TEXAS REGISTER

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Felicia Mora
10th Grade

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

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

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IN THIS ISSUE

WITHDRAWN RULES

ADOPTED RULES

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-0803-GA

Requestor:

Mr. Bill Segura, Chancellor

Texas State Technical College System

3801 Campus Drive

Waco, Texas 76705

Re: Whether Texas State Technical College (TSTC) can legally enter into a student loan program with a private lender, whereby TSTC and the private lender share the risk of students defaulting on the loans (RQ-0803-GA)

Briefs requested by July 10, 2009

RQ-0804-GA

Requestor:

Ms. Loretta R. DeHay

Interim Administrator

Texas Real Estate Commission

Post Office Box 12188

Austin, Texas 78711-2188

Re: Whether under chapter 1102 of the Occupations Code, the Texas Real Estate Commission has jurisdiction to take disciplinary action against a licensed inspector who performs a real estate inspection for a person who is not a buyer or seller or potential buyer or seller of real property (RQ-0804-GA)

Briefs requested by July 15, 2009

RQ-0805-GA

Requestor:

The Honorable Rodney Ellis

Chair, Committee on Government

Organization

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

The Honorable Senfronia Thompson

Chair, Committee on Local & Consent Calendars

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78768-2910

Re: Whether the prohibition against owning or holding an interest in more than five package stores or their permit and the exceptions to such prohibition in chapter 22 of the Alcoholic Beverage Code violate federal or state law (RQ-0805-GA)

Briefs requested by July 16, 2009

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

TRD-200902457
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: June 17, 2009

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PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 5. GENERAL ADMINISTRATION

1 TAC §355.8081

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.8081, Payments for Laboratory and X-ray Services, Radiation Therapy, Physical Therapists' Services, Physician Services, Podiatry Services, Chiropractic Services, Optometric Services, Ambulance Services, Dentists' Services, and Psychologists' Services, under Title 1, Part 15, Chapter 355, Subchapter J, Division 5 of the Texas Administrative Code, to add Medicaid reimbursement for services provided by a licensed psychological associate (LPA) under the direct supervision of a licensed psychologist.

Background and Justification

The Texas State Board of Examiners of Psychologists requires an LPA to work under the supervision of a licensed psychologist and does not allow an LPA to engage in independent practice. Currently, Texas Medicaid does not reimburse licensed psychologists for services provided by an LPA who works under the supervision of a licensed psychologist and does not allow an LPA to enroll as a Medicaid provider.

Medicare allows reimbursement to clinical psychologists for services performed by an LPA under the direct supervision of the clinical psychologist. The Code of Federal Regulations (42 CFR §410.71) states that the services performed by an LPA are covered under Medicare if: the services are performed under the direct supervision of a licensed psychologist; the licensed psychologist is immediately available to provide assistance and direction throughout the time the service is being performed; and the LPA performing the service is an employee of either the licensed psychologist or the legal entity that employs the licensed psychologist.

The proposed rule revision aligns Medicaid policy with Medicare by allowing a licensed psychologist to be reimbursed for services performed by an LPA when the LPA is under the direct supervision of the licensed psychologist. The supervising psychologist will be reimbursed 70 percent of the Medicaid fee that would be paid to a psychologist for the same service. The proposed rule also remains consistent with the Texas State Board of Examiners of Psychologists rules that prohibit an LPA from engaging in independent practice. Allowing Medicaid reimbursement for services provided by an LPA is expected to expand access to behavioral health services because it allows a new provider type to perform Medicaid reimbursable services.

Section-by-Section Summary

The proposed revision to the title of §355.8081 adds the reference to Licensed Psychological Associates' Services.

The proposed new §355.8081(c) allows Medicaid reimbursement to a supervising licensed psychologist or the legal entity employing the supervising licensed psychologist for services provided by an LPA under the direct supervision of the licensed psychologist at 70 percent of the fee paid to psychologists for the same service.

Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed rule amendment is in effect there will be a fiscal impact to state government of $1,315,297 (SFY2010); $2,778,136 (SFY2011); $3,747,011 (SFY2012); $4,403,025 (SFY2013); and $4,362,424 (SFY2014). The proposed rule will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that for each year of the first five years the proposed rule is in effect, the public will benefit by increased access to behavioral and mental health services for Medicaid clients provided by LPAs.

Small and Micro-business Impact Analysis

Mr. Suehs has also determined that there will be no effect on small businesses or micro businesses that are Medicaid providers. Providers will not be required to alter their business practices as a result of the rule. There are no significant other costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "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 HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to Dan Huggins, Director of Acute Care Services, Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, MC-H400, Austin, Texas 78708-5200; by fax to (512) 491-1998; or by e-mail to Dan.Huggins@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

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

§355.8081. Payments for Laboratory and X-ray Services, Radiation Therapy, Physical Therapists' Services, Physician Services, Podiatry Services, Chiropractic Services, Optometric Services, Ambulance Services, Dentists' Services, [~~and~~] Psychologists' Services, and Licensed Psychological Associates' Services.

(a) Subject to qualifications, limitations, and exclusions as provided in this chapter, payment to eligible providers must not exceed the lesser of the provider's billed amount or the amount derived from the methodology described in §355.8085 of this title (relating to Texas Medicaid Reimbursement Methodology (TMRM) for Physicians and Certain Other Practitioners).

(b) Reimbursement for ambulance services is described in §355.8600 of this title (relating to Reimbursement for Ambulance Services). Reimbursement for clinical laboratory services is described in §355.8610 of this title (relating to Reimbursement for Clinical Laboratory Services).

(c) Reimbursement for services provided by a licensed psychologist is described in §355.8085 of this title. Reimbursement for services provided by a licensed psychological associate (LPA) under the supervision of a licensed psychologist is reimbursed to the licensed psychologist at 70 percent of the fee paid to the licensed psychologist for the same service.

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 June 15, 2009.

TRD-200902401
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: July 26, 2009
For further information, please call: (512) 424-6900

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 4. COOPERATIVE MARKETING ASSOCIATIONS

4 TAC §§4.1 - 4.4

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

The Texas Department of Agriculture (the department) proposes to repeal §§4.1 - 4.4, concerning Cooperative Marketing Association license regulations. The repeal is proposed to eliminate unnecessary sections in this chapter to conform to new requirements established under Senate Bill (SB) 1016, 81st Legislative Session, 2009, that removed the responsibilities for the licensing of Cooperative Marketing Association by the department.

