispensed. (If the pharmacist merely initials and dates the back of the

prescription drug order, he or she shall be deemed to have dispensed a refill for the full face amount of the prescription drug order); or

(ii) on another appropriate, uniformly maintained, readily retrievable record, such as medication records, which indicates by patient name the following information:

(I) unique identification number of the prescription;

(II) name and strength of the drug dispensed;

(III) date of each dispensing;

(IV) quantity dispensed at each dispensing;

(V) initials or identification code of the dispensing pharmacist;

(VI) effective January 1, 2009, initials or identification code of the pharmacy technician or pharmacy technician trainee preparing the prescription label, if applicable; and

(VII) total number of refills for the prescription.

(B) If refill records are maintained in accordance with subparagraph (A)(ii) of this paragraph, refill records for controlled substances in Schedules III - V shall be maintained separately from refill records of dangerous drugs and nonprescription drugs.

(3) Authorization of refills. Practitioner authorization for additional refills of a prescription drug order shall be noted on the original prescription, in addition to the documentation of dispensing the refill.

(4) Transfer of prescription drug order information. For the purpose of refill or initial dispensing, the transfer of original prescription drug order information is permissible between pharmacies, subject to the following requirements:

(A) the transfer of original prescription drug order information for controlled substances listed in Schedule III, IV, or V is permissible between pharmacies on a one-time basis;

(B) the transfer of original prescription drug order information for dangerous drugs is permissible between pharmacies without limitation up to the number of originally authorized refills;

(C) the transfer is communicated directly between pharmacists and/or pharmacist interns;

(D) both the original and the transferred prescription drug order are maintained for a period of two years from the date of last refill;

(E) the pharmacist or pharmacist intern transferring the prescription drug order information shall:

(i) write the word "void" on the face of the invalidated prescription drug order; and

(ii) record on the reverse of the invalidated prescription drug order the following information:

(I) the name, address, and if a controlled substance, the DEA registration number of the pharmacy to which such prescription drug order is transferred;

(II) the name of the pharmacist or pharmacist intern receiving the prescription drug order information;

(III) the name of the pharmacist or pharmacist intern transferring the prescription drug order information; and

(IV) the date of the transfer;

(F) the pharmacist or pharmacist intern receiving the transferred prescription drug order information shall:

(i) write the word "transfer" on the face of the transferred prescription drug order; and

(ii) record on the transferred prescription drug order the following information:

(I) original date of issuance and date of dispensing or receipt, if different from date of issuance;

(II) original prescription number and the number of refills authorized on the original prescription drug order;

(III) number of valid refills remaining and the date of last refill, if applicable;

(IV) name, address, and if a controlled substance, the DEA registration number of the pharmacy from which such prescription information is transferred; and

(V) name of the pharmacist or pharmacist intern transferring the prescription drug order information.

(5) A pharmacist or pharmacist intern may not refuse to transfer original prescription information to another pharmacist or pharmacist intern who is acting on behalf of a patient and who is making a request for this information as specified in paragraph (4) of this subsection.

(6) Effective January 1, 2009, each time a modification, change, or manipulation is made to a record of dispensing, documentation of such change shall be recorded on the back of the prescription or on another appropriate, uniformly maintained, readily retrievable record, such as medication records. The documentation of any modification, change, or manipulation to a record of dispensing shall include the identification of the individual responsible for the alteration.

(e) Prescription drug order records maintained in a data processing system.

(1) General requirements for records maintained in a data processing system.

(A) Compliance with data processing system requirements. If a Class A (community) pharmacy's data processing system is not in compliance with this subsection, the pharmacy must maintain a manual recordkeeping system as specified in subsection (d) of this section.

(B) Original prescriptions. Original prescriptions shall be maintained in three files as specified in subsection (b)(5)(C) of this section.

(C) Requirements for backup systems.

(i) The pharmacy shall maintain a backup copy of information stored in the data processing system using disk, tape, or other electronic backup system and update this backup copy on a regular basis, at least monthly, to assure that data is not lost due to system failure.

(ii) Data processing systems shall have a workable (electronic) data retention system which can produce an audit trail of drug usage for the preceding two years as specified in paragraph (2)(G) of this subsection.

(D) Change or discontinuance of a data processing system.

(i) Records of dispensing. A pharmacy that changes or discontinues use of a data processing system must:

(I) transfer the records of dispensing to the new data processing system; or

(II) purge the records of dispensing to a printout which contains the same information required on the daily printout as specified in paragraph (2)(B) of this subsection. The information on this hard-copy printout shall be sorted and printed by prescription number and list each dispensing for this prescription chronologically.

(ii) Other records. A pharmacy that changes or discontinues use of a data processing system must:

(I) transfer the records to the new data processing system; or

(II) purge the records to a printout which contains all of the information required on the original document.

(iii) Maintenance of purged records. Information purged from a data processing system must be maintained by the pharmacy for two years from the date of initial entry into the data processing system.

(E) Loss of data. The pharmacist-in-charge shall report to the board in writing any significant loss of information from the data processing system within 10 days of discovery of the loss.

(2) Records of dispensing.

(A) Each time a prescription drug order is filled or refilled, a record of such dispensing shall be entered into the data processing system.

(B) Effective January 1, 2009, each time a modification, change or manipulation is made to a record of dispensing, documentation of such change shall be recorded in the data processing system. The documentation of any modification, change, or manipulation to a record of dispensing shall include the identification of the individual responsible for the alteration. Should the data processing system not be able to record a modification, change, or manipulation to a record of dispensing, the information should be clearly documented on the hard-copy prescription.

(C) The data processing system shall have the capacity to produce a daily hard-copy printout of all original prescriptions dispensed and refilled. This hard-copy printout shall contain the following information:

(i) unique identification number of the prescription;

(ii) date of dispensing;

(iii) patient name;

(iv) prescribing practitioner's name;

(v) name and strength of the drug product actually dispensed; if generic name, the brand name or manufacturer of drug dispensed;

(vi) quantity dispensed;

(vii) initials or an identification code of the dispensing pharmacist;

(viii) effective January 1, 2009, initials or an identification code of the pharmacy technician or pharmacy technician trainee performing data entry of the prescription, if applicable;

(ix) if not immediately retrievable via CRT display, the following shall also be included on the hard-copy printout:

(I) patient's address;

(II) prescribing practitioner's address;

(III) practitioner's DEA registration number, if the prescription drug order is for a controlled substance;

(IV) quantity prescribed, if different from the quantity dispensed;

(V) date of issuance of the prescription drug order, if different from the date of dispensing; and

(VI) total number of refills dispensed to date for that prescription drug order; and

(x) effective January 1, 2009, any changes made to a record of dispensing.

(D) The daily hard-copy printout shall be produced within 72 hours of the date on which the prescription drug orders were dispensed and shall be maintained in a separate file at the pharmacy. Records of controlled substances shall be readily retrievable from records of noncontrolled substances.

(E) Each individual pharmacist who dispenses or refills a prescription drug order shall verify that the data indicated on the daily hard-copy printout is correct, by dating and signing such document in the same manner as signing a check or legal document (e.g., J.H. Smith, or John H. Smith) within seven days from the date of dispensing.

(F) In lieu of the printout described in subparagraph (C) of this paragraph, the pharmacy shall maintain a log book in which each individual pharmacist using the data processing system shall sign a statement each day, attesting to the fact that the information entered into the data processing system that day has been reviewed by him or her and is correct as entered. Such log book shall be maintained at the pharmacy employing such a system for a period of two years after the date of dispensing; provided, however, that the data processing system can produce the hard-copy printout on demand by an authorized agent of the Texas State Board of Pharmacy. If no printer is available on site, the hard-copy printout shall be available within 72 hours with a certification by the individual providing the printout, which states that the printout is true and correct as of the date of entry and such information has not been altered, amended, or modified.

(G) The pharmacist-in-charge is responsible for the proper maintenance of such records and responsible that such data processing system can produce the records outlined in this section and that such system is in compliance with this subsection.

(H) The data processing system shall be capable of producing a hard-copy printout of an audit trail for all dispensings (original and refill) of any specified strength and dosage form of a drug (by either brand or generic name or both) during a specified time period.

(i) Such audit trail shall contain all of the information required on the daily printout as set out in subparagraph (C) of this paragraph.

(ii) The audit trail required in this subparagraph shall be supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy.

(I) Failure to provide the records set out in this subsection, either on site or within 72 hours constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(J) The data processing system shall provide on-line retrieval (via CRT display or hard-copy printout) of the information set out in subparagraph (C) of this paragraph of:

(i) the original controlled substance prescription drug orders currently authorized for refilling; and

(ii) the current refill history for Schedules III, IV, and V controlled substances for the immediately preceding six-month period.

(K) In the event that a pharmacy which uses a data processing system experiences system downtime, the following is applicable:

(i) an auxiliary procedure shall ensure that refills are authorized by the original prescription drug order and that the maximum number of refills has not been exceeded or authorization from the prescribing practitioner shall be obtained prior to dispensing a refill; and

(ii) all of the appropriate data shall be retained for on-line data entry as soon as the system is available for use again.

(3) Authorization of refills. Practitioner authorization for additional refills of a prescription drug order shall be noted as follows:

(A) on the hard-copy prescription drug order;

(B) on the daily hard-copy printout; or

(C) via the CRT display.

(4) Transfer of prescription drug order information. For the purpose of refill or initial dispensing, the transfer of original prescription drug order information is permissible between pharmacies, subject to the following requirements.

(A) The transfer of original prescription drug order information for controlled substances listed in Schedule III, IV, or V is permissible between pharmacies on a one-time basis only. However, pharmacies electronically sharing a real-time, on-line database may transfer up to the maximum refills permitted by law and the prescriber's authorization.

(B) The transfer of original prescription drug order information for dangerous drugs is permissible between pharmacies without limitation up to the number of originally authorized refills.

(C) The transfer is communicated directly between pharmacists and/or pharmacist interns orally by telephone or via facsimile or as authorized in paragraph (5) of this subsection. A transfer completed as authorized in paragraph (5) of this subsection may be initiated by a pharmacy technician or pharmacy technician trainee acting under the direct supervision of a pharmacist.

(D) Both the original and the transferred prescription drug orders are maintained for a period of two years from the date of last refill.

(E) The pharmacist or pharmacist intern transferring the prescription drug order information shall:

(i) write the word "void" on the face of the invalidated prescription drug order; and

(ii) record on the reverse of the invalidated prescription drug order the following information:

(I) the name, address, and if a controlled substance, the DEA registration number of the pharmacy to which such prescription is transferred;

(II) the name of the pharmacist or pharmacist intern receiving the prescription drug order information;

(III) the name of the pharmacist or pharmacist intern transferring the prescription drug order information; and

(IV) the date of the transfer.

(F) The pharmacist or pharmacist intern receiving the transferred prescription drug order information shall:

(i) write the word "transfer" on the face of the transferred prescription drug order; and

(ii) record on the transferred prescription drug order the following information:

(I) original date of issuance and date of dispensing or receipt, if different from date of issuance;

(II) original prescription number and the number of refills authorized on the original prescription drug order;

(III) number of valid refills remaining and the date of last refill, if applicable;

(IV) name, address, and if a controlled substance, the DEA registration number of the pharmacy from which such prescription drug order information is transferred; and

(V) name of the pharmacist or pharmacist intern transferring the prescription drug order information.

(G) Prescription drug orders may not be transferred by non-electronic means during periods of downtime except on consultation with and authorization by a prescribing practitioner; provided however, during downtime, a hard copy of a prescription drug order may be made available for informational purposes only, to the patient, a pharmacist or pharmacist intern, and the prescription may be read to a pharmacist or pharmacist intern by telephone.

(H) The original prescription drug order shall be invalidated in the data processing system for purposes of filling or refilling, but shall be maintained in the data processing system for refill history purposes.

(I) If the data processing system has the capacity to store all the information required in subparagraphs (E) and (F) of this paragraph, the pharmacist is not required to record this information on the original or transferred prescription drug order.

(J) The data processing system shall have a mechanism to prohibit the transfer or refilling of controlled substance prescription drug orders which have been previously transferred.

(5) Electronic transfer of prescription drug order information between pharmacies. Pharmacies electronically accessing the same prescription drug order records may electronically transfer prescription information if the following requirements are met.

(A) The original prescription is voided and the following information is documented in the records of the transferring pharmacy:

(i) the name, address, and if a controlled substance, the DEA registration number of the pharmacy to which such prescription is transferred;

(ii) the name of the pharmacist or pharmacist intern receiving the prescription drug order information; and

(iii) the date of the transfer.

(B) Pharmacies not owned by the same person may electronically access the same prescription drug order records, provided the owner or chief executive officer of each pharmacy signs an agreement allowing access to such prescription drug order records.

(C) An electronic transfer between pharmacies may be initiated by a pharmacy technician or pharmacy technician trainee acting under the direct supervision of a pharmacist.

(6) A pharmacist or pharmacist intern may not refuse to transfer original prescription information to another pharmacist or pharmacist intern who is acting on behalf of a patient and who is making a request for this information as specified in paragraphs (4) and (5) of this subsection.

(f) Limitation to one type of recordkeeping system. When filing prescription drug order information a pharmacy may use only one of the two systems described in subsection (d) or (e) of this section.

(g) Distribution of controlled substances to another registrant. A pharmacy may distribute controlled substances to a practitioner, another pharmacy, or other registrant, without being registered to distribute, under the following conditions.

(1) The registrant to whom the controlled substance is to be distributed is registered under the Controlled Substances Act to dispense that controlled substance.

(2) The total number of dosage units of controlled substances distributed by a pharmacy may not exceed 5.0% of all controlled substances dispensed and distributed by the pharmacy during the 12-month period in which the pharmacy is registered; if at any time it does exceed 5.0%, the pharmacy is required to obtain an additional registration to distribute controlled substances.

(3) If the distribution is for a Schedule III, IV, or V controlled substance, a record shall be maintained which indicates:

(A) the actual date of distribution;

(B) the name, strength, and quantity of controlled substances distributed;

(C) the name, address, and DEA registration number of the distributing pharmacy; and

(D) the name, address, and DEA registration number of the pharmacy, practitioner, or other registrant to whom the controlled substances are distributed.

(4) If the distribution is for a Schedule I or II controlled substance, the following is applicable.

(A) The pharmacy, practitioner, or other registrant who is receiving the controlled substances shall issue Copy 1 and Copy 2 of a DEA order form (DEA 222C) to the distributing pharmacy.

(B) The distributing pharmacy shall:

(i) complete the area on the DEA order form (DEA 222C) titled "To Be Filled in by Supplier";

(ii) maintain Copy 1 of the DEA order form (DEA 222C) at the pharmacy for two years; and

(iii) forward Copy 2 of the DEA order form (DEA 222C) to the Divisional Office of the Drug Enforcement Administration.

(h) Other records. Other records to be maintained by a pharmacy:

(1) a permanent log of the initials or identification codes which will identify each dispensing pharmacist by name (the initials or identification code shall be unique to ensure that each pharmacist can be identified, i.e., identical initials or identification codes shall not be used);

(2) Copy 3 of DEA order form (DEA 222C) which has been properly dated, initialed, and filed, and all copies of each unaccepted or defective order form and any attached statements or other documents;

(3) a hard copy of the power of attorney to sign DEA 222C order forms (if applicable);

(4) suppliers' invoices of dangerous drugs and controlled substances; a pharmacist shall verify that the controlled drugs listed on the invoices were actually received by clearly recording his/her initials and the actual date of receipt of the controlled substances;

(5) suppliers' credit memos for controlled substances and dangerous drugs;

(6) a hard copy of inventories required by §291.17 of this title (relating to Inventory Requirements);

(7) hard-copy reports of surrender or destruction of controlled substances and/or dangerous drugs to an appropriate state or federal agency;

(8) a hard copy of the Schedule V nonprescription register book;

(9) records of distribution of controlled substances and/or dangerous drugs to other pharmacies, practitioners, or registrants; and

(10) a hard copy of any notification required by the Texas Pharmacy Act or the sections in this chapter, including, but not limited to, the following:

(A) reports of theft or significant loss of controlled substances to DEA, Department of Public Safety, and the board;

(B) notifications of a change in pharmacist-in-charge of a pharmacy; and

(C) reports of a fire or other disaster which may affect the strength, purity, or labeling of drugs, medications, devices, or other materials used in the diagnosis or treatment of injury, illness, and disease.

(i) Permission to maintain central records. Any pharmacy that uses a centralized recordkeeping system for invoices and financial data shall comply with the following procedures.

(1) Controlled substance records. Invoices and financial data for controlled substances may be maintained at a central location provided the following conditions are met.

(A) Prior to the initiation of central recordkeeping, the pharmacy submits written notification by registered or certified mail to the divisional director of the Drug Enforcement Administration as required by Title 21, Code of Federal Regulations, §1304.04(a), and submits a copy of this written notification to the Texas State Board of Pharmacy. Unless the registrant is informed by the divisional director of the Drug Enforcement Administration that permission to keep central records is denied, the pharmacy may maintain central records commencing 14 days after receipt of notification by the divisional director.

(B) The pharmacy maintains a copy of the notification required in subparagraph (A) of this paragraph.

(C) The records to be maintained at the central record location shall not include executed DEA order forms, prescription drug orders, or controlled substance inventories, which shall be maintained at the pharmacy.

(2) Dangerous drug records. Invoices and financial data for dangerous drugs may be maintained at a central location.

(3) Access to records. If the records are kept on microfilm, computer media, or in any form requiring special equipment to render the records easily readable, the pharmacy shall provide access to such equipment with the records.

(4) Delivery of records. The pharmacy agrees to deliver all or any part of such records to the pharmacy location within two business days of written request of a board agent or any other authorized official.

(j) Ownership of pharmacy records. For the purposes of these sections, a pharmacy licensed under the Act is the only entity which may legally own and maintain prescription drug records.

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

Filed with the Office of the Secretary of State on May 18, 2009.

TRD-200901935
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Effective date: June 7, 2009
Proposal publication date: March 27, 2009
For further information, please call: (512) 305-8028

SUBCHAPTER G. SERVICES PROVIDED BY PHARMACIES

22 TAC §291.129

The Texas State Board of Pharmacy adopts amendments to §291.129, concerning Satellite Pharmacy. The amendments are adopted without changes to the proposed text as published in the March 27, 2009, issue of the *Texas Register* (34 TexReg 2077).

The amendments delete the option of providing a notarized statement signed by the lessee and lessor certifying the existence of a lease as a part of the application for a pharmacy license and correct the citation with regard to Storage of Drugs.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on May 18, 2009.

TRD-200901936
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Effective date: June 7, 2009
Proposal publication date: March 27, 2009
For further information, please call: (512) 305-8028

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 289. RADIATION CONTROL

SUBCHAPTER F. LICENSE REGULATIONS

25 TAC §289.254, §289.260

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts the repeal of §289.254, concerning licensing of radioactive waste processing and storage facilities, and §289.260, concerning licensing of uranium recovery and byproduct material disposal facilities, without changes to the proposal as published in the January 16, 2009, issue of the *Texas Register* (34 TexReg 321) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The repeal of §289.254 and §289.260 is necessary as the result of Senate Bill 1604, 80th Legislative Session, 2007, that amended Health and Safety Code, §401.011, and transferred the regulatory authority for licensing and inspection of low-level waste processing and uranium recovery and disposal from the department to the Texas Commission on Environmental Quality (TCEQ).

SECTION-BY-SECTION SUMMARY

Section 289.254 and §289.260 are repealed in their entirety in order to be consistent with legislation, which transferred all regulatory authority from the department to the TCEQ and, therefore, the rules are unnecessary.

COMMENTS

A public hearing was held on February 3, 2009, during the comment period. The department, on behalf of the commission, did not receive any comments regarding the proposed rules during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

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

This agency 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 May 18, 2009.

TRD-200901938
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: June 7, 2009
Proposal publication date: January 16, 2009
For further information, please call: (512) 458-7111 x6972

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 105. GENERAL CONTRACTING RULES

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Assistive and Rehabilitative Services (DARS), adopts amendments and a new rule to the DARS rules in Title 40, Part 2, Chapter 105, General Contracting Rules. DARS adopts amendments to Subchapter A, General Contracting Information, §105.1003, Definitions, Subchapter B, Contractor Requirements, §105.1013, General Requirements for Contracting, and adds new §105.1019, Contract Assignment. The rules are adopted without changes to the proposed text as published in the March 20, 2009, issue of the *Texas Register* (34 TexReg 1942) and will not be republished.

DARS adopts §105.1003 and §105.1013 and new §105.1019, to establish procedures for contract assignment.

No comments were received regarding adoption of the rules.

SUBCHAPTER A. GENERAL CONTRACTING INFORMATION

40 TAC §105.1003

The amendment is adopted pursuant to HHSC's statutory rulemaking authority under Texas Government Code §531.033 and §2155.144, which grant HHSC the authority to promulgate rules for the acquisition of goods and services, and Texas Government Code §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

This agency 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 May 14, 2009.

TRD-200901915
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Effective date: June 3, 2009
Proposal publication date: March 20, 2009
For further information, please call: (512) 424-4050

SUBCHAPTER B. CONTRACTOR REQUIREMENTS

40 TAC §105.1013, §105.1019

The amendment and new rule are adopted pursuant to HHSC's statutory rulemaking authority under Texas Government Code §531.033 and §2155.144, which grant HHSC the authority to promulgate rules for the acquisition of goods and services, and Texas Government Code §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

This agency 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 May 14, 2009.

TRD-200901916
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Effective date: June 3, 2009
Proposal publication date: March 20, 2009
For further information, please call: (512) 424-4050

CHAPTER 106. DIVISION FOR BLIND SERVICES

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Assistive and Rehabilitative Services (DARS), adopts amendments and repeals to the DARS rules in Title 40, Part 2, Chapter 106, Division for Blind Services. This proposal adopts Subchapter C, Vocational Rehabilitation Program, Division 3, Vocational Rehabilitation Services, §106.557, and Subchapter I, Blind Children's Vocational Discovery and Development Program, Division 1, General Information, §106.1403 and §106.1407, and Division 5, Order of Selection for Payment of Services, §106.1489. DARS also adopts the repeals of Subchapter I, Division 1, §106.1405, Remedy of Dissatisfaction. The rules are adopted without changes to the proposed text as published in the March 20, 2009, issue of the *Texas Register* (34 TexReg 1945) and will not be republished.

The purpose of the amendments and repeal is to clarify program language and to remove incorrect and obsolete language and rules.

Specifically, DARS adopts amendments to Subchapter C, Vocational Rehabilitation Program, Division 3, Vocational Rehabilitation Services, §106.557, by clarifying language concerning academic training; and Subchapter I, Blind Children's Vocational Discovery and Development Program, Division 1, General Information, §106.1403, by removing the internal reference to a repealed rule; §106.1407, by adding the definition for "deafblind"; and Division 5, Order of Selection for Payment of Services, §106.1489, by clarifying the order of selection for deafblind consumers and removing priorities for services that are no longer funded. In Subchapter C, Vocational Rehabilitation Program, Division 3, Vocational Rehabilitation Services, §106.557, subsection (b)(11) is being deleted, as it is now obsolete. DARS

also repeals Subchapter I, Division 1, §106.1405, Remedy of Dissatisfaction, which is now obsolete.

The adopted rule changes are authorized by the Rehabilitation Act of 1973, Section 701 et seq. (as hereafter amended), the Randolph-Sheppard Act, Texas Government Code, §2001.01 et seq.

No comments were received regarding adoption of the rules.

SUBCHAPTER C. VOCATIONAL REHABILITATION PROGRAM

DIVISION 3. VOCATIONAL REHABILITATION SERVICES

40 TAC §106.557

The amendment is adopted pursuant to HHSC's statutory rulemaking authority under Texas Government Code §531.033 and §2155.144, which grant HHSC the authority to promulgate rules for the acquisition of goods and services, and Texas Government Code §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

This agency 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 May 14, 2009.

TRD-200901917
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Effective date: June 3, 2009
Proposal publication date: March 20, 2009
For further information, please call: (512) 424-4050

SUBCHAPTER I. BLIND CHILDREN'S VOCATIONAL DISCOVERY AND DEVELOPMENT PROGRAM

DIVISION 1. GENERAL INFORMATION

40 TAC §106.1403, §106.1407

The amendments are adopted pursuant to HHSC's statutory rulemaking authority under Texas Government Code §531.033 and §2155.144, which grant HHSC the authority to promulgate rules for the acquisition of goods and services, and Texas Government Code §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

This agency 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 May 14, 2009.

TRD-200901918
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Effective date: June 3, 2009
Proposal publication date: March 20, 2009
For further information, please call: (512) 424-4050

40 TAC §106.1405

The repeal is adopted pursuant to HHSC's statutory rulemaking authority under Texas Government Code §531.033 and §2155.144, which grant HHSC the authority to promulgate rules for the acquisition of goods and services, and Texas Government Code §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

This agency 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 May 14, 2009.

TRD-200901919
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Effective date: June 3, 2009
Proposal publication date: March 20, 2009
For further information, please call: (512) 424-4050

DIVISION 5. ORDER OF SELECTION FOR PAYMENT OF SERVICES

40 TAC §106.1489

The amendments are adopted pursuant to HHSC's statutory rulemaking authority under Texas Government Code §531.033 and §2155.144, which grant HHSC the authority to promulgate rules for the acquisition of goods and services, and Texas Government Code §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

This agency 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 May 14, 2009.

TRD-200901920
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Effective date: June 3, 2009
Proposal publication date: March 20, 2009
For further information, please call: (512) 424-4050

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.

Agency Rule Review Plan

Texas State Board of Pharmacy

Title 22, Part 15

Rule Review Plan at http://www.sos.state.tx.us/texreg/review/2009/index.shtml

TRD-200901931
Filed: May 18, 2009

Proposed Rule Reviews

Texas Workforce Commission

Title 40, Part 20

The Texas Workforce Commission (Commission) files this notice of its intent to review Chapter 800, General Administration, in accordance with Texas Government Code §2001.039.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Commission.

Comments on the review 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. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

TRD-200901951
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery
Texas Workforce Commission
Filed: May 19, 2009

The Texas Workforce Commission (Commission) files this notice of its intent to review Chapter 801, Local Workforce Development Boards, in accordance with Texas Government Code §2001.039.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Commission.

Comments on the review 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. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

TRD-200901952
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery
Texas Workforce Commission
Filed: May 19, 2009

The Texas Workforce Commission (Commission) files this notice of its intent to review Chapter 807, Career Schools and Colleges, in accordance with Texas Government Code §2001.039.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Commission.

Comments on the review 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. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

TRD-200901953
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery
Texas Workforce Commission
Filed: May 19, 2009

The Texas Workforce Commission (Commission) files this notice of its intent to review Chapter 819, Texas Workforce Commission Civil Rights Division, in accordance with Texas Government Code §2001.039.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule

will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Commission.

Comments on the review 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. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

TRD-200901954
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery
Texas Workforce Commission
Filed: May 19, 2009

The Texas Workforce Commission (Commission) files this notice of its intent to review Chapter 835, Self-Sufficiency Fund, in accordance with Texas Government Code §2001.039.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Commission.

Comments on the review 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. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

TRD-200901955
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery
Texas Workforce Commission
Filed: May 19, 2009

The Texas Workforce Commission (Commission) files this notice of its intent to review Chapter 837, Apprenticeship Training Program, in accordance with Texas Government Code §2001.039.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Commission.

Comments on the review 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. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

TRD-200901956
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery
Texas Workforce Commission
Filed: May 19, 2009

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 37 TAC §439.11(d)

DISCIPLINE	TOTAL # OF SKILL EVALUATIONS IN CURRICULUM	MINIMUM OF 3 OR 10% (ROUNDED UP)
Structure	129	13
FFI	89	9
FFII	20	3
AW	6	3
OPS	14	3
INSPECTOR	57	6
INSPECTOR I	21	3
INSPECTOR II	22	3
PLAN EXAMINER I	14	3
INVESTIGATOR	27	3
INSTRUCTOR I	14	3
INSTRUCTOR II	12	3
INSTRUCTOR III	15	3
FIRE OFFICER I	16	3
FIRE OFFICER II	12	3
HAZMAT TECH	22	3
DRIVER/OPERATOR--PUMPER	15	3
ARFF	19	3

In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Ark-Tex Council of Governments

Request for Proposal

The Ark-Tex Council of Governments (ATCOG) is soliciting proposals for a training provider/police academy to provide regional law enforcement training through a grant provided by the Texas Governor's Office, Criminal Justice Division (if awarded this funding).

The types of training to be provided include: Basic Law Enforcement Officer, Basic Jailer Certification, and Advanced/Specialized Law Enforcement Training. The period of performance is September 1, 2009 through August 31, 2010.

The service delivery area includes the following counties in Texas: Bowie, Cass, Delta, Franklin, Hopkins, Lamar, Morris, Red River, and Titus.

Potential respondents may obtain a copy of the request for proposal, scoring guidelines, and project scoring criteria by contacting Patricia Haley, Ark-Tex Council of Governments, P.O. Box 5307, Texarkana, Texas 75505-5307, or call (903) 832-8636. The deadline for proposal submission is June 11, 2009, at 5:00 p.m. The Ark-Tex Council of Governments Regional Criminal Justice Advisory Committee will score multiple proposals received. Respondents will be notified in writing of the date, time, and place of the meeting at which the proposals will be scored.

TRD-200901914
L.D. Williamson
Executive Director
Ark-Tex Council of Governments
Filed: May 14, 2009

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of May 8, 2009, through May 14, 2009. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for this activity extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on May 20, 2009. The public comment period for this project will close at 5:00 p.m. on June 19, 2009.

FEDERAL AGENCY ACTIONS: Applicant: South Texas Materials and Barge Terminal, LLC. Location: The project is located along the south side of the Corpus Christi Ship Channel (CCSC), at 1407 Navigation Boulevard, on a 10-acre site owned by the Port of Corpus Christi Authority (PCCA) in Corpus Christi, Nueces County, Texas. The property is located immediately west of the former location of the Tule Lake Lift Bridge and approximately 3.6 miles west of the Harbor Bridge. The project can be located on the U.S.G.S. quadrangle map entitled: Corpus Christi, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 652250; Northing: 3077650. Project Description: The applicant proposes to dredge an area adjacent to the CCSC that would measure approximately 244 feet in width by 410 feet in length to a depth of -12 feet Mean Low Tide (MLT). A 100-foot-wide by 250-foot-long barge slip would be dredged to that same depth within the larger dredge area. Approximately 52,500 cubic yards of material would be dredged by clamshell/dragline, with hydraulic dredging used when clamshell/dragline methods would not work. The applicant has stated that they will adhere to the 300mg/liter total-suspended-solids limit for decant water from the Dredged Material Placement Area(s) (DMPAs). A 200-foot-long bulkhead with 60-foot-long wing walls on each end would be installed along the shoreline at the location of the proposed barge slip. Approximately 10,244 cubic yards of concrete riprap and revetment would be placed in front of the proposed bulkhead and along the wing walls. CCC Project No.: 09-0163-F1 Type of Application: U.S.A.C.E. permit application #SWG-2009-001012 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above, including a copy the consistency certifications for inspection, may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200901968
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: May 20, 2009

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Comptroller of Public Accounts

Certification of the Average Taxable Price of Gas and Oil

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined that the average taxable price of crude oil for reporting period April 2009, as required by Tax Code, §202.058, is $35.72 per barrel for the three-month

period beginning on January 1, 2009, and ending March 31, 2009. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of April 2009, from a qualified Low-Producing Oil Lease, is not eligible for exemption from the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined that the average taxable price of gas for reporting period April 2009, as required by Tax Code, §201.059, is $3.64 per mcf for the three-month period beginning on January 1, 2009, and ending March 31, 2009. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of April 2009, from a qualified Low-Producing Well, is not eligible for exemption from the natural gas production tax imposed by Tax Code, Chapter 201.