Rick Garza, Coordinator for Commodity Programs, has determined that, for the first five-year period the repeal is in effect, there will be fiscal implications for state government as a result of non-collection of licensing fees. There will be an estimated decrease in state revenue of $3,800 per year. There will be no fiscal implications for local government.

Mr. Garza also has determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of implementation of the repeal will be the elimination of unnecessary rules. There will be no adverse fiscal impact on microbusinesses, or small businesses required to comply with the repeals. Any existing fees paid by those entities will no longer be required.

Written comments on the proposal may be submitted to Rick Garza, Coordinator for Commodity Programs, 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 proposal in the *Texas Register.*

The repeal is proposed under the Texas Agriculture Code (the Code), §12.016, which provides the department with the authority to adopt rules for administration of its duties under the Code; §52.151, as amended by SB 1016, 81st Texas Legislature, 2009, to eliminate the requirement that a marketing association pay to the department an annual licensing fee established by the department by rule; and Texas Government Code, §2001.006, which provides the department with the authority to adopt rules in preparation for the implementation of legislation that has become law, but has not taken effect.

The proposal affects the Texas Agriculture Code, Chapter 52.

§4.1. Definitions.

§4.2. Who May Obtain a License.

§4.3. Fees.

§4.4. Notice of Dissolution.

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 June 15, 2009.

TRD-200902424
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: July 26, 2009
For further information, please call: (512) 463-4075

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CHAPTER 23. ROSE GRADING

4 TAC §23.1, §23.2

The Texas Department of Agriculture (the department) proposes amendments to §23.1 and §23.2, concerning rose grading, due to the passage of Senate Bill (SB) 1016 during the 81st Legislative Session, 2009. The issuance of a certificate of authority to rose graders by the department was eliminated under SB 1016. Under the proposed rule, the need for defining the certificate of authority under §23.1(2) is no longer required. For the same reason, obtaining a certificate of authority under §23.2(a) and need for an application form to apply for or renew a certificate of authority under §23.2(b) are no longer necessary. The sections are amended accordingly.

Dr. Awinash Bhatkar, Coordinator for Plant Quality Programs, has determined that for the first five-year period the amended sections are in effect, there will be a loss of $2,500 in revenue for the state government as a result of enforcing or administering the amended sections. There will be no impact on the local governments.

Dr. Bhatkar also has determined that for each year of the first five years the amended sections are in effect, the public benefit anticipated as a result of the amended sections will be a more efficient use of state resources. There are about six rose graders in the state possessing the rose grading certificate of authority, with $500 revenue collected annually by the department as licensing fees. Two of the rose graders meet the criteria of microbusinesses and none meet the criteria of small businesses. The businesses will save annual licensing fees due to the rule amendments. There are no costs to individuals who are required to comply with the amendments as proposed.

Comments on the proposal may be submitted to Dr. Awinash Bhatkar, Coordinator for Plant Quality Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Agriculture Code, §121.007, which authorizes the department to adopt rules as necessary concerning rose grading, as amended by SB 1016; and Texas Government Code, §2001.006, which provides the department with the authority to adopt rules in preparation for the implementation of legislation that has become law, but has not taken effect.

The proposal affects the Texas Agriculture Code, Chapter 121.

§23.1. Definitions.

In addition to the definitions set out in the Texas Agriculture Code, Chapter 121, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

~~[(2) Certificate of authority--a document issued by the department to a person who grades, sells, or offers for sale rose plants.]~~

(2) [~~(3)~~] Container-grown roses--Roses which have been growing in the container in which they are marketed for a minimum of one month of active growing season or for a maximum of two growing seasons.

(3) [~~(4)~~] Cull--Any bush not meeting the grade, sizes, or standards as set out in this chapter.

(4) [~~(5)~~] Non-established container stock--Roses which are transported in soil or in a potting mixture contained within a container for a period insufficient to allow the formation of fibrous roots sufficient to form a root-media ball.

(5) [~~(6)~~] Row-run--A term used in purchasing roses grown in a crop in which diseased and cull plants are excluded from the sale.

§23.2. Exemptions [~~Application~~].

~~[(a) Each person who grades or influences the grade of rose plants must obtain a certificate of authority from the department.]~~

~~[(b) An application form for a new or renewal certificate of authority may be obtained from the department. Each applicant shall be responsible for declaring the proper classification and submitting the appropriate fee to the department. Failure to complete the form entirely may result in denial of the certificate of authority.]~~

~~[(c) Exemptions.]~~

~~[(1) Growers of rose bushes are exempt from provisions of this chapter unless a grade is claimed.]~~

[~~(2)~~] Grading classifications and labeling requirements do not apply to crops in the field or to row-run sales of field crops, but only apply from point of delivery to distributors, processors, packers, wholesalers, and retailers.

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 June 15, 2009.

TRD-200902423
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: July 26, 2009
For further information, please call: (512) 463-4075

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TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 1. LIBRARY DEVELOPMENT
SUBCHAPTER C. MINIMUM STANDARDS FOR ACCREDITATION OF LIBRARIES IN THE STATE LIBRARY SYSTEM

13 TAC §1.86

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas State Library and Archives Commission or in the Texas Register

office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas State Library and Archives Commission proposes the repeal of 13 TAC §1.86, regarding the standards for accreditation of certain non-public libraries in the state library system.

The 81st Legislature has approved new statutory language (House Bill 3756) authorizing additional types of libraries to join a system, and streamlining the statutory requirements for certain non-public libraries to join a system. The changes are numerous and require repeal of the existing rule and adoption of a new rule.

Deborah Littrell, Library Development Division Director, has determined that for each year of the first five years the repeal is in effect, there will be no fiscal implications for state or local governments. Ms. Littrell does not anticipate either a loss of, or an increase in, revenue to state or local government as a result of the proposed repeal. The public benefit of the proposed repeal is that they will help establish the standards for accreditation of certain non-public libraries in the state library system. There will be no impact on small businesses, micro-businesses, or individuals as a result of enforcing the repeal.