Inquiries should be directed to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-200901958
Martin Cherry
General Counsel
Comptroller of Public Accounts
Filed: May 19, 2009

Notice of Contract Amendment

Pursuant to Chapter 403, Texas Government Code, and Chapter 54, Texas Education Code, the Comptroller of Public Accounts (Comptroller) announces the amendment of the following contract award:

The notice of request for proposals (RFP #184c) was published in the May 2, 2008, issue of the *Texas Register* (33 TexReg 3669). The Notice of Award was published in the September 19, 2008, issue of the *Texas Register* (33 TexReg 8050).

The contractor provides outside counsel services to the Comptroller and the Texas Prepaid Higher Education Tuition Board.

The contract was awarded to Clark, Thomas & Winters, PC, 300 West 6th Street, 15th Floor, Austin, Texas 78701. The total amount of the contract is not to exceed $150,000.00. The original term of the contract was September 1, 2008 through August 31, 2009. The amendment extends the term of the contract through August 31, 2010.

TRD-200901913
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: May 14, 2009

Request for Proposals

Pursuant to Chapter 2155, §2155.001, Chapter 403, §401.011 and Chapter 2156, §2156.121, of the Texas Government Code; the Comptroller of Public Accounts (Comptroller) announces its Request for Proposals (RFP #193b) from qualified firms to provide Outbound Mailing Services to the Comptroller. The successful respondent, if any, will provide outbound mailing services to the Comptroller on an as needed basis as described in the RFP.

Contact: Parties interested in submitting a proposal should contact Thomas H. Hill, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th Street, Room 201, Austin, Texas 78774, telephone number: (512) 305-8673, to obtain a copy of the RFP. The Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP will be available for pick-up at the above-referenced address on May 29, 2009, between 10:00 a.m. and 5:00 p.m., Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller will also make the RFP available electronically on the Electronic State Business Daily after Friday, May 29, 2009, 10:00 a.m. CZT.

Questions and Non-mandatory Letters of Intent: All written inquiries, questions, and Non-mandatory Letters of Intent to propose must be received at 111 E. 17th Street, Room 201, Austin, Texas 78774 not later than 2:00 p.m. CZT on Friday, June 12, 2009. Prospective respondents are encouraged to fax Non-mandatory Letters of Intent and Questions to (512) 463-3669 or e-mail them to contracts@cpa.state.tx.us to ensure timely receipt. The Letter of Intent must be addressed to Thomas H. Hill, Assistant General Counsel, Contracts, and must contain the information as stated in the corresponding Section of the RFP and be signed by an official of that entity. Non-mandatory Letters of Intent and Questions received after this time and date will not be considered. On or about Wednesday, June 17, 2009, the Comptroller expects to post responses to questions as a revision to the Electronic State Business Daily notice on the issuance of this RFP.

Closing Date: Proposals must be delivered to the Office of the Assistant General Counsel, Contracts, at the location specified above (ROOM 201) no later than 2:00 p.m. CZT, on Wednesday, July 1, 2009. Proposals received in Room 201 after this time and date will not be considered regardless of the reason for the late delivery and receipt. Respondents are encouraged to verify and are solely responsible for verifying timely receipt of proposals in that office (ROOM 201).

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Deputy Comptroller shall make the final decision on any contract award or awards resulting from this RFP.

The Comptroller reserves the right, in its sole discretion, to accept or reject any or all proposals submitted. The Comptroller is not obligated to award or execute any contracts on the basis of this notice or the distribution of any RFP. The Comptroller shall not pay for any costs incurred by any entity in responding to this notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP--May 29, 2009, 10:00 a.m. CZT; Non-mandatory Letters of Intent to propose and Questions Due--June 12, 2009, 2:00 p.m. CZT; Official Responses to Questions posted--June 17, 2009, or as soon thereafter as practical; Proposals Due--July 1, 2009, 2:00 p.m. CZT; Contract Execution--July 27, 2009, or as soon thereafter as practical; and Commencement of Project Activities--July 27, 2009 for any necessary transition in preparation for services to begin September 1, 2009.

TRD-200901937
Pamela G. Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: May 18, 2009

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/25/09 - 05/31/09 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/25/09 - 05/31/09 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 06/01/09 - 06/30/09 is 5.00% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 06/01/09 - 06/30/09 is 5.00% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment, or other similar purpose.

TRD-200901947
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: May 19, 2009

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Court of Criminal Appeals

Availability of Grant Funds

Pursuant to Chapter 56 of the Texas Government Code and the General Appropriations Bill, the Texas Court of Criminal Appeals announces the availability of grant funds for the purpose of providing continuing legal education courses, programs, and technical assistance projects. This funding will be for the grant period of September 1, 2009 through August 31, 2010. The deadline for applications is July 1, 2009. Please contact the Texas Court of Criminal Appeals for application packets and any other inquiries:

Texas Court of Criminal Appeals

Judicial Education Office, Room 103

201 West 14th Street

Austin, Texas 78701

(512) 475-2312

TRD-200901941
Louise Pearson
Clerk of the Court
Court of Criminal Appeals
Filed: May 18, 2009

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Credit Union Department

Application for a Merger or Consolidation

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration:

An application was received from EDS Credit Union (Plano) seeking approval to merge with First American Federal Credit Union (Santa Ana, CA). EDS Credit Union will be the surviving credit union. In accordance with Texas Finance Code §122.005(b) and 7 TAC §91.104(b), the Commissioner has the authority to waive or delay public notice of an action.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200901965
Harold E. Feeney
Commissioner
Credit Union Department
Filed: May 20, 2009

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Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department (Department) and are under consideration:

An application was received from Cabot & NOI Employees Credit Union, Pampa, Texas to expand its field of membership. The proposal would permit employees of CTW Brake Rims, Inc. who work in or are paid from Pampa, Texas, to be eligible for membership in the credit union.

An application was received from Space City Credit Union, Houston, Texas to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school, businesses and other legal entities located within a 10-mile radius of the following Space City Credit Union branch locations: 3101 Harrisburg Boulevard, Houston, Texas 77003 or 1233 South Loop West, Houston, Texas 77027, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.tcud.state.tx.us/applications.html. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200901964
Harold E. Feeney
Commissioner
Credit Union Department
Filed: May 20, 2009

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Application to Expand Field of Membership - Approved

Community Resource Credit Union, Baytown, Texas - See *Texas Register* issue dated March 27, 2009.

Application to Amend Articles of Incorporation - Approved

TEC/TWC Credit Union, San Antonio, Texas - See *Texas Register* issue dated March 27, 2009.

TRD-200901966

Harold E. Feeney
Commissioner
Credit Union Department
Filed: May 20, 2009

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 29, 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) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 29, 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: 5 & 1 Investors, Limited; DOCKET NUMBER: 2009-0640-WQ-E; IDENTIFIER: RN105705271; LOCATION: Bell County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 Texas Administrative Code (TAC) §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: Apac-Texas, Inc.; DOCKET NUMBER: 2009-0257-AIR-E; IDENTIFIER: RN101869253; LOCATION: Jasper, Jasper County; TYPE OF FACILITY: hot mix asphalt plant; RULE VIOLATED: 30 TAC §116.115(c), Permit Number 6224G, Special Condition (SC) Number 14, and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain records necessary to determine compliance with operating conditions of the permit; PENALTY: $500; ENFORCEMENT COORDINATOR: Audra Benoit, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: City of Asherton; DOCKET NUMBER: 2009-0176-MWD-E; IDENTIFIER: RN101721348; LOCATION: Dimmit County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013746001, Other Requirements Number 4, by failing to provide documentation of the pond liner certification; 30 TAC §305.125(1) and §309.13(e) and TPDES Permit Number WQ0013746001, Other Requirements Number 7, by failing to submit a nuisance odor prevention request and obtain approval; and 30 TAC §21.4 and §290.51(a)(3) and the Code, §5.702, by failing to pay fees and associated late fees; PENALTY: $2,540; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: B & J Excavating, Inc.; DOCKET NUMBER: 2009-0349-WQ-E; IDENTIFIER: RN105684070; LOCATION: Angelina County; TYPE OF FACILITY: sand and gravel mining operation; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(c), by failing to obtain authorization under a TPDES Multi-Sector Industrial General Permit to discharge storm water; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 425-6010; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(5) COMPANY: Berry Contracting, L.P. dba Bay Limited; DOCKET NUMBER: 2008-1910-PST-E; IDENTIFIER: RN102919909; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor underground storage tanks (USTs) for releases; and 30 TAC §334.72(3), by failing to report a suspected release within 24 hours of discovery; PENALTY: $3,600; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(6) COMPANY: Bi-County Water Supply Corporation; DOCKET NUMBER: 2009-0274-PWS-E; IDENTIFIER: RN102692183; LOCATION: Camp County; TYPE OF FACILITY: public water supply (PWS); RULE VIOLATED: 30 TAC §290.45(b)(1)(D)(iv) and THSC, §341.0315(c), by failing to provide a minimum pressure tank capacity of 20 gallons per connection; and 30 TAC §290.45(b)(1)(D)(iii) and THSC, §341.0315(c), by failing to provide a minimum of two service pumps with a total capacity of two gallons per minute (gpm) per connection; PENALTY: $575; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(7) COMPANY: Pedro Callejas; DOCKET NUMBER: 2009-0302-LII-E; IDENTIFIER: RN105650493; LOCATION: Houston and Austin; Harris and Williamson Counties; TYPE OF FACILITY: landscaping business; RULE VIOLATED: 30 TAC §30.5(a) and (b) and §344.30, Texas Occupations Code, §1903.251, and the Code, §37.003, by failing to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system and by failing to refrain from advertising or representing himself to the public as a person who can perform services for which a license or registration is required; PENALTY: $743; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500; 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(8) COMPANY: CenterPoint Energy Field Services, Inc.; DOCKET NUMBER: 2009-0268-AIR-E; IDENTIFIER: RN100825256; LOCATION: Waskom, Harrison County; TYPE OF FACILITY: natural gas compressor station; RULE VIOLATED: 30 TAC §122.143(4) and §122.145(2)(C), General Operating Permit, Site Wide Requirements (b)(2), and THSC, §382.085(b), by failing to timely submit a semi-annual deviation report; PENALTY: $2,300; ENFORCEMENT

COORDINATOR: Kirk Schoppe, (512) 239-0489; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(9) COMPANY: City of Cisco; DOCKET NUMBER: 2009-0412-PWS-E; IDENTIFIER: RN101389104; LOCATION: Cisco, Eastland County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) for total trihalomethanes (TTHM); PENALTY: $1,050; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(10) COMPANY: E. I. du Pont de Nemours and Company; DOCKET NUMBER: 2009-0102-AIR-E; IDENTIFIER: RN100216035; LOCATION: Nederland, Jefferson County; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 30 TAC §101.201(c) and §122.143(4), Federal Operating Permit (FOP) Number O-01961, General Terms and Conditions (GTC), SC Number 2F, and THSC, §382.085(b), by failing to submit a final emissions event report; and 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), Air Permit Number 4351, SC Number 1, FOP Number O-01961, GTC and SC Number 16, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $5,643; ENFORCEMENT COORDINATOR: Raymond Marlow, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(11) COMPANY: City of Edinburg; DOCKET NUMBER: 2009-0619-WQ-E; IDENTIFIER: RN102217734; LOCATION: Edinburg, Hidalgo County; TYPE OF FACILITY: sludge transporter; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(12) COMPANY: City of Frisco; DOCKET NUMBER: 2009-0166-WQ-E; IDENTIFIER: RN101430437; LOCATION: Frisco, Collin County; TYPE OF FACILITY: wastewater collection system; RULE VIOLATED: the Code, §26.121(a), by failing to prevent an unauthorized discharge of wastewater; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: Granite Stonebridge Health Center LLC; DOCKET NUMBER: 2009-0366-MWD-E; IDENTIFIER: RN101520500; LOCATION: Travis County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), Permit Number WQ0013860001, Effluent Limitations and Monitoring Requirements Section A, and the Code, §26.121(a), by failing to comply with permit effluent limits for five-day biochemical oxygen demand and total suspended solids; and 30 TAC §305.125(1) and Permit Number WQ0013860001, Monitoring Requirements Number 5, by failing to have meter calibration records readily available for review; PENALTY: $14,250; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(14) COMPANY: Haciendas Adobe Development, LP; DOCKET NUMBER: 2009-0642-WQ-E; IDENTIFIER: RN105401772; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(15) COMPANY: Haribar, LLC dba Mart Food Mart; DOCKET NUMBER: 2008-1970-PST-E; IDENTIFIER: RN102230984; LOCATION: Mart, McLennan County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 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)(C) 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)(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; and 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 non-removable point in the immediate area of the fill tube; PENALTY: $8,453; ENFORCEMENT COORDINATOR: Michael Graham, (806) 796-7092; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(16) COMPANY: HAROON & KHALID INVESTMENT, INC. dba Telephone Road Shell; DOCKET NUMBER: 2009-0272-PST-E; IDENTIFIER: RN101849693; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; PENALTY: $4,221; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(17) COMPANY: Ineos USA, LLC; DOCKET NUMBER: 2009-0292-AIR-E; IDENTIFIER: RN100238708; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 30 TAC §116.715(a), Flexible Permit Number 95, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $60,000; Supplemental Environmental Project (SEP) offset amount of $30,000 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Kirk Schoppe, (512) 239-0489; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(18) COMPANY: Larry G. Little; DOCKET NUMBER: 2009-0407-WOC-E; IDENTIFIER: RN103479135; LOCATION: McAdoo, Dickens County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §30.5(a) and §30.381(b), the Code, §37.003, and THSC, §341.034(b), by failing to obtain a valid public water system operator license prior to performing process control duties in the production, treatment, and distribution of public drinking water; PENALTY: $718; ENFORCEMENT COORDINATOR: Chris Keffer, (512) 239-5610; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(19) COMPANY: Martin Operating Partnership L.P.; DOCKET NUMBER: 2009-0194-IWD-E; IDENTIFIER: RN101609436; LOCATION: Jefferson County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0001202000, Effluent Limitations and Monitoring Requirements Numbers 1 and 2 at Outfalls 003 and 008, Number 2 at Outfall 006, and Number 1 at Outfall 005, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for ammonia nitrogen and pH; PENALTY: $20,400; SEP offset amount of $8,160 applied to Jefferson County-Pleasure Island Stabilization; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(20) COMPANY: PAMIR, INC. dba Shop N Go; DOCKET NUMBER: 2009-0255-PST-E; IDENTIFIER: RN102432614; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 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)(A) 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 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; and 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for the UST system; PENALTY: $7,597; ENFORCEMENT COORDINATOR: Brianna Carlson, (956) 425-6010; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(21) COMPANY: Nanu Patel; DOCKET NUMBER: 2009-0440-WQ-E; IDENTIFIER: RN101669026; LOCATION: Hearne, Robertson County; TYPE OF FACILITY: construction site for a motel; 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 activity; PENALTY: $4,356; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(22) COMPANY: Pure Utilities, L.C.; DOCKET NUMBER: 2009-0238-PWS-E; IDENTIFIER: RN101259885; LOCATION: Livingston, Polk County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.46(d)(2)(A) and THSC, §341.0315(c), by failing to operate the disinfection equipment to maintain the disinfectant residual in the water of at least 0.2 milligrams per liter (mg/L) free chlorine; 30 TAC §290.45(b)(1)(C)(iii) and THSC, §341.0315(c), by failing to provide two or more pumps having a total capacity of two gpm per connection; 30 TAC §290.45(b)(1)(C)(ii) and THSC, §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection; and 30 TAC §290.41(c)(3)(A), by failing to submit well completion data prior to placing well number two into service; PENALTY: $1,996; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3100; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(23) COMPANY: David M. Richter; DOCKET NUMBER: 2009-0632-WOC-E; IDENTIFIER: RN103433876; LOCATION: El Paso County; TYPE OF FACILITY: licensing; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $210; ENFORCEMENT COORDINATOR: Kirk Schoppe, (512) 239-0489; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(24) COMPANY: Rodell Water System, Inc.; DOCKET NUMBER: 2009-0230-PWS-E; IDENTIFIER: RN105061436; LOCATION: Leon County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.45(f)(1), (4), and (5), by failing to provide a purchase water contract in order to properly evaluate the facility's production, storage, service pump, or pressure maintenance capacity; 30 TAC §290.46(f)(3)(D)(i), by failing to provide all facility operating records for review at the time of the investigation; and 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations throughout the distribution system; PENALTY: $1,909; ENFORCEMENT COORDINATOR: Chris Keffer, (512) 239-5610; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(25) COMPANY: Sam's Truck Stop Business, Inc.; DOCKET NUMBER: 2009-0252-MLM-E; IDENTIFIER: RN101377620; LOCATION: Van Horn, Culberson County; TYPE OF FACILITY: retail fueling station with a PWS; RULE VIOLATED: 30 TAC §290.121(a), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan; 30 TAC §290.46(m)(1)(A), by failing to inspect the facility's ground storage tanks annually; 30 TAC §290.46(m)(1)(B), by failing to inspect the facility's pressure tanks annually; 30 TAC §290.46(f)(2), (3)(B)(iii) and (D)(i), by failing to maintain records of water works operation and maintenance activities and make them available to commission personnel; 30 TAC §290.46(d)(2)(A) and §290.111(b)(4) and THSC, §341.0315(c), by failing to operate the disinfection equipment to maintain the residual disinfectant concentration in the water at least 0.2 mg/L free chlorine; 30 TAC §290.43(c)(6), by failing to maintain the ground storage tank; 30 TAC §290.43(c)(8), by failing to paint, disinfect, and maintain the ground storage tank in strict accordance with current American Water Works Association standards; 30 TAC §290.41(c)(3)(K), by failing to properly seal the wellhead by a gasket or sealing compound to prevent the possibility of contaminating the well water; 30 TAC §290.39(j), by failing to notify the executive director prior to making any significant change or addition to the facility's production, treatment, storage, pressure maintenance, or distribution facilities; and 30 TAC §285.34(e), by failing to provide a holding tank constructed according to the requirements established for septic tanks; PENALTY: $2,823; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 490-3096; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(26) COMPANY: Sand Hill Foundation, LLC; DOCKET NUMBER: 2009-0620-WR-E; IDENTIFIER: RN105681332; LOCATION: Center, Shelby County; TYPE OF FACILITY: build foundations for drilling pads; RULE VIOLATED: the Code, §11.081 and §11.121, by impounding, diverting, or using state water without a required permit; PENALTY: $350; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(27) COMPANY: Tes Woldu dba T Food Mart; DOCKET NUMBER: 2009-0281-PST-E; IDENTIFIER: RN101543833; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; PENALTY: $2,337; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(28) COMPANY: Tenaska Frontier Partners, Limited; DOCKET NUMBER: 2009-0277-AIR-E; IDENTIFIER: RN100245539; LOCATION: Shiro, Grimes County; TYPE OF FACILITY: combined cycle power production plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), FOP Number O-1754, GTC, and THSC, §382.085(b), by failing to timely submit an annual compliance certification report; PENALTY: $2,100; ENFORCEMENT COORDINATOR: Kirk Schoppe, (512) 239-0489; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(29) COMPANY: The Estates at Huntress Lane, LP and Post Oak Development of Texas, Inc.; DOCKET NUMBER: 2009-0124-EAQ-E; IDENTIFIER: RN104848205; LOCATION: Bexar County; TYPE OF FACILITY: single-family residential development; RULE VIOLATED: 30 TAC §213.23(a)(1), by failing to obtain approval of an Edwards Aquifer Contributing Zone Plan; PENALTY: $17,500; ENFORCEMENT COORDINATOR: Jennifer Graves, ((956) 425-6010;

REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(30) COMPANY: TOTAL PETROCHEMICALS USA, INC.; DOCKET NUMBER: 2009-0220-AIR-E; IDENTIFIER: RN100212109; LOCATION: La Porte, Harris County; TYPE OF FACILITY: petrochemical manufacturing plant; RULE VIOLATED: 30 TAC §116.615(2), Standard Permit Number 78962, Maximum Allowable Emission Rate Table, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $10,000; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(31) COMPANY: Valero Refining-Texas, L.P.; DOCKET NUMBER: 2009-0339-AIR-E; IDENTIFIER: RN100219310; LOCATION: Houston, Harris County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §101.201(c) and THSC, §382.085(b), by failing to submit the final report for a reportable emissions event; and 30 TAC §116.115(2)(F), Air Standard Permit Number 83749, Maximum Emission Rates Table, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $10,439; SEP offset amount of $4,176 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Raymond Marlow, (409) 898-3838; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(32) COMPANY: City of West Tawakoni; DOCKET NUMBER: 2009-0309-PWS-E; IDENTIFIER: RN101423671; LOCATION: West Tawakoni, Hunt County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.113(f)(4) and (5) and THSC, §341.0315(c), by failing to comply with the MCL for TTHM and haloacetic acids; PENALTY: $5,850; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200901959
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: May 19, 2009

Enforcement Orders

An agreed order was entered regarding Quest Diagnostics Clinical Laboratories, Inc. dba Quest Diagnostics, Docket No. 2005-0021-MLM-E on May 8, 2009 assessing $51,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sarn Management Inc. Toor Food Mart, Docket No. 2005-1795-PST-E on May 8, 2009 assessing $5,152 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip Goodwin, Staff Attorney at (512) 239-0675, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Angelina County Water Control and Improvement District No. 3, Docket No. 2006-2239-MWD-E on May 8, 2009 assessing $4,410 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, Staff Attorney at (512) 239-0629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Broaddus, Docket No. 2007-0888-MLM-E on May 8, 2009 assessing $29,367 in administrative penalties with $28,079 deferred.

Information concerning any aspect of this order may be obtained by contacting Pam Campbell, Enforcement Coordinator at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hamshire Community Water Supply Corporation, Docket No. 2007-0970-MWD-E on May 8, 2009 assessing $46,000 in administrative penalties with $42,400 deferred.

Information concerning any aspect of this order may be obtained by contacting Pam Campbell, Enforcement Coordinator at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Bert Brymer, Docket No. 2007-1271-PST-E on May 8, 2009 assessing $13,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was entered regarding NTA Enterprises, Inc. dba Lucky 7 Quick Stop, Docket No. 2007-1761-PST-E on May 8, 2009 assessing $13,900 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barham Richard, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Parrish Machine & Service Inc., Docket No. 2007-1762-IHW-E on May 8, 2009 assessing $13,590 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lucite International, Inc., Docket No. 2007-1876-AIR-E on May 8, 2009 assessing $50,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Karl Tatsch dba Hill Country Cleaners, Docket No. 2007-2031-DCL-E on May 8, 2009 assessing $336 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gary Shiu, Staff Attorney at (713) 422-8916, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shut down order was entered regarding Dwight Price dba A1 Towing & Recovery, Docket No. 2008-0061-PST-E on May 8, 2009 assessing $4,675 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barham Richard, Staff Attorney at (512) 239-0600, Texas

Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Solutia Inc., Docket No. 2008-0062-AIR-E on May 8, 2009 assessing $117,048 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-1873, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Veolia ES Technical Solutions, L.L.C., Docket No. 2008-0270-IHW-E on May 8, 2009 assessing $6,090 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-5846, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Alberto Perez, Sr. dba Dos Amigos Guns, Docket No. 2008-0541-PST-E on May 8, 2009 assessing $8,925 in administrative penalties with $1,785 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Kenneth and Gloria Poppe dba Poppe's Pub & Grub, Docket No. 2008-0553-PWS-E on May 8, 2009 assessing $850 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Becky Combs, Staff Attorney at (512) 239-6939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Randy Russell dba Oak Ridge Mobile Home Park, Docket No. 2008-0638-PWS-E on May 8, 2009 assessing $1,010 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephanie Frazee, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CKN, Inc. dba Corner Food Mart, Docket No. 2008-0820-PST-E on May 8, 2009 assessing $1,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy Mitchell, Staff Attorney at (512) 239-0736, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding James Lindgren dba Tow King, Inc., Docket No. 2008-0828-MSW-E on May 8, 2009 assessing $1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephanie Frazee, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E. I. du Pont de Nemours and Company, Docket No. 2008-0971-AIR-E on May 8, 2009 assessing $12,859 in administrative penalties with $2,571 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Marlow, Enforcement Coordinator at (409) 899-8785, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Allen Watts dba Lago Vista Water System, Docket No. 2008-0977-PWS-E on May 8, 2009 assessing $2,068 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TOTAL PETROCHEMICALS USA, INC., Docket No. 2008-1173-AIR-E on May 8, 2009 assessing $83,424 in administrative penalties with $16,684 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Francisco Cornejo dba Marble Palace Company, Docket No. 2008-1192-WQ-E on May 8, 2009 assessing $2,100 in administrative penalties with $420 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Webera, Inc. dba Max Dry Clean Super Store, Docket No. 2008-1264-DCL-E on May 8, 2009 assessing $3,606 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy Mitchell, Staff Attorney at (512) 239-0736, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding REHMANIA CLEANERS, L.L.C. dba Premier Cleaners, Docket No. 2008-1367-DCL-E on May 8, 2009 assessing $2,164 in administrative penalties with $432 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Graham, Enforcement Coordinator at (806) 796-7635, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Load Trail, Ltd., Docket No. 2008-1464-AIR-E on May 8, 2009 assessing $68,250 in administrative penalties with $13,650 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Abdulbhai Momin dba Handi Plus 37, Docket No. 2008-1480-PST-E on May 8, 2009 assessing $16,196 in administrative penalties with $3,239 deferred.

Information concerning any aspect of this order may be obtained by contacting Wallace Myers, Enforcement Coordinator at (512) 239-6580, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Flat Rock Minerals, LLC, Docket No. 2008-1570-AIR-E on May 8, 2009 assessing $3,470 in administrative penalties with $694 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding James Hall, Docket No. 2008-1614-WOC-E on May 8, 2009 assessing $1,491 in administrative penalties with $298 deferred.

Information concerning any aspect of this order may be obtained by contacting Carlie Konkol, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ConocoPhillips Company, Docket No. 2008-1636-AIR-E on May 8, 2009 assessing $10,150 in administrative penalties with $2,030 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RJR BioEnergy, Inc., Docket No. 2008-1638-MSW-E on May 8, 2009 assessing $7,761 in administrative penalties with $1,552 deferred.

Information concerning any aspect of this order may be obtained by contacting Ross Fife, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Javier B. Armendariz, Docket No. 2008-1668-PST-E on May 8, 2009 assessing $15,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip Goodwin, Staff Attorney at (512) 239-0675, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Delek Refining, Ltd., Docket No. 2008-1670-AIR-E on May 8, 2009 assessing $26,500 in administrative penalties with $5,300 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3420, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ASHNOOR, L.L.C., Docket No. 2008-1681-PST-E on May 8, 2009 assessing $8,419 in administrative penalties with $1,683 deferred.

Information concerning any aspect of this order may be obtained by contacting Wallace Myers, Enforcement Coordinator at (512) 239-6580, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Frank Prado dba Prado's Backhoe Service, Docket No. 2008-1682-SLG-E on May 8, 2009 assessing $8,950 in administrative penalties with $1,790 deferred.

Information concerning any aspect of this order may be obtained by contacting Evette Alvarado, Enforcement Coordinator at (512) 239-2573, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jimmie Wayne Massey, Docket No. 2008-1683-MWD-E on May 8, 2009 assessing $3,000 in administrative penalties with $600 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding YASINHA INC dba Forum 303 Chevron, Docket No. 2008-1686-PST-E on May 8, 2009 assessing $19,057 in administrative penalties with $3,811 deferred.

Information concerning any aspect of this order may be obtained by contacting Wallace Myers, Enforcement Coordinator at (512) 239-6580, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sayed Ridi dba S R Auto Sales, Docket No. 2008-1718-PST-E on May 8, 2009 assessing $3,325 in administrative penalties with $665 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Poly Trucking Inc. dba Poly-Trucking, Docket No. 2008-1720-PST-E on May 8, 2009 assessing $34,919 in administrative penalties with $6,983 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cherokee Independent School District, Docket No. 2008-1731-PWS-E on May 8, 2009 assessing $3,008 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Amanda Henry, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TXI OPERATIONS, LP, Docket No. 2008-1751-IWD-E on May 8, 2009 assessing $14,400 in administrative penalties with $2,880 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aqua Water Supply Corporation, Docket No. 2008-1790-MWD-E on May 8, 2009 assessing $5,800 in administrative penalties with $1,160 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (512) 239-1460, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Trinity Materials, Inc., Docket No. 2008-1803-WQ-E on May 8, 2009 assessing $770 in administrative penalties with $154 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Rodrigo Salas dba Sams Cleaners, Docket No. 2008-1805-DCL-E on May 8, 2009 assessing $3,172 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tommy Tucker Henson II, Staff Attorney at (512) 239-0946, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding John R. Murff, Docket No. 2008-1826-PST-E on May 8, 2009 assessing $5,450 in administrative penalties with $1,090 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Linda Correa Garcia, Docket No. 2008-1827-PST-E on May 8, 2009 assessing $5,500 in administrative penalties with $1,100 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tyson Fresh Meats, Inc., Docket No. 2008-1836-IWD-E on May 8, 2009 assessing $3,040 in administrative penalties with $608 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mendi T. Momin dba Pedernales Country Store, Docket No. 2008-1837-PST-E on May 8, 2009 assessing $5,250 in administrative penalties with $1,050 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of La Ward, Docket No. 2008-1848-PWS-E on May 8, 2009 assessing $1,664 in administrative penalties with $332 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bexar Metropolitan Water District Public Facility Corporation, Docket No. 2008-1849-PWS-E on May 8, 2009 assessing $508 in administrative penalties with $101 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Richdairy Ventures Inc dba High Five Food Store 21, Docket No. 2008-1861-PST-E on May 8, 2009 assessing $10,100 in administrative penalties with $2,020 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SHAKU BROTHERS INC. dba Memorial Hill Food Mart, Docket No. 2008-1862-PST-E on May 8, 2009 assessing $1,540 in administrative penalties with $308 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bentwood Estates, Inc., Docket No. 2008-1885-MWD-E on May 8, 2009 assessing $3,318 in administrative penalties with $663 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Macario Hernandez, Docket No. 2008-1891-MSW-E on May 8, 2009 assessing $1,050 in administrative penalties with $210 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CPG Investments LLC and Aspri Investments, LLC dba Dill Food Mart, Docket No. 2008-1908-PST-E on May 8, 2009 assessing $2,250 in administrative penalties with $450 deferred.

Information concerning any aspect of this order may be obtained by contacting Pam Campbell, Enforcement Coordinator at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Berry Contracting, L.P. dba Bay LTD, Docket No. 2008-1911-PST-E on May 8, 2009 assessing $6,990 in administrative penalties with $1,398 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NRH GROUP, INC dba Park and Gas, Docket No. 2008-1917-PST-E on May 8, 2009 assessing $8,916 in administrative penalties with $1,783 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Fort Worth, Docket No. 2008-1924-WQ-E on May 8, 2009 assessing $3,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Evette Alvarado, Enforcement Coordinator at (512) 239-2573, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding United States Postal Service, Docket No. 2008-1928-EAQ-E on May 8, 2009 assessing $1,500 in administrative penalties with $300 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pavilion Assisted Living, LLC, Docket No. 2008-1949-EAQ-E on May 8, 2009 assessing $750 in administrative penalties with $150 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ingram Concrete, LLC, Docket No. 2008-1957-AIR-E on May 8, 2009 assessing $4,050 in administrative penalties with $810 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Quicksilver Resources Inc., Docket No. 2008-1964-WR-E on May 8, 2009 assessing $700 in administrative penalties with $140 deferred.

Information concerning any aspect of this order may be obtained by contacting Evette Alvarado, Enforcement Coordinator at (512) 239-2573, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding John Yturri, Docket No. 2009-0015-MLM-E on May 8, 2009 assessing $5,553 in administrative penalties with $1,110 deferred.