Written comments on this proposal may be submitted to Deborah Littrell, Director, Library Development Division, Texas State Library and Archives Commission, P.O. Box 12927, Austin, Texas 78711-2927, (512) 463-8800, or e-mail deborah.littrell@tsl.state.tx.us.

The repeal is proposed under the authority of Government Code §441.123 that directs the commission to establish and develop a state library system, and §441.136 that authorizes the director and librarian to propose rules necessary for the administration of the program.

The proposed repeal affects Government Code §441.123 and §441.136.

§1.86. Standards for Accreditation of Libraries Operated by Public School Districts, Institutions of Higher Education, or Units of State or Local Government.

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 June 15, 2009.

TRD-200902419
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Earliest possible date of adoption: July 26, 2009
For further information, please call: (512) 463-5459

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13 TAC §1.86

The Texas State Library and Archives Commission proposes new 13 TAC §1.86, regarding the standards for accreditation of certain non-public libraries in the state library system.

The 81st Legislature has approved new statutory language (House Bill 3756) authorizing additional types of libraries to join a system, and streamlining the statutory requirements for certain non-public libraries to join a system. The changes are numerous and require repeal of the existing rule and adoption of a new rule. It also adds new language where required to address types of libraries not originally included in the rule.

Deborah Littrell, Library Development Division Director, has determined that for each year of the first five years the new section is in effect, there will be no fiscal implications for state or local governments. Ms. Littrell does not anticipate either a loss of, or an increase in, revenue to state or local government as a result of the proposed new section. The public benefit of the proposed new section is that they will help establish the standards for accreditation of certain non-public libraries in the state library system. There will be no impact on small businesses, micro-businesses, or individuals as a result of enforcing the new section.

Written comments on this proposal may be submitted to Deborah Littrell, Director, Library Development Division, Texas State Library and Archives Commission, P.O. Box 12927, Austin, Texas 78711-2927, fax (512) 463-8800, or e-mail deborah.littrell@tsl.state.tx.us.

This new section is proposed under the authority of Government Code §441.123 that directs the commission to establish and develop a state library system, and §441.136 that authorizes the director and librarian to propose rules necessary for the administration of the program.

The proposed new rule affects Government Code §441.123 and §441.136.

§1.86. Standards for Accreditation of Libraries Operated by Public School Districts, Institutions of Higher Education, Units of Local, State, or Federal Government, Accredited Non-Public Elementary or Secondary Schools, or Special or Research Libraries.

These standards for accreditation apply only to libraries that are operated by a public school district, institution of higher education, unit of local, state, or federal government, accredited non-public elementary or secondary schools, or special or research libraries. The standards for accreditation of public libraries are specified in §1.81 of this title (relating to Quantitative Standards for Accreditation of Library).

(1) These libraries shall agree to loan materials without charge to users of other libraries in the system.

(2) Any library eligible for membership in the Texas Library System under this section will be accredited by the following standards.

(A) For libraries operated by a public school district:

(i) the unit of membership shall be the school district;

(ii) the district must submit written verification that it is academically accredited by the Texas Education Agency.

(B) For libraries operated by an institution of higher education:

(i) the unit of membership in the Texas Library System shall be the institution. Institutions of higher education with libraries in multiple locations shall apply as a single unit. Community colleges shall apply per their certification by the Texas Higher Education Coordinating Board, in accordance with Government Code §61.063;

(ii) the institution must submit written verification that it is accredited by an accrediting agency recognized by the Texas Higher Education Coordinating Board.

(C) For libraries operated by a unit of local, state, or federal government, the library must:

(i) submit written verification from the governmental unit that it is operated by that governmental unit;

(ii) submit documentation showing that there is an organized collection, with staff, and regular hours of operation.

(D) For libraries operated by accredited non-public elementary or secondary schools:

(i) the unit of membership shall be the accredited organization;

(ii) the library must submit written documentation of its accreditation.

(E) For libraries operated by special or research organizations the library must:

(i) submit written verification from the organization that it is supported by that organization;

(ii) submit documentation showing that there is an organized collection, with staff, and regular hours of operation.

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 June 15, 2009.

TRD-200902420
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Earliest possible date of adoption: July 26, 2009
For further information, please call: (512) 463-5459

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CHAPTER 2. GENERAL POLICIES AND PROCEDURES

SUBCHAPTER A. PRINCIPLES AND PROCEDURES OF THE COMMISSION

13 TAC §2.6

The Texas State Library and Archives Commission proposes amendments to 13 TAC §2.6, relating to sunset dates for advisory committees. The amendments are being proposed to update the sunset dates for advisory committees, and to delete a committee that was abolished by a recent statute.

Edward Seidenberg, Deputy Director, has determined that for each year of the first five years the amended section is in effect, there will be no fiscal implications for state or local governments. Mr. Seidenberg does not anticipate either a loss of, or an increase in, revenue to state or local government as a result of the proposed amendments. The public benefit of the proposed amendments is that they will help clarify the sunset dates for advisory committees. There will be no impact on small businesses, micro-businesses, or individuals as a result of enforcing the amended rule.

Written comments on the proposed amendments may be submitted to Edward Seidenberg, Texas State Library and Archives Commission, P.O. Box 12927, Austin, Texas 78711; or by fax to (512) 463-0185.

The amendments are proposed under Government Code §2110.008, that requires the Texas State Library and Archives Commission to adopt Sunset dates for advisory committees and §441.006(a) that provides the commission with authority to govern the Texas State Library.

Government Code, §441.006 and §2110.008, are affected by the proposed amendments.

§2.6. Sunset Dates for Advisory Committees.

The following advisory committees will be abolished on August 31, 2021 [~~August 31, 2009~~] unless the commission continues or consolidates the committees prior to that date:

(1) Library Systems Act Advisory Board,

[~~(2) Local Government Records Committee,~~]

(2) [~~(3)~~] TexShare Advisory Board,

(3) [~~(4)~~] Texas Historical Records Advisory Board, and

(4) [~~(5)~~] Electronic Recording Advisory Committee.

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 June 12, 2009.

TRD-200902396
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Earliest possible date of adoption: July 26, 2009
For further information, please call: (512) 463-5459

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SUBCHAPTER C. GRANT POLICIES

DIVISION 2. NEGOTIATED GRANTS

13 TAC §2.213

The Texas State Library and Archives Commission proposes new 13 TAC §2.213, regarding system integrated negotiated grants. This section will enable the agency to administer the new funding that the Legislature has appropriated for state fiscal years 2010 and 2011.