Information concerning any aspect of this order may be obtained by contacting Ross Fife, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AMBICA CORPORATION dba Pecan Food Mart, Docket No. 2009-0019-PST-E on May 8, 2009 assessing $2,625 in administrative penalties with $525 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Liberty Materials, Inc., Docket No. 2009-0031-IWD-E on May 8, 2009 assessing $1,900 in administrative penalties with $380 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (512) 239-1460, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Luna Creek, Ltd., Docket No. 2009-0042-EAQ-E on May 8, 2009 assessing $1,500 in administrative penalties with $300 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Emory, Docket No. 2009-0051-MWD-E on May 8, 2009 assessing $5,250 in administrative penalties with $1,050 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding IH10/FIS Building, L.P., Docket No. 2009-0063-PWS-E on May 8, 2009 assessing $2,665 in administrative penalties with $533 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 490-3096, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Francisco Vasquez, Docket No. 2008-1843-WOC-E on May 8, 2009 assessing $210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Lamb County Hospital, Docket No. 2008-1846-PST-E on May 8, 2009 assessing $875 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Red River Redevelopment Authority, Docket No. 2008-1864-WQ-E on May 8, 2009 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Thomas V. Rodriquez, Docket No. 2008-1961-WOC-E on May 8, 2009 assessing $210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Maximino Acuna, Docket No. 2008-1963-WOC-E on May 8, 2009 assessing $210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Allen Keller Company, Docket No. 2008-1965-WQ-E on May 8, 2009 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding AB Builders, Docket No. 2008-1972-WQ-E on May 8, 2009 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding Mustafa Nadaf dba Discount Mini Mart, Docket No. 2007-0609-PST-E on May 7, 2009 assessing $15,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding Gwen Gordon and Wanda Percy dba Holliday Cafe, Docket No. 2007-0741-PST-E on May 14, 2009 assessing $1,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered granting Dissolution of Salt Fork Underground Water Conservation District, Docket No. 2007-0766-DIS-E on May 14, 2009 assessing $0 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200901972
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 20, 2009

Notice of Application and Preliminary Decision for Proposed Post-Closure Order

Post-Closure Order No. 32123

TCEQ Docket No. 2008-1402-IHW

APPLICATION AND PRELIMINARY DECISION. The American Ecology Environmental Services Corporation (AEESC), located at 13640 Highway 155 North, Tyler, Smith County, Texas, has applied to the Texas Commission on Environmental Quality (TCEQ) to conduct post-closure care for closed, inactive hazardous waste management units, and to conduct groundwater compliance monitoring at the facility. AEESC is the owner and operator of this closed commercial waste management facility and there are no active waste management operations at the facility. AEESC filed this application on January 3, 2008.

TCEQ's Executive Director has completed the technical review of the application and prepared a proposed Post-Closure Order. The proposed Order, if approved, would establish the post-closure care and compliance monitoring requirements for the closed waste management units. The Executive Director has made a preliminary decision that this proposed Order, if issued, meets all statutory and regulatory requirements. The Post-Closure Order application, Executive Director's Preliminary Decision, and proposed Post-Closure Order are available for viewing and copying at the Tyler Public Library, 201 South College Avenue, Tyler, Smith County, Texas.

The post-closure care requirements proposed for AEESC assume the following: that AEESC will comply with post-closure care monitoring requirements for the closed waste management units; that it will meet compliance monitoring requirements for groundwater monitoring for the closed RCRA-permitted waste management units, Solid Waste Management Units, and Area of Concerns that are closed as a single waste management area; and that it will comply with post-closure and compliance monitoring financial assurance requirements.

ADDITIONAL NOTICE. After the remedial action is complete (in this case post-closure care), the Executive Director will issue another notice indicating his proposed decision that remedial action is complete at the facility. Notice of a Proposed Decision that Remedial Action is Complete will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments on the Proposed Decision that Remedial Action is Complete.

PUBLIC COMMENT. You may submit public comments on this application. The Executive Director will respond to timely comments raising issues that are relevant and material or otherwise significant. After the Executive Director files the response to comments, the chief clerk shall mail the response to comments to persons who submitted comments during the comment period and persons who requested to be on the mailing list for the action.

MAILING LIST. If you submit public comments you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION. All written public comments and requests must be submitted within 30 days from the date of newspaper publication of this notice to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www.tceq.state.tx.us/about/comments.html. If you need more information about this application or the process, please call TCEQ Office of Public Assistance, toll free, at 1-800-687-4040. Si desea información en Español, puede llamar al 1-800-687-4040. General information about TCEQ can be found at our web site at www.tceq.state.tx.us.

Further information may also be obtained from AEESC representatives at Titanium Environmental Services, LLC, P.O. Box 4029, Longview, Texas 75606 or by calling Ms. Laura Rectenwald at (903) 234-8443.

TRD-200901970
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 20, 2009

Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 29, 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 June 29, 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: Aguado Stone Incorporated; DOCKET NUMBER: 2008-1713-MLM-E; TCEQ ID NUMBER: RN105086110; LOCATION: 3601 County Road 239, Georgetown, Williamson County; TYPE OF FACILITY: limestone quarry; RULES VIOLATED: 30 TAC §213.4(a)(1), by failing to submit an Edwards Aquifer Protection Plan for commission approval prior to conducting regulated activities on the Edwards Aquifer Recharge Zone; 30 TAC §327.5(a), by failing to immediately abate and contain a spill or discharge; 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(c), by failing to obtain authorization to discharge storm water associated with stone quarry activities at the facility; 30 TAC §334.127(a), by failing to register aboveground storage tanks with the TCEQ; 30 TAC §111.201 and Texas Health and Safety Code, §382.085(b), by failing to comply with the general prohibition on outdoor burning at the facility; 30 TAC §330.15(c), by failing to prevent the disposal of municipal solid waste at an unauthorized facility; and 30 TAC §327.5(a), by failing to abate or contain spills or discharges of petroleum products; PENALTY: $41,750; STAFF ATTORNEY: James Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(2) COMPANY: Jose De Los Santos dba De Los Santos Ready Mix; DOCKET NUMBER: 2008-0951-MSW-E; TCEQ ID NUMBER: RN105178941; LOCATION: 2 Industrial Boulevard, Eagle Pass, Maverick County; TYPE OF FACILITY: sand and gravel excavation and sorting business; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: $1,050; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(3) COMPANY: Mohammad A. Swati; DOCKET NUMBER: 2008-0742-PST-E; TCEQ ID NUMBER: RN101773232; LOCATION: 1107 Cordrey Street, Orange, Orange County; TYPE OF FACILITY: property that previously contained two inactive underground storage tanks (USTs); RULES VIOLATED: 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 the occurrence of the change; PENALTY: $1,100; STAFF ATTORNEY: Stephanie J. Frazee, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: Murlwyn L. Stringer; DOCKET NUMBER: 2008-0257-PST-E; TCEQ ID NUMBER: RN101548774; LOCATION: Interstate 45 at Exit 221, south of Angus, Navarro County; TYPE OF FACILITY: four inactive USTs; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to perform the permanent removal of four USTs that had not met the upgrade requirements; PENALTY: $2,625; STAFF ATTORNEY: Benjamin Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Robertina Haro; DOCKET NUMBER: 2008-0534-PST-E; TCEQ ID NUMBER: RN102221868; LOCATION: 2 3/4 Mile North Conway, Mission, Hidalgo County; TYPE OF FACILITY: UST system; RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to provide an amended registration regarding USTs within 30 days from the date of the occurrence of the change or addition; and 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed updated implementation date, three USTs for which any applicable component of the system was not brought into timely compliance with the upgrade requirements; PENALTY: $17,600; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(6) COMPANY: Tex-Wave Industries, L.P., Tex-Wave Management, L.L.C., David Croft, and Monty Guiles; DOCKET NUMBER: 2007-1347-MLM-E; TCEQ ID NUMBER: RN101979466; LOCATION: 450 Industrial Avenue, Robstown, Nueces County; TYPE OF FACILITY: metal galvanizing facility; RULES VIOLATED: 30 TAC §106.375(2)(B), by failing to have hydrochloric acid in an enclosed building; 30 TAC §335.6(c), by failing to update the Notice of Registration to reflect current site conditions; 30 TAC §§335.9(a)(1), 335.13(i), and 335.431(c), and 40 CFR §262.40(a) and §268.7(a)(8), by failing to maintain all records for hazardous and industrial waste activities, by failing to maintain copies of each manifest for a minimum of three years from the date of shipment, and by failing to maintain records for land disposal restrictions; and 30 TAC §335.69(a)(1)(B) and §335.112(a)(9) and 40 CFR §262.34(a)(1)(ii) and §265.197, by failing to comply with hazardous waste tank requirements and to conduct adequate tank closure; PENALTY: $38,640; STAFF ATTORNEY: Gary Shiu, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

TRD-200901949
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: May 19, 2009

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 opportu-

nity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 29, 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 June 29, 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: AKJ Management, Inc. dba A&B Food Mart; DOCKET NUMBER: 2008-1363-PST-E; TCEQ ID NUMBER: RN101539294; LOCATION: 300 East Moore Avenue, Terrell, Kaufman County; TYPE OF FACILITY: property with three inactive underground storage tanks (USTs); RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to ensure that all USTs are monitored in a manner that will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §115.221 and Texas Health and Safety Code, §382.085(6), by failing to install an approved Stage I vapor recovery system; PENALTY: $6,250; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: John Young dba Royal Coach Mobile Home Village; DOCKET NUMBER: 2008-1643-PWS-E; TCEQ ID NUMBER: RN102678000; LOCATION: 700 West Greens Road, Houston, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.271(b) and §290.274(a) and (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 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; PENALTY: $754; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(3) COMPANY: The J.W. Grimes Family Limited Partnership; DOCKET NUMBER: 2008-1187-MSW-E; TCEQ ID NUMBER: RN105517247 and RN105372718; LOCATION: 3146 Sherwood Avenue, Lancaster, Dallas County (RN105372718; Lancaster Site) and 10045 Farm-to-Market Road 66, Maypearl, Ellis County (RN105517247; Maypearl Site); TYPE OF FACILITY: two unauthorized municipal solid waste disposal sites; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the disposal of municipal solid waste at an unauthorized site (the Maypearl Site); and 30 TAC §330.15(c), by failing to prevent the disposal of municipal solid waste at an unauthorized site (the Lancaster Site); PENALTY: $15,000; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200901950
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: May 19, 2009

Notice of Receipt of Application and Intent to Obtain a Municipal Solid Waste Permit Major Amendment No. 2245A

APPLICATION Stericycle, Inc., 28161 North Keith Drive, Lake Forest, Lake County, IL 60045-4528, has applied to the Texas Commission on Environmental Quality (TCEQ or Commission) for an amendment to their current Type V medical waste processing permit. The applicant is requesting a major amendment to the permit to increase the waste capacity of the facility. The facility is located at 2821 Industrial Lane, Garland, Dallas County, Texas 75041. The TCEQ received the application on March 16, 2009. The permit amendment application is available for viewing and copying at the Garland Central Public Library, 625 Austin Street, Garland, Dallas County, Texas 75040.

ADDITIONAL NOTICE. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the Commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and, the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the

request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to the TCEQ Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION. All written public comments and requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 or electronically at www.tceq.state.tx.us/about/comments.html. If you need more information about this permit application or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. Si desea información en Español, puede llamar al 1-800-687-4040. General information about TCEQ can be found at our web site at www.tceq.state.tx.us.

Further information may also be obtained from Stericycle, Inc. at the address stated above or by calling Mr. John Hargrove, P.E., Consultant, Geosyntec at (281) 810-5055.

TRD-200901971
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 20, 2009

Notice of Water Quality Applications

The following notices were issued during the period of April 28, 2009 through May 14, 2009.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

CITY OF EASTLAND has applied for a renewal of TPDES Permit No. WQ0010637001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The facility is located at the east end of Smith Street, approximately one mile southeast of the intersection of State Highway 6 and U.S. Highway 80 and 1.4 miles northeast of the intersection of State Highway 6 and Interstate Highway 20, in the City of Eastland in Eastland County, Texas.

CITY OF ALBANY has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0010035002, which authorizes the discharge of filter backwash effluent from a water treatment plant at a daily average flow not to exceed 60,000 gallons per day. The facility is located at 917 Railroad Street at the intersection of Railroad Street and North Avenue C in the City of Albany in Shackelford County, Texas.

CITY OF EARTH has applied for a renewal of Permit No. WQ0010162001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day via evaporation on 1.6 acres of pond area, and the further disposal of treated domestic wastewater effluent at a daily average flow not to exceed 70,000 gallons per day via surface irrigation of 30 acres of non-public access agricultural land on demand for supplemental irrigation only. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located in the southeast quarter of the City of Earth at a point 0.25 mile east of the intersection of U.S. Highway 70 and Farm-to-Market Road 1055 and 0.25 mile south on Elm Street in Lamb County, Texas.

CITY OF SAN MARCOS has applied for a major amendment to TPDES Permit No. WQ0010273002 to authorize an increase in the 2-hour peak flow discharge of treated domestic wastewater from 12,500 gallons per minute to 21,528 gallons per minute. The current permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 9,000,000 gallons per day. The facility is located on the north bank of the San Marcos River, approximately 4,000 feet east of the intersection of State Highway 123 and Interstate Highway 35 in the City of San Marcos in Hays County, Texas.

MCWANE INC which operates Tyler Pipe, a grey and ductile iron foundry, has applied for a major amendment to TPDES Permit No. WQ0001793000 to add the authorization to discharge casting quench process wastewater, North and South Plant cooling tower blowdown, treated domestic wastewater, industrial garage washdown water, storm water from plant areas and the Tyler Landfill area and miscellaneous de minimis flows (such as heat exchanger drains, shell cooling water testing, furnace backup water, condensate, washdown, water from air tank test, wastewater treatment plant sludge press washdown, fire/emergency water line flush, stabilization building washdown, etc.) at a daily average flow not to exceed 720,000 gallons per day via Outfall 001; to recalculate technology-based annual loadings and concentration limitations at Outfall 001; to add the authorization to route treated domestic wastewater via Outfall 002 or to the South Wastewater Treatment Plant for reuse and/or discharge via Outfall 001; to and revise the minimum analytical level for oil and grease from 5 milligram per liters (mg/l) to between 1.15 mg/l to 5 mg/l. The current permit authorizes the discharge of treated (mold cooling) process wastewater at a daily average flow not to exceed 720,000 gallons per day via Outfall 001, treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day via Outfall 002, and storm water runoff on an intermittent and flow variable basis via Outfalls 003 and 004. The facility is located north of the intersection of and between U.S. Highway 69 and Jim Hogg Highway (old Lindale Highway) in the community of Swan, Smith County, Texas.

SPORTSMANS WORLD MUNICIPAL UTILITY DISTRICT which operates Sportsman's World MUD WWTP, has applied for a major amendment to TPDES Permit No. WQ0002461000 to authorize an increase in the daily average flow limitation from 100,000 gallons per

day to 800,000 gallons per day; an increase in the daily maximum flow limitation from 150,000 to 1,200,000 gallons per day; less stringent effluent limitations for total dissolved solids; and decrease in the monitoring frequency for total dissolved solids. The current permit authorizes the discharge of reverse osmosis reject water on a daily average flow not to exceed 100,000 gallons per day via Outfall 001. The facility is located approximately 0.5 mile south-southwest of the mouth of the Bluff Creek tributary to the main body of Possum Kingdom Reservoir or approximately 0.25 mile southeast of Bluff Creek Marina, Palo Pinto County, Texas.

HYDROCARBON RECOVERY SERVICES INC which operates the Baytown Facility, has applied for a renewal to TPDES Permit No. WQ0004710000 which authorizes the discharge of treated process wastewater, non-contact cooling water, and treated contact storm water at a daily average flow not to exceed 100,000 gallons per day via Outfall 001; and contact storm water from the Separation/Distillate area and previously monitored storm water on an intermittent and flow variable basis via Outfall 002. The amendment request submitted with the application has been withdrawn. The application is now for a permit renewal without changes as requested by the applicant. The facility is located approximately 5980 feet south of State Highway 146 on Spur 55 and approximately 875 feet east of the intersection of Spur 55 and Farm-to-Market Road 1405, Chambers County, Texas.

CITY OF COLLEGE STATION has applied for a renewal of TPDES Permit No. WQ0010024003, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The facility is located immediately south of Rock Prairie Road, approximately 16,000 feet east-northeast of the intersection of State Highway 6 and Greens Prairie Road, and approximately 9,000 feet north of the Texas International Speedway in Brazos County, Texas.

CITY OF COPPERAS COVE has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to TPDES Permit No. WQ0010045005 to reduce the frequency of monitoring requirements for aluminum. The current permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,000,000 gallons per day. The facility is located north of the City of Copperas Cove, adjacent to the west side of Farm-to-Market Road 116 at a point approximately 1.8 miles north of the intersection of Farm-to-Market Road 116 and Farm-to-Market Road 1113 in Coryell County, Texas.

CITY OF BANGS applied for a renewal of TPDES Permit No. WQ0010122001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility is located approximately one mile south of the intersection of U.S. Highway 84 and Farm-to-Market Road 586 in Brown County, Texas.

CITY OF RICHMOND has applied for a renewal of TPDES Permit No. WQ0010258003, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 6,000,000 gallons per day. The facility is located at 220 Legion Drive on the northeast corner of Rabbs Bayou and Golfview Drive, approximately 300 feet north of the Golfview Drive in Fort Bend County, Texas.

CITY OF RULE has applied for a renewal of TCEQ Permit No. WQ0010265001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 110,000 gallons per day via surface irrigation of 20 acres of non-public access pastureland. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately two miles southwest of Rule, approximately 1.5 miles south of U.S. Highway 380 and approximately two miles west of State Highway 6 in Haskell County, Texas.

CITY OF SUDAN has applied for a renewal of TCEQ Permit No. WQ0010294001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 105,000 gallons per day via evaporation. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately 3000 feet northeast of the intersection of U.S. Highway 84 and Farm-to-Market Road 303 and approximately 4000 feet north of the intersection of U.S. Highway 84 and Farm-to-Market Road 1843 in Lamb County, Texas.

CITY OF ABILENE has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0010334004, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 18,000,000 gallons per day via Outfall 001; and at an annual average flow not to exceed 4,000,000 gallons per day via Outfall 002. The current permit also authorizes the disposal of treated domestic wastewater via irrigation of 1,960 acres of on-site and off-site properties and an additional 335 acres of on-site properties. The current permit also authorizes the disposal of sewage sludge on-site in the sewage sludge surface disposal site. The facility is located at 19000 County Road 309, approximately 1.5 miles north of the intersection of State Highway 351 and County Road 309, and 5 miles northeast of the intersection of Interstate Highway 20 and State Highway 351 in Jones County, Texas.

CITY OF BRENHAM has applied for a renewal of TPDES Permit No. WQ0010388001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,550,000 gallons per day. The current permit authorizes marketing and distribution of Class A sewage sludge. The facility is located at 2005 Old Chappell Hill Road, approximately 3,300 feet southeast of the intersection of Farm-to-Market Road 577 and State Highway 105, south of and adjacent to Hog Branch in the City of Brenham in Washington County, Texas.

CITY OF HITCHCOCK has applied for a renewal of TPDES Permit No. 10690-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,000,000 gallons per day. The facility is located approximately 1.0 mile south of the intersection of State Highway 6 and Farm-to-Market Road 519 in Galveston County, Texas.

THE CITY OF WALLIS has applied for a renewal of TPDES Permit No. WQ0010765001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 498,000 gallons per day. The facility is located approximately 5,000 feet northwest of the intersection of Farm-to-Market Road 1093 and State Highway 36 just north of State Highway 36 in Austin County, Texas.

TEXAS PARKS AND WILDLIFE DEPARTMENT has applied for a renewal of TCEQ Permit No. WQ0012234001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 3,000 gallons per day on 1.8 acres of evaporation pond. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately 3,250 feet east of Farm-to-Market Road 762 and approximately 1.2 miles north of Farm-to-Market Road 1462 within Brazos Bend State Park in Fort Bend County, Texas.

RR DEVELOPMENT TEXAS II INC has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014925001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 550,000 gallons per day. The facility will be located approximately 2.5 miles northwest

of the intersection of Texas Highway 35 and 188, to the east of Port Bay in Aransas County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200901969
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 20, 2009

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Texas Facilities Commission

Request for Proposals #303-9-11806

The Texas Facilities Commission (TFC), on behalf of the Office of the Attorney General, announces the issuance of Request for Proposals (RFP) #303-9-11806. TFC seeks a five year lease of approximately 12,240 square feet of office space in Texas City, Texas.

The deadline for questions is June 15, 2009, and the deadline for proposals is June 26, 2009, at 3:00 p.m. The award date is July 24, 2009. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Sandy Williams at (512) 475-0453. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=82507.*

TRD-200901942
Kay Molina
General Counsel
Texas Facilities Commission
Filed: May 18, 2009

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Request for Proposals #303-9-11845

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission (HHSC), announces the issuance of Request for Proposals (RFP) #303-9-11845. TFC seeks a five (5) or ten (10) year lease of approximately 3,758 square feet of office space in Georgetown, Williamson County, Texas.

The deadline for questions is June 9, 2009 and the deadline for proposals is June 22, 2009 at 3:00 p.m. The award date is August 19, 2009. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Sandy Williams at (512) 475-0453. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=82590.*

TRD-200901962
Kay Molina
General Counsel
Texas Facilities Commission
Filed: May 19, 2009

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Texas Health and Human Services Commission

Notice of Award of a Major Consulting Contract

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Texas Health and Human Services Commission announces the award of contract #529-06-0425-00037 to **Navigant Consulting, Inc.** an entity with a principal place of business at 30 South Wacker, Suite 3100, Chicago, IL 60606. The contractor will provide consulting Services to the Texas Health and Human Services Commission regarding the effectiveness of the Specialty Care Access Improvement: Telemedicine Project.

The total value of the contract with **Navigant Consulting, Inc.** is $556,390.00 The contract was executed on May 19, 2009 and will expire on August 31, 2011, unless extended or terminated sooner by the parties. **Navigant Consulting, Inc.** will produce numerous documents and reports during the term of the contract, with the final reporting due by August 2011.

TRD-200901975
David Brown
Assistant General Counsel
Texas Health and Human Services Commission
Filed: May 20, 2009

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Texas Department of Insurance

Company Licensing

Application to change the name of JEFFERSON STANDARD LIFE INSURANCE COMPANY to SECURITAS FINANCIAL LIFE INSURANCE COMPANY, a foreign life company. The home office is in Syracuse, New York.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200901973
Brenda Caldwell
Assistant General Counsel
Texas Department of Insurance
Filed: May 20, 2009

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Notice of Request for Qualifications of Applicants for Special Deputy Receiver RFQ-SDR-2009-1

Purpose of Request for Qualifications (RFQ)

On or after July 1, 2009, the Texas Department of Insurance ("TDI") will issue RFQ-SDR-2009-1 (the "2009 RFQ") for individuals or legal entities to become "Qualified Applicants" eligible to serve as a Special Deputy Receiver ("SDR") for receiverships under Texas Insurance Code Chapter 443.

Term of RFQ

The term of the 2009 RFQ will begin September 1, 2009 and end August 31, 2012, unless extended by the Commissioner. If you are cur-

rently qualified under a previous RFQ, your approval as a Qualified Applicant expires August 31, 2009. You must be approved in accordance with the 2009 RFQ to submit a bid on a Request for Proposals ("RFP") issued on or after September 1, 2009. All approvals of Qualified Applicants under the 2009 RFQ will terminate at the end of the term of the RFQ.

Submission of Application

The RFQ and application forms will be published on the TDI website on or about June 15, 2009. The forms may be downloaded at that time from http://www.tdi.state.tx.us/lorc/sdrcontractadmn.html, or a paper copy may be requested. Further information regarding the RFQ will appear as needed on TDI's website at this address. You must submit an application by 3:00 p.m. July 31, 2009 for it to be processed by September 1, 2009. An application submitted after July 31, 2009 will be processed sometime after September 1, 2009.

RFQ Approval Process

Applications must meet all requirements of the RFQ to be considered. Applications will be reviewed by the Commissioner's staff, and evaluated on the basis of the criteria in the RFQ. Once approved, Qualified Applicants will be eligible to submit bids on an RFP for an SDR issued during the term of the 2009 RFQ.

SDR's Duties

If an SDR is selected, the SDR shall perform duties assigned by the Receiver, which typically include:

Securing control of the insurer's operations, property, and records.

Evaluating, collecting, investing, and liquidating assets as appropriate.

Evaluating the insurer's personnel and contractors.

Supervising litigation filed by and against the receivership estate.

Operating information systems and extracting data.

Investigating and pursuing claims against parties who are liable to the insurer.

Identifying and recovering any preferential transfers.

Providing notice to policyholders, claimants and interested parties.

Handling claims, and coordinating with state insurance guaranty associations.

Creating and filing financial reports and tax returns.

Distributing assets to approved claimants, and closing the receivership estate.

Rights and Obligations

TDI is not responsible for any costs incurred in responding to this RFQ or any RFP, and reserves the right to accept or reject any or all applications. Approval as a Qualified Applicant does not confer any rights to the applicant, and TDI is under no obligation to award a contract on the basis of this RFQ or any RFP. TDI reserves the right to issue other RFQs for SDRs as needed.

Contact Information

Any requests for information should be directed to Lewis Wright, Financial Program - SDR Process, Texas Department of Insurance, P.O. Box 149104, Mail Code 305-2A, Austin TX 78714, telephone (512) 322-3463, e-mail sdrcontracting@tdi.state.tx.us.

TRD-200901977
Brenda Caldwell
Assistant General Counsel
Texas Department of Insurance
Filed: May 20, 2009

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Texas Lottery Commission

Instant Game Number 1204 "Precious Pearl 7's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1204 is "PRECIOUS PEARL 7'S". The play style is "key number match with multiplier".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1204 shall be $7.00 per ticket.

1.2 Definitions in Instant Game No. 1204.

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, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 7 SYMBOL, $7.00, $10.00, $15.00, $20.00, $40.00, $50.00, $100, $500, $2,000 and $77,000. The possible blue play symbols are: 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 7 SYMBOL and NECKLACE SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1204 - 1.2D

PLAY SYMBOL	CAPTION
1 (black)	ONE
2 (black)	TWO
3 (black)	THR
4 (black)	FOR
5 (black)	FIV
6 (black)	SIX
8 (black)	EGT
9 (black)	NIN
10 (black)	TEN
11 (black)	ELV
12 (black)	TLV
13 (black)	TRN
14 (black)	FTN
15 (black)	FFN
16 (black)	SXN
18 (black)	ETN
19 (black)	NTN
20 (black)	TWY
21 (black)	TWON
22 (black)	TWTO
23 (black)	TWTH
24 (black)	TWFR
25 (black)	TWFV
26 (black)	TWSX
28 (black)	TWET
29 (black)	TWNI
30 (black)	TRTY
31 (black)	TRON
32 (black)	TRTO
33 (black)	TRTH
34 (black)	TRFR
35 (black)	TRFV
36 (black)	TRSX
38 (black)	TRET
39 (black)	TRNI
40 (black)	FRTY
7 SYMBOL (black)	WIN
1 (blue)	ONE
2 (blue)	TWO
3 (blue)	THR
4 (blue)	FOR
5 (blue)	FIV
6 (blue)	SIX
8 (blue)	EGT
9 (blue)	NIN
10 (blue)	TEN

11 (blue)	ELV
12 (blue)	TLV
13 (blue)	TRN
14 (blue)	FTN
15 (blue)	FFN
16 (blue)	SXN
18 (blue)	ETN
19 (blue)	NTN
20 (blue)	TWY
21 (blue)	TWON
22 (blue)	TWTO
23 (blue)	TWTH
24 (blue)	TWFR
25 (blue)	TWFV
26 (blue)	TWSX
28 (blue)	TWET
29 (blue)	TWNI
30 (blue)	TRTY
31 (blue)	TRON
32 (blue)	TRTO
33 (blue)	TRTH
34 (blue)	TRFR
35 (blue)	TRFV
36 (blue)	TRSX
38 (blue)	TRET
39 (blue)	TRNI
40 (blue)	FRTY
7 SYMBOL (blue)	DOUBLE
NECKLACE SYMBOL (blue)	NKLAC
$7.00 (black)	SEVEN$
$10.00 (black)	TEN$
$15.00 (black)	FIFTN
$20.00 (black)	TWENTY
$40.00 (black)	FORTY
$50.00 (black)	FIFTY
$100 (black)	ONE HUND
$500 (black)	FIV HUND
$2,000 (black)	TWO THOU
$77,000 (black)	77 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 $7.00, $10.00, $15.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100 or $500.

H. High-Tier Prize - A prize of $2,000 or $77,000.

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 (1204), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1204-0000001-001.

K. Pack - A pack of "PRECIOUS PEARL 7'S" Instant Game tickets contains 075 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "PRECIOUS PEARL 7'S" Instant Game No. 1204 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 "PRECIOUS PEARL 7'S" Instant Game is determined once the latex on the ticket is scratched off to expose 44 (forty-four) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins the PRIZE shown for that number. If a player reveals a "BLACK 7" symbol, the player wins the PRIZE shown for that symbol. If a player reveals a "BLUE 7" symbol, the player wins DOUBLE the PRIZE shown for that symbol. If a player reveals a "BLUE NECKLACE" symbol, the player wins all 20 prizes 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 44 (forty-four) 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 44 (forty-four) 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 44 (forty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 44 (forty-four) 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 "BLUE 7" (doubler) play symbol will only appear as dictated by the prize structure.

C. The "NECKLACE" (win all) play symbol will only appear as dictated by the prize structure.

D. When the "NECKLACE" (win all) play symbol appears, there will be no occurrence of any YOUR NUMBERS play symbols matching to any of the WINNING NUMBERS play symbols.

E. There will be a minimum of 4 and a maximum of 12 blue play symbols on every ticket unless otherwise restricted by the prize structure.

F. No more than four (4) matching non-winning prize symbols will appear on a ticket.

G. No duplicate non-winning YOUR NUMBERS play symbols on a ticket regardless of color.

H. No duplicate WINNING NUMBERS play symbols on a ticket.

I. Non-winning prize symbols will never be the same as the winning prize symbol(s).

J. YOUR NUMBER play symbols matching WINNING NUMBER play symbols will be a win, regardless of color.

K. No prize amount in a non-winning spot will correspond with the play symbol (i.e. 20 and $20).

L. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "PRECIOUS PEARL 7'S" Instant Game prize of $7.00, $10.00, $15.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "PRECIOUS PEARL 7'S" Instant Game prize of $2,000 or $77,000, 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 "PRECIOUS PEARL 7'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "PRECIOUS PEARL 7'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "PRECIOUS PEARL 7'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,040,000 tickets in the Instant Game No. 1204. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1204 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$7	403,200	12.50
$10	470,400	10.71
$15	201,600	25.00
$20	235,200	21.43
$50	67,200	75.00
$100	35,700	141.18
$500	2,562	1,967.21
$2,000	70	72,000.00
$77,000	5	1,008,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.56. 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. 1204 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

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. 1204, 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-200901923
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: May 15, 2009

Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on May 18, 2009, 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 Charter Communications VI, LLC d/b/a Charter Communications for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 37004 before the Public Utility Commission of Texas.

The requested amendment is to expand the service area footprint to include the Town of Woodloch, 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 37004.

TRD-200901960
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 19, 2009

Notice of Application for Amendment to Certificated Service Area Boundary

Notice is given to the public of an application filed on May 11, 2009, with the Public Utility Commission of Texas for an amendment to a certificated service area boundary.

Docket Style and Number: Application of Taylor Telephone Cooperative, Inc. to Amend Certificate of Convenience and Necessity to Modify the Service Area Boundary between the Hawley Exchange (Taylor) and the Anson Exchange (AT&T Texas). Docket Number 36982.

The Application: The minor boundary amendment will transfer a portion of AT&T Texas' serving area in the Anson exchange to Taylor's Hawley exchange to allow Taylor to provide telecommunications services to one residential customer. AT&T Texas 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 June 5, 2009, 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 36982.

TRD-200901928
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 15, 2009

Notice of Application for Designation as an Eligible Telecommunications Carrier

Notice is given to the public of an application filed with the Public Utility Commission of Texas on May 11, 2009, for designation as an eligible telecommunications carrier (ETC) pursuant to P.U.C. Substantive Rule §26.418.

Docket Title and Number: Application of Tennessee Telephone Services, LLC d/b/a Freedom Communications USA, LLC for Designation as an Eligible Telecommunications Carrier. Docket Number 36979.