The proposed new rule establishes the goals and purposes, eligible applicants, criteria for grant awards, and eligible expenses for a new grant program, the system integrated negotiated grants.

Deborah Littrell, Library Development Division Director, has determined that for each year of the first five years the new section is in effect, there will be no fiscal implications for state or local governments. Ms. Littrell does not anticipate either a loss of, or an increase in, revenue to state or local government as a result of the proposed new rule. The public benefit of the proposed new rule is that they will help enable the agency to administer these funds. There will be no impact on small businesses, micro-businesses, or individuals as a result of enforcing the rule.

Written comments on this proposal may be submitted to Deborah Littrell, Director, Library Development Division, Texas State Library and Archives Commission, P.O. Box 12927, Austin, Texas 78711-2927, fax (512) 463-8800, or e-mail deborah.littrell@tsl.state.tx.us.

This new section is proposed under the authority of Government Code §441.135 that authorizes a program of grants and §441.137 of the Library Systems Act that stipulates that the director and librarian shall administer the program of state grants and shall make public the rules adopted by the commission.

The proposed new rule affects Government Code §441.135 and §441.137.

§2.213. System Integrated Negotiated Grants.

(a) Goals and Purposes. This grant program provides funds for eligible applicants to develop and implement library programs or services that have been identified by the agency to be a priority and that provide Texas library users with improved services that demonstrate community impact. Priority for funding will be given to collaborative programs or services that involve two or more systems, including diverse types of libraries and/or organizations.

(b) Eligible applicants are major resource library systems and regional library systems.

(c) Criteria for Grant. The commission may award negotiated grants to develop and implement programs or services. An award may be made and/or renewed each year if:

(1) funding continues to be available;

(2) the applicant demonstrates capability of delivering the services in a timely fashion at a reasonable cost;

(3) the commission finds a continuing regional and statewide need for the services;

(4) the commission finds that the best value to the state will be achieved without competition;

(5) the commission finds that proposed programs or services are not substantively duplicative of existing agency programs or services; and

(6) the program or service meets identified outcomes.

(d) Eligible Expenses.

(1) Grant will fund costs for personnel, equipment/property, telecommunications, supplies, travel, and professional services necessary to implement the specified services.

(2) Grant will not fund building construction or renovation; major capital expenses; food, beverages, or gifts; equipment/property or technology not specifically needed to implement the specified services.

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 June 12, 2009.

TRD-200902399
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Earliest possible date of adoption: July 26, 2009
For further information, please call: (512) 463-5459

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §1.16

The Texas Higher Education Coordinating Board proposes an amendment to §1.16, concerning Contracts for Materials and Services.

Specifically, this amendment will provide that, in the event the Board or the Agency Operations Committee, as applicable, has approved a request for the purchase of materials or services that will result in multiple contracts, any contract of which by itself shall have a cost greater than $100,000 must be approved by the Chair and Vice Chair of the Board. The Commissioner or the Deputy Commissioner for Business and Finance/Chief Operating Officer, in accordance with §1.16(c), shall provide final approval of such contracts if the amount of the contract is less than or equal to $100,000.

Mr. William M. Franz, General Counsel, has determined that for each year of the first five years the section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rule.

Mr. Franz has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the increased efficiency of the contracting process. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to William M. Franz, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711, william.franz@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendment is proposed under the Texas Education Code, §61.027, which provides the Coordinating Board with the authority to make rules.

The amendment affects Texas Education Code, §61.027.

§1.16. Contracts for Materials and Services.

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

(h) In the event that the Board or the Agency Operations Committee, as applicable, has approved the issuance of a request for the purchase of materials or services that will result in the letting of contracts, including grants, to multiple vendors or providers of services, any resulting contract which by itself shall have a cost greater than $100,000 must be approved by the Chair and Vice Chair of the Board. The Commissioner or the Deputy Commissioner for Business and Finance/Chief Operating Officer, in accordance with subsection (c) of this section, shall provide final approval of contracts with the selected vendors or providers of services if the contract amount is less than or equal to $100,000.

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 June 15, 2009.

TRD-200902425
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: July 30, 2009
For further information, please call: (512) 427-6114

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CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER E. APPROVAL OF DISTANCE EDUCATION, OFF-CAMPUS, AND EXTENSION COURSES AND PROGRAMS FOR PUBLIC INSTITUTIONS

19 TAC §4.105

The Texas Higher Education Coordinating Board proposes amendments to §4.105, concerning Functions of Regional Councils, for the purpose of complying with Texas Education Code §130.008(d) and (d-1). Passage of House Bill 2480 during the regular session of the 81st Texas Legislature amended Texas Education Code §130.008(d) and (d-1) by adding language that permits a public community college to enter into an agreement with a high school located in the service area of another public community college to offer a dual credit course only if the local public community college is unable to provide the requested course to the satisfaction of the school district and has been invited to do so by the ISD.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that for each year of the first five years the amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Dr. Stephenson has also determined that for each year of the first five years the amendments are in effect, the high schools desiring to enter into agreements with public community colleges for the provision of dual credit courses will be able to partner with colleges regardless of the college area in which the high school is located. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted to Dr. MacGregor Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or macgregor.stephenson@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the provisions of Texas Education Code, Chapter 61, Subchapter G, which provides the Coordinating Board with the authority to regulate the awarding or offering of degrees, credit toward degrees, and the use of certain terms.

The amendments affect implementation of Texas Education Code, Chapter 130, Subchapter A, §130.008(d) and (d-1).

§4.105. Functions of Regional Councils.

(a) A public community college may enter into an agreement to offer only a dual credit course with a high school located in the service area of another public community college only if the other public community college is unable to provide the requested course to the satisfaction of the school district and the school district has explicitly invited the institution to do so.

(b) [~~(a)~~] Universities, health-related institutions, public technical colleges, and Lamar state colleges shall submit for Regional Council review all off-campus lower-division courses proposed for delivery to sites in the Council's Service Region.

(c) [~~(b)~~] Public community colleges shall submit for the appropriate Regional Council's review all off-campus lower-division courses proposed for delivery to sites outside their service areas.