The Application: The company is requesting ETC 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 United States Code §214(e) and P.U.C. Substantive Rule §26.418, the commission, either upon its own motion or upon request, shall designate qualifying common carriers as ETCs for service areas set forth by the commission. Freedom Communications USA, LLC seeks ETC/ETP designation in the service areas of Southwestern Bell Telephone Company d/b/a AT&T Texas, and Verizon Southwest, its designated service area. The company holds Service Provider Certificate of Operating Authority Number 60824.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by June 18, 2009. 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 36979.

TRD-200901929
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 15, 2009

Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on May 12, 2009, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Broadvox-CLEC, LLC for a Service Provider Certificate of Operating Authority, Docket Number 36986 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, ISDN, HDSL, SDSL, RADSL, VDSL, Optical Services, T1-Private Line, Switch 56 KBPS, Frame Relay, Fractional T1, long distance, and wireless services.

Applicant's requested SPCOA geographic area includes the area of Texas currently served by Southwestern Bell Telephone Company d/b/a AT&T Texas, GTE Southwest d/b/a Verizon Southwest, Windstream, and Embarq.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than June 3, 2009. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 36986.

TRD-200901930
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 15, 2009

Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing on May 11, 2009, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The applicant will file the LRIC study on or about May 21, 2009.

Docket Title and Number: Application of Central Telephone Company of Texas d/b/a Embarq for Approval of LRIC Study for New Custom Calling Feature Referred to as Outbound Call Block Feature Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 36980.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 36980. Written comments or recommendations should be filed no later than forty-five (45) days after the date of a sufficient study and should be filed at 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 telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 36980.

TRD-200901926
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 15, 2009

Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing on May 11, 2009, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The applicant will file the LRIC study on or about May 21, 2009.

Docket Title and Number: Application of United Telephone Company of Texas, Inc. d/b/a Embarq for Approval of LRIC Study for New Custom Calling Feature Referred to as Outbound Call Block Feature Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 36981.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 36981. Written comments or recommendations should be filed no later than forty-five (45) days after the date of a sufficient study and should be filed at 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 telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 36981.

TRD-200901927
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 15, 2009

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University of North Texas

Notice of Invitation for Consultants to Provide Offers of Consulting Services Related to Evaluation of the Alumni Database System

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 UNT in evaluating and analyzing UNT's alumni database to determine the effectiveness of the current application utilized by the Division of Advancement; evaluate the effectiveness of the PeopleSoft Contributor Relations application and provide a cost/benefit analysis of converting to a different application to include a recommendation of new solution; evaluate the effectiveness of the processes between the functional and technical units in regards to effectiveness of data extraction, application modifications, and customized reporting features and provide recommendations for improving the project management system utilized by Advancement Services and CITC; evaluate the health of the data currently in the alumni database and make recommendations for maximizing data quality and lowest expense and identify weaknesses in current data-mining capabilities.

Specifications:

Any consultant submitting an offer in response to this Invitation must provide a response to the Request for Proposals posted on the University of North Texas website under the Bid Listings Page found at http://pps.unt.edu. The following information will need to be included in the response: (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 UNT, and any other information the consultant desires UNT to consider in connection with the consultant's offer; (8) information to assist 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 UNT in assessing the consultant's experience performing the requested services for other complex institutions or systems of higher education; (10) information to assist UNT in assessing whether the consultant will have any conflicts of interest in performing the requested services; (11) information to assist UNT in assessing the overall cost to UNT for the requested services to be performed; and (12) information to assist UNT in assessing the consultant's capability and financial resources to perform the requested services.

Selection Process:

The consulting services do not relate to services previously provided to UNT.

Selection of the Successful Offer (defined below) submitted in response to the Request for Proposal posted under the bid listings tab found at http://pps.unt.edu, RFP752-9-75915MR by the Submittal Deadline located in the posted RFP 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 proposal. 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 (RFP75-9-75915MR) posted on UNT's website http://pps.unt.edu by the Submittal Deadline 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 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 the Request for Proposal. 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.

Submittal Deadline:

To respond to the Request for Proposal, consultants must submit the information requested in the Specification section of the RFP found at http://pps.unt.edu and any other relevant information in a clear and concise written format to: Melissa Redfearn, Contract Specialist, University of North Texas, 2310 North Interstate 35-E, Denton, Texas 76205. Offers must be submitted in accordance with the posted RFP.

Questions:

Questions concerning this Invitation should be directed to: Melissa Redfearn, Contract Specialist, (940) 565-3200, or University of North Texas, 2310 North Interstate 35-E, Denton, Texas 76205. 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-200901974
Carrie Stoeckert
Assistant Director of PPS
University of North Texas
Filed: May 20, 2009

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University of North Texas System

Notice of Request for Information for Outside Legal Services Related to Real Estate, Oil and Gas, and Mineral Interest Matters

The University of North Texas System (UNT System) requests information from law firms interested in representing the agency and its component institutions in real estate, oil and gas, and mineral interest matters. This RFI is issued to establish (for the time frame beginning September 1, 2009 to August 31, 2010, with the potential for an extension at the option of the UNT System until August 31, 2011) a referral list from which the UNT System, by and through its Office of Vice Chancellor and General Counsel, will select appropriate counsel for representation on specific real estate, oil and gas, and/or mineral interest matters as the need arises.

Description: The UNT System is currently comprised of one health institution, the University of North Texas Health Science Center at Fort Worth, and two academic institutions, the University of North Texas and the University of North Texas Dallas Campus, which are located in three different cities in Texas. Subject to approval by the Office of the Attorney General for the State of Texas (OAG), the UNT System will engage outside counsel to provide advice and counsel in regard to a broad range of real estate matters involving the Agency and the Agency's component institutions, which shall include but not be limited to addressing issues related to transactions involving real estate, oil and gas, and mineral interests. Counsel will evaluate proposals, review surveys, examine title and title commitments, assist in curing title exceptions and/or defects, draft, review and negotiate contracts and lease agreements, and provide such other guidance and expertise as may be necessary to protect and develop the Agency's varied real estate interests, oil and gas interests, and/or mineral interests in certain properties. Counsel may further be called upon to assist in the acquisition of real estate property and/or mineral interests in certain properties. The UNT System invites responses to this RFI from qualified firms for the provision of such legal services under the direction and supervision of UNT System's Office of Vice Chancellor and General Counsel.

Responses; Qualifications: Responses to this RFI should include at least the following information: (1) a description of the firm's or attorney's qualifications for performing the legal services requested, including the firm's prior experience in real estate, oil and gas and mineral interest-related matters, and appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision both of the firm's legal services generally and real estate, oil and gas, and mineral interest matters in particular; (2) the names and experience of the attorneys who may be assigned to work on such matters; (3) the submission of fee information (either in the form of hourly rates for each attorney and paralegal who may be assigned to perform services in relation to real estate, oil and gas and mineral interest matters, flat fees, or other fee arrangements directly related to the achievement of specific goals and cost controls) and billable expenses; (4) disclosures of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the UNT System, a component institution of the UNT System, or to the State of Texas, or any of its boards, agencies, commissions, universities, or elected or appointed officials); and (5) confirmation of willingness to comply with policies, directives and guidelines of the UNT System, the component institutions of the UNT System and the Texas OAG.

The law firm(s) or attorney(s) will be selected based on demonstrated knowledge and experience, quality of staff assigned to perform services under the contract, compatibility with the goals and objectives of the UNT System, and reasonableness of proposed fees. The successful firm(s) or attorney(s) will be required to sign the Texas OAG's Outside Counsel Agreement, and execution of a contract with the UNT System is subject to approval by the Texas OAG. The UNT System reserves the right to accept or reject any or all responses submitted. The UNT System is not responsible for and will not reimburse any costs incurred in developing and submitting a response.

Format and Person to Contact: Two copies of the response are requested if submitted by non-electronic means. The response should be typed, preferably double spaced, on 8 1/2 x 11 inch paper with all pages sequentially numbered, and either stapled or bound together if submitted by non-electronic means. They should be sent by mail, facsimile, or electronic mail, or delivered in person, marked "Response to Request for Information," and addressed to Michelle Williams, Associate General Counsel, University of North Texas System, 1155 Union Circle, #310907, Denton, TX 76203-5017; or email mwilliams@unt.edu or fax to (940) 369-7026.

Deadline for Submission of Response: All responses must be received at the address set forth above no later than 5:00 p.m., June 30, 2009. Questions regarding this request may be directed to Michelle Williams at (940) 565-2717.

TRD-200901963
Carrie Stoeckert
Assistant Director of PPS
University of North Texas System
Filed: May 19, 2009

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Request for Information - Bond Counsel

PURPOSE

The University of North Texas System (System) is requesting information from law firms desiring to serve in a nonexclusive capacity as Bond Counsel for the System.

DESCRIPTION OF SYSTEM AND BOND ISSUANCE AUTHORITY

The University of North Texas System is comprised of the University of North Texas, the University of North Texas Health Science Center at Fort Worth and the University of North Texas System Center at Dallas. The System is governed by a nine-member Board of Regents. The current Board members are: Gayle Strange, Chairman; Charles Mitchell; Robert Nickell; Al Silva; C. Dan Smith; Jack Wall; Don Buchholz; Gwyn Shea; and Rice Tilley, Jr.

Bonds are issued under authority granted the System in Article VII, §17 of the Texas Constitution. Federal tax related matters regarding bonds issued by the System, including strategies and management practices in the conduct of a debt program, requires a close working relationship with Bond Counsel. The System invites responses to this RFI from qualified firms for the provision of such legal services.

TIME SCHEDULE AND PERSON TO CONTACT

Format and Person to Contact: Three copies of the response are requested if submitted by non-electronic means. The response should be typed, preferably double spaced, on 8 1/2 x 11 inch paper with all pages sequentially numbered, and either stapled or bound together if submitted by non-electronic means. They should be sent by mail, facsimile, or electronic mail, or delivered in person, marked "Response to Request for Information," and addressed to Michelle Williams, Associate General Counsel, University of North Texas System, 1155 Union Circle, #310907, Denton, TX 76203-5017; or email mwilliams@unt.edu or fax to (940) 369-7026.

Deadline for Submission of Response: All responses must be received at the address set forth above no later than 5:00 p.m., June 30, 2009. Questions regarding this request may be directed to Michelle Williams at (940) 565-2717.

RESPONSES

Responses to this RFI should include the following information:

1. A brief description of the firm or attorney's history and general experience.

2. A description of the firm or attorney's qualifications for performing the legal services of Bond Counsel, including prior experience in bond issuance matters and securities law issues for state agencies with particular emphasis on Texas college and university issues.

3. A description of the insurance coverage carried by your law firm, including but not limited to, disclosure of the insurer and policy(ies) limits.

4. The identity of each of the lawyers who will be assigned to work with the University and a description of his or her experience and legal background in rendering legal opinions in the area of public finance.

5. Outline of the firm's general experience during the past five years with the major rating agencies.

6. The submission of fee information (either in the form of hourly rates for each attorney who may be assigned to perform services for the System, flat fees, formula for percentage payment based on bond or financial paper issuance, or other fee arrangements directly related to the achievement of specific goals and cost controls) and billable expenses. In the initial review, this information will only be considered for informational purposes and to establish the current market range with respect to fee information. After a respondent has been identified as the most highly qualified, the System will attempt to negotiate a contract with the respondent that includes a fair and reasonable payment for services.

7. Discuss the management philosophy of the firm as it relates to the control of fees and expenses and allowances for non-billable time. Explain your billing procedure.

8. Provide any other information about the firm that you feel is relevant to the consideration of your firm being chosen as Bond Counsel.

9. Confirmation of willingness to comply with policies, directives and guidelines of the System and the Attorney General of the State of Texas as well as state and federal law.

BASIS OF AWARD

Issuance of this RFI in no way constitutes a commitment by the System to award a contract.

The System will make the selection for Bond Counsel based upon its perception of demonstrated competence and qualifications, including familiarity with public finance and state and federal tax law; quality of staff assigned to perform services under the contract; compatibility with the goals and objectives of the UNT System and reasonableness of proposed fees. The successful firm(s) or attorney(s) will be required to sign a contract based on the Outside Counsel Agreement form developed by the Texas Office of the Attorney General (OAG) and execution of a contract with the UNT System is subject to approval by the OAG.

System Administration will give first consideration to firms whose principal place of business is located in Texas. By issuing this RFI, the System has not committed itself to employ a Bond Counsel. The System also retains the right to employ one or more firms to act as Bond Counsel or to address financial or security issues during the time period in which a contract related to this RFI is in effect. The System reserves the right to make those decisions after receipt of responses and the System Administration's decision on these matters is final.

The System reserves the right to negotiate individual elements of a response and to reject any and all responses. Any award will be contingent on the negotiation of a contract and final approval by the Office of the Attorney General.

SCOPE OF SERVICES AND PAYMENT TERMS

The selected Bond Counsel shall provide representation to the System on specific bond and commercial paper matters, securities law issues, and related financial matters as the need arises. The System's needs include the usual and necessary services of a Bond Counsel in connection with the issuance, sale and delivery of bonds. Bond Counsel shall be responsible for all duties and services necessary or advisable to facilitate the issuance of bonds as stated on the attached schedule. Bond Counsel may also be requested to address issues related to the issuance of commercial paper and increasing the System's self liquidity.

Legal fees and expenses, if any, for legal services under the terms of this engagement that are related to bond or commercial paper issuance shall be paid only out of the principal amount of the issuance and are therefore contingent upon the issuance of the bonds or commercial paper.

Hourly fees shall be paid for work related to increasing the System's self liquidity and for other projects that do not involve issuances and that do involve more than casual or intermittent services. For casual or intermittent services not related to a specific or future bond or commercial issue, no fee will be charged.

There shall not be individual liability of any member of the Board of Regents or other officials of the University, for the payment of any amounts due hereunder.

TERM OF AGREEMENT

The contract term for this engagement will be for the period from September 1, 2009 to August 31, 2010 with a potential extension at the option of the System until August 31, 2011. The System retains the right to terminate the contract for legal services for any reason subject to written notice and upon payment of earned fees and expenses accrued as of the date of termination.

COST INCURRED IN RESPONDING

Issuance of this RFI in no way constitutes a commitment by the System to pay any legal services incurred either in the preparation of a response to this RFI or for the production of any contract for legal services. All costs directly or indirectly related to preparation of a response to this RFI or any supplemental information required to clarify the RFI which may be required by the System shall be the sole responsibility of, and shall be borne by, the Respondent.

RELEASE OF INFORMATION

The System Administration, during the response evaluation process or prior to contract award, shall not release information submitted relative to this request.

OPEN RECORDS

All responses shall be deemed, once submitted, to be the property of the System and subject to the Public Information Act, Chapter 552 of the Texas Government Code.

SCHEDULE OF BOND COUNSEL FEES

The Bond Counsel will perform all usual and necessary legal services as Bond Counsel. Specifically, they will prepare and direct legal proceedings and perform other necessary legal services with reference to the authorization, sale and deliver of bonds, including the following:

1. Preparation of all resolutions and other instruments pursuant to which bonds will be authorized, sold, and delivered in consultation with the Board of Regents of the System; the Underwriters with respect to the bonds, if any; the Financial Advisor; and the officers of the System.

2. Preparation of any trust indenture or trust agreements authorizing or securing the bonds.

3. Attendance at meetings of the Board of Regents of the System to the extent required or requested with reference to the authorization and issuance of the bonds.

4. Attendance at meetings with prospective bond purchasers or rating agencies to the extent required or requested.

5. Attendance at meetings of the State Bond Review Board to the extent required or requested.

6. Obtaining the approval of the bonds of the Attorney General of the State of Texas and the registration of the bonds by the Comptroller of Public Accounts of the State of Texas, as required by law.

7. Supervising the execution of the bonds and delivery thereof to the purchasers.

8. When so delivered, rendering an opinion covering the validity of the bonds under Texas law and the tax-exempt status of the interest thereon under federal income tax laws.