(d) A public community college proposing to offer a course at a high school outside of the college's service area shall notify the Regional Council in whose service area the high school is located. It must provide a letter from the school district stating that the local community college is not offering the proposed dual credit course to the satisfaction of the school district and that the school district has invited the other community college to offer the course.

(e) [~~(c)~~] With the exception of subsection (a) of this section, any [~~In the event of a~~] dispute arising from off campus [~~electronic~~] delivery of lower-division courses to groups, any institution party to the disagreement may appeal first to the Regional Council, and then to the Commissioner and the Board.

(f) [~~(d)~~] With the exception of subsection (a) of this section, Regional Councils in each of the ten Uniform State Service Regions shall make recommendations to the Commissioner and shall resolve disputes regarding plans for lower-division courses and programs proposed by public institutions.

(g) [~~(e)~~] Each Regional Council shall make recommendations to the Commissioner regarding off-campus courses and programs proposed for delivery within its Uniform State Service Region in accordance with the consensus views of Council members, except for courses and programs proposed to be offered by public community colleges in their designated service areas and courses and programs governed by the provisions of subsection (a) of this section.

(h) [~~(f)~~] Regional Councils shall advise the Commissioner on appropriate policies and procedures for effective state-level administration of off-campus lower-division instruction.

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 June 15, 2009.

TRD-200902426
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: July 30, 2009
For further information, please call: (512) 427-6114

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SUBCHAPTER M. NOTICE REGARDING THE AVAILABILITY OF HIGHER EDUCATION TEXTBOOKS THROUGH MULTIPLE RETAILERS

19 TAC §§4.215 - 4.218

The Texas Higher Education Coordinating Board proposes new §§4.215 - 4.218, concerning Notice Regarding the Availability of Higher Education Textbooks through Multiple Retailers. The new sections result from House Bill 1096, 81st Texas Legislature which added Texas Education Code §51.9705 to require each public institution of higher education to establish a procedure by which each institution of higher education shall provide to each student enrolled at the institution written notice of the availability of required or recommended textbooks through university-affiliated bookstores and through retailers other than university-affiliated bookstores. These sections also describe the timeframe during which an institution shall provide notification.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that for each year of the first five years the new sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Stephenson has also determined that for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of administering the new sections will be in enabling students to know about the availability of textbooks at outlets other than the campus. There is no effect on small or micro businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dr. MacGregor Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or macgregor.stephenson@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new sections are proposed under the Texas Education Code, §51.9705.

The new sections affect implementation of Texas Education Code, §51.9705.

§4.215. Authority and Purpose.

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, §51.9705, Notice Regarding Availability of Textbooks through Multiple Retailers. The rules in this subchapter establish procedures to administer this provision of notice.

(b) Purpose. The purpose of this subchapter is to establish a procedure by which each institution of higher education shall provide to each student enrolled at the institution written notice regarding the availability of required or recommended textbooks through university-affiliated bookstores and through retailers other than university-affiliated bookstores.

§4.216. Definitions.

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

(1) Institution of Higher Education or Institution--Any public technical institute, public junior college, public senior college or university, medical or dental unit or other agency of higher education as defined in Texas Education Code, §61.003(8).

(2) "University-affiliated bookstore"--A bookstore that:

(A) sells textbooks for courses offered by an institution of higher education, regardless of whether the bookstore is located on the campus of the institution;

(B) is operated by or with the approval of the institution through ownership, a management agreement, a lease or rental agreement, or otherwise; and

(C) for the purposes of this subchapter, a "university-affiliated bookstore" also includes a bookstore similarly affiliated with any public institution of higher education as defined in paragraph (1) of this section.

§4.217. Notification Requirement.

Each institution of higher education shall provide to each student enrolled at the institution written notice regarding the availability of required or recommended textbooks through university-affiliated bookstores and through retailers other than university-affiliated bookstores.

§4.218. Notification Procedures.

(a) Each institution of higher education shall provide written notice regarding the availability of textbooks:

(1) to each student of the institution during the week preceding each fall and spring semester;

(2) to each student enrolled at the institution in a semester or summer term during the first three weeks of the semester or the first week of the summer term, as applicable; and

(3) to students or prospective students of the institution attending an orientation conducted by or for the institution.

(b) The notice shall be provided in a hard-copy or electronic format in a manner that ensures that the notice is reasonably likely to come to the attention of a student receiving the notice. For current students of an institution, an e-mail sent to the student's designated e-mail address, or institutional e-mail account if another is not designated, shall be sufficient, as shall a hard copy mailed to the student's physical address. For students or prospective students attending an orientation, either an e-mail to their designated e-mail address or a hard copy provided directly to the students shall be sufficient.

(c) The notice must contain the following statement: "A student of this institution is not under any obligation to purchase a textbook from a university-affiliated bookstore. The same textbook may also be available from an independent retailer, including an online retailer."

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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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: July 30, 2009
For further information, please call: (512) 427-6114

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CHAPTER 5. RULES APPLYING TO PUBLIC UNIVERSITIES, HEALTH-RELATED INSTITUTIONS, AND/OR SELECTED PUBLIC

COLLEGES OF HIGHER EDUCATION IN TEXAS
SUBCHAPTER A. GENERAL PROVISIONS
19 TAC §5.5

The Texas Higher Education Coordinating Board proposes amendments to §5.5, concerning rules applying to the automatic admission of certain high school graduates to public universities.

Specifically, in compliance with Senate Bill 175, 81st Texas Legislature, the proposed amendments places limits on the percentage of applicants in the top 10 percent of their high school classes in one of the two preceding school years to whom The University of Texas at Austin is required to offer admission.

Ms. Susan Brown, Assistant Commissioner, Planning and Accountability, has determined that for each year of the first five years the section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rule.

Ms. Brown has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be more flexibility for The University of Texas at Austin to select an entering undergraduate class that is outstanding. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Janet Beinke, Director of Planning, Planning and Accountability, 1200 East Anderson Lane, Austin, TX 78752, janet.beinke@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the authority of Texas Education Code, §61.027.

The amendments affect Texas Education Code, §51.803.

§5.5. Uniform Admission Policy.

(a) Each public university shall admit first-time undergraduate [~~freshmen~~] students for each semester in accordance with Texas Education Code, §§51.801 - 51.809. Only The University of Texas at Austin shall admit students under Texas Education Code, §51.803(a-1) - (a-5) and subsection (d) of this section.

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

(d) For the period from the 2011-2012 academic year through the 2015-2016 academic year, The University of Texas at Austin is not required to admit applicants in excess of the number needed to fill 75 percent of first-time resident undergraduate students.

(e) [~~(d)~~] High school rank for students seeking automatic admission to a general academic teaching institution on the basis of their class rank is determined and reported as follows:

(1) Class rank shall be based on the end of the 11th grade, middle of the 12th grade, or at high school graduation, whichever is most recent at the application deadline.

(2) The top 10 percent of a high school class shall not contain more than 10 percent of the total class size.

(3) The student's rank shall be reported by the applicant's high school or school district as a specific number out of a specific number total class size.

(4) Class rank shall be determined by the school or school district from which the student graduated or is expected to graduate.

(f) [~~(e)~~] A general academic teaching institution may limit the number of students admitted under this section if the number of applicants eligible and applying for admission to the institution under this section exceeds by more than 10 percent the average number of first-time freshmen admitted the previous two academic years. If an institution chooses to limit the number of students admitted under this section, it must ensure that:

(1) At least 97 percent of first-time freshmen admitted are in the top 10 percent of their high school class and;

(2) Clear guidelines are established for the selection of students based on one or a specified combination of the following methods:

(A) A lottery in which all students qualified for automatic admission have an equal chance for selection;

(B) Students are selected on a first-come, first-admitted basis following receipt of a complete application; or

(C) At least four or more criteria identified in Texas Education Code, §51.805 are used to select students admitted.

(g) [~~(f)~~] Each general academic teaching institution shall annually report to the Board the composition of the entering class of first-time freshmen students admitted under this section. The report shall include a demographic breakdown of the class including race, ethnicity, and economic status. Each general academic teaching institution shall provide this report to the Board annually on or before a date set by the Board.

(h) [~~(g)~~] In exercising its discretion in accordance with Texas Education Code, §51.804, whether to adopt an admissions policy for each academic year for first time freshman students, the governing board of each general academic teaching institution may elect to admit students who do not meet the requirements of Texas Education Code, §51.803, but who qualify for admission under one or more of the factors listed in Texas Education Code, §51.805(b). However, the total number of such students who are admitted in an academic year may not exceed 20% of the total number of first-time freshman students admitted by the institution for that academic year. This subsection expires August 31, 2009.

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 June 15, 2009.

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: July 30, 2009
For further information, please call: (512) 427-6114

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CHAPTER 9. PROGRAM DEVELOPMENT IN PUBLIC TWO-YEAR COLLEGES
SUBCHAPTER H. PARTNERSHIPS BETWEEN SECONDARY SCHOOLS AND PUBLIC TWO-YEAR COLLEGES

19 TAC §9.144

The Texas Higher Education Coordinating Board proposes amendments to §9.144, concerning Partnership Agreements for the purpose of complying with Texas Education Code §130.008(d) and (d-1). Passage of House Bill 2480 during the regular session of the 81st Texas Legislature amended Texas Education Code §130.008(d) and (d-1) by adding language that permits a public community college to enter into an agreement with a high school located in the service area of another public community college to offer a dual credit course only if the local public community college is unable to provide the requested course to the satisfaction of the school district and has been invited to do so by the ISD.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that for each year of the first five years the amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Dr. Stephenson has also determined that for each year of the first five years the amendments are in effect, the high schools desiring to enter into agreements with public community colleges for the provision of dual credit courses will be able to partner with colleges regardless of the college area in which the high school is located. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted to Dr. MacGregor Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or macgregor.stephenson@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the provisions of Texas Education Code, §§61.027, 61.061, and 61.062(c) and Chapter 61, Subchapter G, which provides the Coordinating Board with the authority to regulate the awarding or offering of degrees, credit toward degrees, and the use of certain terms.

The proposed amendments affect implementation of Texas Education Code, Chapter 130, Subchapter A, §130.008(d) and (d-1).

§9.144. Partnership Agreements.

(a) A public community college may enter into an agreement to offer only a dual credit course with a high school located in the service area of another public community college only if the other public community college is unable to provide the requested course to the satisfaction of the school district and the school district has explicitly invited the institution to do so.

(b) [~~(a)~~] Need For Partnership Agreement. For any instructional partnership between a secondary school and a public two-year college, an agreement must be approved by the governing boards or designated authorities of both the public school district or private secondary school and the public two-year college.

(c) [~~(b)~~] Elements of Partnership Agreements. Any partnership agreement as described in §9.143 of this title (relating to Types of Partnerships) must address the following elements:

(1) student eligibility requirements;

(2) faculty qualifications;

(3) location and student composition of classes;

(4) provision of student learning and support services;

(5) eligible courses;

(6) grading criteria;

(7) transcripting of credit; and

(8) funding provisions.

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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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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CHAPTER 13. FINANCIAL PLANNING
SUBCHAPTER F. FORMULA FUNDING AND TUITION CHARGES FOR REPEATED AND EXCESS HOURS OF UNDERGRADUATE STUDENTS

19 TAC §13.104

The Texas Higher Education Coordinating Board proposes amendments to §13.104, concerning rules applying to formula funding and tuition charges for repeated and excess hours of undergraduate students.

Specifically, in compliance with House Bill 101 and Senate Bill 1343, 81st Texas Legislature, the proposed amendments relate to those hours not subject to the limitation on formula funding set out in §13.103 of the same subchapter and would include hours earned before receiving an associate's degree, dual credit course hours for which the student received credit toward a high school diploma, and semester credit hours earned by the student before graduating from high school and used to satisfy high school graduation requirements.

Ms. Susan Brown, Assistant Commissioner, Planning and Accountability has determined that for each year of the first five years the section is in effect, the additional cost to the Coordinating Board will be approximately ten thousand dollars per year for a total five year cost of $50,627. There will not be any fiscal implications to local government as a result of enforcing or administering the rule.

Ms. Brown has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be more equitable treatment of those students pursuing college coursework at the high school level. They will not be penalized for pursing advanced education goals while in high school. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Gary W. Johnstone, Deputy Assistant Commissioner, Planning and

Accountability, 1200 East Anderson Lane, Austin, TX 78752, gary.johnstone@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, §61.0595(d).