9. Interpretations concerning bond covenants when requested by representatives of the System.

For each separate installment or series of bonds, except "advance refunding bonds," fees covering legal services as Bond Counsel will be calculated as follows:

1. Minimum fee of $_____________ for issues the principal amount of which is $10,000,000 or less;

2. For issues the principal amount of which is more than $10,000,000 but not exceeding $25,000,000, $______________ per $1,000 increment of the principle amount;

3. For issues the principal amount of which is more than $25,000,000 but not exceeding $50,000,000, $______________ per $1,000 increment of the principal amount;

4. For issues the principle amount of which is more than $50,000,000 but not exceeding $100,000,000, $______________ per $1,000 increment of the principal amount; and

5. For issues the principle amount of which is more than $100,000,000, $_____________ per $1,000 increment of the principle amount.

The fee for "advance refunding" bonds will be $_____________ per $1,000 principal amount.

The payment of fees described above shall be contingent upon the delivery of the bonds.

Bond Counsel shall be required to bill in accordance with the UNT System's Outside Counsel Billing Guidelines. Actual out-of-pocket expenses shall be eligible for reimbursement to the extent allowable under the Billing Guidelines.

The above fees do not include any special services not normally included in the legal services performed by Bond Counsel described above, such as (i) litigation; (ii) legal services involving direct responsibility for proceedings before administrative agencies including, by way of example, the Texas Higher Education Coordinating Board; the Internal Revenue Service; the Securities and Exchange Commission; and the State Securities Administrator; (iii) preparation of any prospectuses, official statements, or other materials which must be prepared in accordance with various securities laws; (iv) title examinations or title opinions; and (v) negotiating any special or unusual contracts not necessary for the issuance of bonds.

The University of North Texas System Office of General Counsel Outside Counsel Billing Guidelines

These guidelines are intended to give structure and predictability to the relationship between the University of North Texas System and Outside Counsel. From the University of North Texas System's perspective, teamwork is the key to quality and cost-effective legal representation. The University of North Texas System and its component institutions (collectively, UNT System) expect to be billed in accordance with the following Outside Counsel Billing Guidelines:

1) Hourly Rates. The hourly rates for each partner, of counsel, associate and paralegal working on UNT System matters shall be billed at the rates set forth in Addendum B of the Outside Counsel Contract, but shall in no event exceed $500.00 an hour.

2) Billable Time.

a) The UNT System will only pay for the services of attorneys, paralegals, patent agents, and technical specialists. All time must be billed in no more than quarter hour increments, and must reflect only actual time spent. Block billing will not be reimbursed. Time entries must note the date performed, identify the legal professional performing the task, describe the task(s) completed, show the time taken to complete each task, and state the applicable hourly rate. Tasks referencing correspondence and filings must describe the document received or authored. The UNT System expects to be billed for the actual time it takes to modify standardized forms, filings, and/or correspondence for use on the matter you are billing. We will not reimburse you for the time it originally took you to prepare them. The UNT System will not pay for review,

execution, and processing of the standard Outside Counsel Contract. No formula or value billing is permitted.

b) The UNT System will not pay for attorneys or paralegals of the firm educating themselves, training, or doing work of a transient nature on a UNT System matter. Each designated professional is expected to perform work of a type commensurate with his/her professional title. Without prior approval, the UNT System will not pay for more than one attorney or legal professional to perform any task. The UNT System will also not pay for duplicate review and/or analysis of documents or legal research. The UNT System's view is that the most efficient use of attorney time is to maintain continuous contact with the file so that it is not necessary to review the file to reacquaint themselves. Thus, repeated time spent reviewing the file should not be necessary and will not be reimbursed.

c) Legal research must be pre-approved by the UNT System. A request to undertake legal research should provide the UNT System with an estimate of either time or dollar amount to be expended. The need for legal research will be addressed on a case-by-case basis.

d) All conferences must describe the attendees and purpose of the meeting, and, if more than one firm member is in attendance, a justification for multiple attendees from the firm.

e) The UNT System will not pay for Administrative Staff, such as secretarial support, case clerks, and accounting and billing clerks, including but not limited to the following: overtime, file opening, file organization, docketing or other administrative tasks; preparation of billing, invoice review, budget preparation or communications regarding same or any other accounting matter.

3) Expenses. The UNT System expects you to anticipate and include expenses and disbursements as part of your overhead and, therefore, part of your basic hourly rate. Accordingly, the UNT System will not reimburse the firm for:

a) Expenses disallowed under the terms and conditions set forth in the Outside Counsel Contract;

b) Copying charges (routine, day-to-day);

c) Fax charges;

d) Routine Postage;

e) Office Supplies;

f) Local, long distance or cellular telephone charges;

g) Local travel within the Dallas-Fort Worth-Denton Metroplex, including mileage, parking and tolls; and

h) All delivery services incurred by in-firm staff.

The UNT System will reimburse the actual cost for the following expenses:

a) Pre-approved volume copying;

b) Overnight courier charges and third party courier services, with an explanation of the nature and purpose of the charge (i.e., why the task was not completed in a timely manner to permit reduced rates); and

c) Allowable expenses as expressly stated in Provision 5.2.2 of the Outside Counsel Contract.

All other expenses must be included within the hourly rates of the firm unless they are truly extraordinary and the UNT System advance approval has been obtained prior to incurring the expense.

4) Invoices. The UNT System expects a firm's invoices to show the same high quality and care it takes with its legal work. Professional time and disbursements should be reviewed by the billing partner and those portions that are not necessary for the legal task(s) described should be deleted before the bill is submitted for payment.

a) Invoices for legal services shall be submitted to the person designated in the Outside Counsel Contract, preferably in electronic form via email, within 10 business days of the end of the month in which legal services are rendered.

b) Each statement should indicate the UNT System institution for which the legal services were performed and the Outside Counsel Contract number under which the legal services were performed.

c) Allowable costs and expenses should be billed in accordance with the guidelines set forth in paragraph 3 above and supported by attached copies of invoices for amounts in excess of $50.00.

d) A summary sheet should be included indicating the total legal fees and expenses, the amount of the contract and the total legal fees and expenses invoiced to date.

It is the responsibility of the firm to monitor the total amount of fees and expenses invoiced under the contract. Once 75% of the contract amount has been invoiced and the remaining 25% will not cover the estimated legal fees and expenses for the remaining term of the contract, the firm should advise the UNT System Office of General Counsel (OGC) in writing requesting an increase in the contract amount and stating the reason for the additional legal fees and expenses. An amendment will be prepared for signature by the firm, UNT System and the Attorney General. Legal services rendered exceeding the contract amount are not allowed and will not be paid. It is the firm's responsibility to advise the Office of General Counsel prior to exceeding the contract limit.

If you have questions regarding these guidelines or any outside counsel matters, please contact: Michelle Williams, Associate General Counsel, The University of North Texas System, 1155 Union Circle #310907, Denton, Texas 76203-5017, (940) 565-2717, mwilliams@unt.edu.

TRD-200901961
Carrie Stoeckert
Assistant Director of PPS
University of North Texas System
Filed: May 19, 2009

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Texas Water Development Board

Request for Statements of Qualifications for Water Research

Pursuant to 31 Texas Administrative Code §355.3, the Texas Water Development Board (TWDB) requests the submission of Statements of Qualifications leading to the possible award of multiple contracts on an as-needed basis to assist with completing groundwater availability modeling simulations in support of joint planning in groundwater management areas.

The initial term of the contract awarded as a result of these contracts shall be from date of award through August 31, 2010 provided the vendor meets all performance measures.

TWDB, with the awarded vendor's concurrence, has the exclusive option to renew for four (4) additional one year periods. Additionally, TWDB shall have the option to extend this contract for a period of 120 days after the final renewal period. Renewals are contingent upon agreement of both parties, under the same terms and conditions, provided the vendor has met all performance measures and subject to availability of appropriated funds.

Contracts may be amended to reflect additions or deletions of like services. In the event of additions or deletions of service, however, unit prices shall remain in effect as provided with response. Escalation that is documented and approved by TWDB is allowed during the renewal period at the sole discretion of TWDB.

Description of Research Objectives

Since 1999, the Texas Legislature has approved funding for the Groundwater Availability Modeling Program. The purpose of the Groundwater Availability Modeling (GAM) Program is to provide reliable and timely information on groundwater availability to the citizens of Texas to ensure adequate supplies or recognize inadequate supplies over a 50-year planning period. Numerical groundwater flow models of the aquifers in Texas will be used to make this assessment of groundwater availability. These services may be utilized by Texas state agencies, local and federal governmental units and private firms and individuals. The program's intent is to qualify multiple respondents to assist with running groundwater availability models to calculate estimates of managed available groundwater in support of the groundwater management area directive to determine desired future conditions of aquifers.

The success of the GAM program depends on the continued interest and support of stakeholders and the Texas Legislature. Ongoing interest is vital to ensure that the most up-to-date model information will be available to address groundwater resource issues for each aquifer. Continued funding is required to update models and develop models for the minor aquifers. The GAM models for the major aquifers, representing 95 percent of groundwater used in Texas, were completed by October 1, 2004. Information and reports on the models are available to the public on TWDB's web site and the models are available on CD upon request. Please review www.twdb.state.tx.us/GAM for more information about the GAM program.

Due to expected volume of model run requests TWDB will receive in response to joint planning in groundwater management areas, we are hoping to implement a pilot program to hire external modelers on an as-needed basis to run model simulations. We expect to hire enough qualified applicants so that we could rotate model run requests through the pool of available internal and external modelers. The model runs would have a pre-set cost established on a three-tier approach based on the complexity of the model run. It is anticipated that the pre-set cost for this three-tier approach is as follows:

Level 1 = $7,000

Level 2 = $10,000

Level 3 = $15,000

This approach would mitigate additional costs the applicant would bear attempting to track hours or other related expenses. Once the model run request has been completed by the applicant, a model run report, the model files, all supporting materials, and an invoice based on the pre-set cost are delivered to TWDB for final review and approval. The model run reports would look the same as our current runs and would go through the same rigorous review process before being delivered to customers.

If the program proves to be cost and time effective, staff may return to the TWDB to expand funding for the program. If effective, the program will increase our output of model runs and allow staff to continue the development and improvement of groundwater availability models.

Deliverables include reports (see samples), all model files, any other files used to manipulate model files and to develop figures, Use MODFLOW code, Groundwater Vistas or PMWIN for pre- and post-processor, Word for report, ESRI ArcGIS for post processing and figures.

Reports in Microsoft Word or compatible program documenting the model run to include the following sections:

* Executive Summary--Which includes a synopsis of the request;

* Identification of Requestor--The individual who requested the model simulation and their affiliated groundwater management area;

* Description of the Request--Summary of model simulation request;

* Methods--Provide sufficient information that GAM staff can duplicate the process or processes used;

* Parameters and Assumptions--Include model version, model limitations, root mean error, pre and post-processor software used (including version), and any other relevant assumptions of parameters;

* Discuss results including relevant water budget;

* References--Using United States Geological Survey style;

* Appendices--As applicable.

Additional deliverables and stipulations include:

* Provide all model files using MODFLOW code, Groundwater Vistas or Processing MODFLOW for Windows (PMWIN);

* Provide any other files or updates used to manipulate model files to develop figures for example ESRI ArcGIS. Adobe Illustrator, Microsoft Excel, and so forth;

* Provide resume's with response for evaluation and approval;

* Respondent must disclose contracts that may conflict with existing or future contracts and locations, and update TWDB as changes occur;

* Provide declaration on the availability and responsiveness of staff assigned to the potential contracts and report conflicts of interest to contract administrator; and

* Respondent agrees to ensure the continuity of the team members assigned to the project. The respondent represents and warrants that the Modeler shall be available for the entirety of the project and shall remain available through out the term of the contract.

Description of Skills

Statements of Qualifications (SOQ) will be ranked based on the following skills: The minimum skills and qualifications for this SOQ are individuals that have experience as a Groundwater Modeler (GM) who have qualifications as a Geoscientist I, II, III or Hydrologist I, II, III as defined in the State of Texas position classification tables.

* Ability to conduct and assist with routine to moderately complex groundwater modeling studies. Work involves conducting and overseeing the execution of technical projects; preparing designs, plans, estimates, calculations, and documentation; and performing or overseeing the performance of model reviews, testing, collection of data, and implementation of data into model files, model runs, data extraction, interpretation, and documentation.

* Plans, organizes, and implements the acquisition of necessary water resources data to develop, run, and analyze groundwater flow models. This may entail proper documentation of source information, application processes, and quality assurance procedures.

* Designs and implements regional and local spatial analysis for groundwater studies.

* Assists with the preparation and review of technical groundwater reports.

* Researches and delivers written and verbal responses to public, inter, and intra agency inquiries. May include presentations at public meetings summarizing modeling studies.

* Graduation from an accredited four-year college or university with BS in Hydrology, Water Resources, Geology, Hydrogeology or related field with 0 to 4 years work experience. Experience and education may be substituted for one another on a year-by-year basis.

* Experience in groundwater modeling using MODFLOW; prefer experience using Groundwater Vistas.

* Experience with GIS applications; prefer ArcGIS with knowledge of spatial analyst extension and exposure to geodatabase use and design.

* Prefer familiarity with water resources data of Texas.

* Knowledge of MODFLOW and modeling techniques.

* Knowledge of basic hydrological and geological concepts, techniques, and analysis.

* Ability to train others; to plan, assign, and/or supervise the work of others; to plan projects; and to apply hydrogeological concepts.

* Skill in the operation of Windows-based computers and software such as spreadsheets, database, and Word. Advanced knowledge of programming including the ability to acquire, manipulate, and develop water resources data in multiple formats and/or from various sources.

* Ability to communicate effectively both verbally and in writing.

Oral presentations may be required as part of qualification review. However, invitation for oral presentation is not an indication of probable selection.

Description of Funding Consideration

A total of up to $150,000 has been identified for groundwater availability simulations from the TWDB's Research and Planning Fund for these projects for Fiscal Year 2009. Additional funds may be identified.

In the event that acceptable Statements of Qualifications are not submitted, the TWDB retains the right to not award funds for the contracts.

Deadline, Review Criteria, and Contact Person for Additional Information.

Five double-sided copies of a complete Statement of Qualifications, including the required attachments, must be filed with the TWDB prior to 12:00 p.m., June 15, 2009. The Statement of Qualifications shall be submitted to meet the following: **NOTE: Failure to return the required items with the response will result in rejection of the offer.**

ORIGINAL: Submit one complete original response (marked Original) which shall include the solicitation document and any additional pricing schedules.

COPIES: Submit four unbound copies which shall NOT include any pricing for the evaluation committee's review.

* Be on single-sided 8 1/2 x 11-inch paper. Response may be tab indexed.

* Be delivered to the address noted in this solicitation.

* Be clearly marked "RESPONSE TO SOQ, Texas Register No.".

* Be complete and comprehensive. TWDB will not be responsible for locating or securing information that is not included in the offer.

Provide information in the following order:

Section 1: Company Profile Summary and History--Two pages maximum. Respondent information to include the following:

* Company name, address, and phone number, legal status (corporation, partnership, joint venture, sole proprietorship).

* Name, phone number, and email address of person TWDB should contact with any questions on the offer.

* Name and title of person submitting offer with the authority to bind the company.

* Describe the general nature of previous work, the number of years in business, size and scope of operation.

Section 2: Company References: Respondent shall provide references from a minimum of three customers to whom the respondent has provided services in the past 36 months similar to the scope of services described in this specification.

Section 3: Resumes of individual modelers that directly relate to the description of skills listed above. Respondent should be the one responsible for running the models-five pages maximum.

Statements of Qualifications will be evaluated according to 31 Texas Administrative Code §355.5 and the Statements of Qualifications Review Criteria rating form included in the TWDB's Guidelines for Water Research Grants. Research shall not duplicate work planned or underway by state agencies. All potential applicants must contact the TWDB to obtain these guidelines.

Statements of Qualifications must be directed either in person to Mr. David Carter, Texas Water Development Board, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas; or by mail to Mr. David Carter, Texas Water Development Board, P.O. Box 13231-Capitol Station, Austin, Texas 78711-3231.

Requests for information, the TWDB's rules covering the Research and Planning Fund, detailed evaluation criteria, more detailed research topic information, and the guidelines may be directed to Mr. David Carter at the preceding address or by calling (512) 936-6079. All technical questions should be directed to Ms. Cindy Ridgeway at (512) 936-2386.

TRD-200901957
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Filed: May 19, 2009

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).