The amendments affect Texas Education Code, §61.0595.

§13.104. Exemptions for Excess Hours.

The following types of hours are exempt and are not subject to the limitation on formula funding set out in §13.103 of this title (relating to Limitation on Formula Funding for Excess Hours):

(1) hours earned by the student before receiving an associate or a bachelor's degree that has been previously awarded to the student;

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

(4) hours earned by the student at a private institution or an out-of-state institution; [and]

(5) hours not eligible for formula funding; and [.]

(6) semester credit hours earned by the student before graduating from high school and used to satisfy high school graduation requirements.

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

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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SUBCHAPTER L. ENGINEERING SUMMER PROGRAM

19 TAC §§13.200 - 13.202

The Texas Higher Education Coordinating Board proposes amendments to §§13.200 - 13.202, concerning the Engineering Summer Program (ESP), codified as Texas Education Code §61.791. These rules describe the ESP grant program, including the establishment of eligibility for the Texas general academic institutions and identifying student populations that are encouraged to participate. The new language for these sections align the rules with the statute to clarify that all eligible institutions may receive funding, and amends existing rules to comply with statute by using the term "Engineering Summer Program" instead of "Engineering Summer Camp." The new language incorporates a change from House Bill 2425 that allows participation of private or independent institutions of higher education that offer an engineering degree program.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that for each year of the first five years the amendments are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Stephenson has also determined that for each of the first five years the amendments are in effect the public benefit will be that because the engineering fields require significant understanding and use of math and science, encouraging students early in their education to continue their studies in these areas is essential. If Texas is to remain competitive nationally and internationally as a leader in engineering, maintaining and increasing the number of students pursuing these fields is critical. The Engineering Summer Program provides an excellent opportunity to encourage students to continue their math and science studies and allows students to recognize that they have the ability to succeed as future engineers. There is no effect on small businesses. There are no economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Reinold Cornelius, Program Director, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or reinold.cornelius@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, §61.791(b), which requires the Coordinating Board to establish rules for the ESP program.

The amendments affect implementation of Texas Education Code, §61.791 and §61.793.

§13.200. Authority, Scope, and Purpose.

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, Subchapter Q, Engineering Recruitment Programs. This subchapter establishes rules for administering the engineering [recruitment] summer program [camps] as prescribed in the Texas Education Code, §61.791 and §61.793 [Sections 61.791 - 61.793].

(b) Scope. Unless otherwise noted, this subchapter applies to [any] general academic teaching institutions or private or independent institutions of higher education [institution] (Texas Education Code, §61.003) that offer [offers] an engineering degree program [and their students].

(c) Purpose. The purpose of the program [these programs] is to provide grants to each [any] general academic teaching institution and to each private or independent institution of higher education that offers an engineering degree program to implement a one-week summer program [camps] for middle and high school students [at any general academic teaching institution]. Participating students receive instruction in math, science, and engineering concepts, similar to that offered in an engineering degree program.

§13.201. Definitions.

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

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

(3) Eligible institution--Any public general academic teaching institution or any private or independent institution of higher education [(public)] that offers one or more [several undergraduate] degree programs in engineering.

[(4) Engineering degree program--Any undergraduate degree program in engineering at an eligible institution.]

(4) [(5)] Summer program [camp]--A math, science, and engineering laboratory-oriented engineering immersion program [day

~~camp~~], organized and offered by an eligible institution [~~with one or more one-week sessions, to take place~~] on its [~~the~~] campus [~~of the eligible institution~~].

[~~(6) Proposal--A summer camp proposal written by an eligible institution.~~]

§13.202. Summer Program [~~Camps~~]

(a) A summer program [~~Summer camps~~] shall be designed for middle and/or high school students to [~~that will~~] introduce participants [~~participating students~~] to math, science, and engineering concepts similar to that offered [~~they may encounter~~] in an engineering degree program.

(b) Once every fiscal year, depending on available funding, the Commissioner may authorize distribution of a request for application [~~proposals~~] for the [~~design and implementation of~~] summer program [~~camps~~].

(c) The Board shall post the request for application [~~proposals~~] on the agency website at least 30 working days prior to the due date for submission [~~proposals~~] and shall notify all eligible institutions.

(d) The request for application [~~proposals~~] shall:

(1) require a one-week summer program with a minimum of 36 contact hours per week;

(2) [~~(1)~~] contain information necessary to prepare an application including notification of available [~~proposals including~~] financial resources to be distributed; [~~available for distribution as well as the criteria that will be used for award of grants,~~]

[~~(2) contain data describing the demographics of the state,~~]

(3) require applying [~~the proposal to address plans by the eligible~~] institution to include students who are from underrepresented demographic groups in engineering programs; [~~ensure that its summer camp reflects the demographics of the state,~~]

(4) require participants to have [~~include the requirements for admission to a summer camp, including the requirement of~~] an appropriate math and science background according to the skill level of the summer program offered; [~~participating student's grade level and the availability of camp scholarships if needed,~~] and

(5) specify [~~any~~] other grant conditions.

(e) Each eligible institution may submit one application [~~proposal to the Board~~] and the Commissioner shall contract [~~award~~] grants for the summer programs [~~camps~~] based on submitted applications [~~proposals~~] and availability of funding.

(f) All [~~eligible~~] institutions receiving a grant [~~grants~~] for a summer program [~~camps~~] shall submit a final report to the Board within 30 days of the end of the award period. The Commissioner shall specify the format for the report. [~~90 days of the end of the summer camp. The Commissioner shall specify the format for the report.~~]

(g) All institutions receiving a grant for a summer program shall submit a final financial report to the Board within 90 days of the end of the award period. The Commissioner shall specify the format for the report.

(h) [~~(g)~~] After making a finding that an eligible institution has failed to perform or failed to conform to grant conditions, the Commissioner may retract or reduce the grant for the summer program [~~camp~~].

(i) [~~(h)~~] The governing board of each eligible institution shall cooperate with the board in administering this program.

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

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: July 30, 2009
For further information, please call: (512) 427-6114

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CHAPTER 14. RESEARCH FUNDING PROGRAMS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §14.1, §14.2

The Texas Higher Education Coordinating Board (THECB or Board) proposes amendments to §14.1 and §14.2, related to General Provisions. Specifically these sections describe the administration of the Norman Hackerman Advanced Research Program, including the establishment of eligibility for Texas higher education institutions. The new language renames the program to the Norman Hackerman Advanced Research Program (NHARP) to reflect the Board's October 2007 decision.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that for each year of the first five years the chapter is in effect, there are no fiscal implications to state or local government as a result of the proposed rule change.

Dr. Stephenson has also determined that for each year of the first five years the chapter is in effect, the proposed rule changes will not alter the public benefit or the local employment impact. There is no effect on small business, micro business or individuals.

Comments on the proposal may be submitted to Stacey Silverman, Director, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or Stacey.Silverman@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, §61.027, which authorizes the THECB to establish rules for the Norman Hackerman Advanced Research Program.

The amendments affect implementation of Texas Education Code, Chapter 142 and 143.

§14.1. Definitions.

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

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

(4) Research program--the Norman Hackerman Advanced Research Program.

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

(7) Research funding programs--the Norman Hackerman Advanced Research Program, Advanced Technology Program, and Technology Development and Transfer Program.

(8) - (9) (No change.)

(10) Investigator--an applicant whose name appears as a principal investigator, co-investigator [~~or co-principal~~], or collaborating investigator on a pre-proposal or full proposal submitted for any of the research funding programs.

(11) (No change.)

§14.2. Authority and Scope.

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

(c) This chapter provides the Coordinating Board the regulating rules applicable to the administration of the Norman Hackerman Advanced Research Program, Advanced Technology Program, Technology Development and Transfer Program, and other related programs.

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 June 15, 2009.

TRD-200902432
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: July 30, 2009
For further information, please call: (512) 427-6114

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SUBCHAPTER B. NORMAN HACKERMAN ADVANCED RESEARCH PROGRAM

19 TAC §14.11, §14.12

The Texas Higher Education Coordinating Board (THECB) proposes amendments to §14.11 and §14.12, related to the Advanced Research Program. These rules describe the administration of the Norman Hackerman Advanced Research Program, including the establishment of eligibility for Texas higher education institutions. The new language in these sections incorporate language from House Bill 58, 81st Texas Legislature to allow participation of eligible Texas independent institutions of higher education to compete for funding. The new language also incorporates the language of Senate Bill 44, 81st Texas Legislature that requires student participation in the funded projects.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that for each year of the first five years the chapter is in effect, there are no fiscal implications to state or local government as a result of the proposed rule change.

Dr. Stephenson has also determined that for each year of the first five years the chapter is in effect, the proposed rule changes will not alter the public benefit or the local employment impact. There is no effect on small business, micro business or individuals.

Comments on the proposal may be submitted to Stacey Silverman, Director, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or Stacey.Silverman@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, §61.027, which requires the THECB to establish rules for the Norman Hackerman Advanced Research Program.

The amendments affect implementation of Texas Education Code, Chapter 142 and 143.

§14.11. Purpose.

(a) (No change.)

(b) The research program is established to encourage and provide support for basic research conducted by faculty and students in eligible public and independent institutions in Texas in the research areas specified by Texas Education Code, §142.002 and as revised by the Advisory Committee.

§14.12. Eligibility.

(a) Only eligible public and independent institutions, as specified in Texas Education Code §61.003 may compete in [~~apply for~~] the research program.

(b) An eligible public or independent institution must be accredited by the Commission on Colleges of the Southern Association of Colleges and Schools.

(c) An eligible public or independent institution must have adopted an intellectual property policy meeting the minimal standards set out in Texas Education Code, §51.680. A copy of the policy must be approved by the Commissioner and be on file at the Coordinating Board.

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

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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CHAPTER 21. STUDENT SERVICES
SUBCHAPTER B. DETERMINATION OF RESIDENT STATUS AND WAIVER PROGRAMS FOR CERTAIN NONRESIDENT PERSONS

19 TAC §21.29

The Texas Higher Education Coordinating Board proposes amendments to §21.29, concerning the Determination of Resident Status and Waiver Programs for Certain Nonresident Persons.

Specifically, the proposed amendments to §21.29(4) reflect that a waiver from nonresident tuition for persons receiving certain competitive scholarships is an option and no longer a requirement for institutions. The amendments also indicate persons awarded scholarships prior to fall 2009 with the understanding of also receiving a waiver of nonresident tuition are entitled to that waiver and may continue to receive waivers through August 1, 2014, if they continue to receive competitive scholarships and continue to be enrolled in the same certificate or degree programs. These amendments implement provisions in House Bill

4244, 81st Texas Legislature. The proposed amendments to §21.29(10) reflect the provisions of a new waiver of nonresident tuition for veterans eligible for federal veterans' benefits, and their spouses and children (including stepchildren). To qualify, they must provide their institutions letters of intent to establish residence in Texas and must reside in the state while attending college. Unless extended by hardship conditions, a child's eligibility to use the waiver ends at age 25. These amendments implement provisions in Senate Bill 93, Senate Bill 297, and Senate Bill 847, 81st Texas Legislature.

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

Ms. Hollis has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of this change will be that the rule will reflect new statutes authorizing the listed waivers. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6165, dan.weaver@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, §54.075, which provides the Coordinating Board with the authority to adopt rules to carry out the purposes of Texas Education Code, §§54.0501 - 54.075.

The amendments affect Texas Education Code, §54.058 and §54.064.

§21.29. Waiver Programs for Certain Nonresident Persons.

A person who is classified as a nonresident under the provisions of this section shall be permitted to pay resident tuition, if the person qualifies for one of the following waiver programs:

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

(4) Program for Competitive Scholarship Recipients.

(A) A nonresident person (including a Citizen, Permanent Resident of the U.S., a person who is eligible to be a Permanent Resident of the U.S., and an eligible nonimmigrant) who receives a competitive scholarship from the institution may be allowed [~~is entitled~~] to pay resident tuition.

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

(H) A student awarded a competitive scholarship prior to fall 2009 that entitled him or her to pay resident tuition in the 2009-2010 academic year is entitled to continue paying resident tuition in subsequent semesters if awarded competitive scholarships in keeping with this paragraph and if the student remains enrolled in the same certificate or degree program. This provision expires August 1, 2014.

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

(10) Programs for Military and Their Families. Members of the U.S. Armed Forces, Army National Guard, Air National Guard, Army, Air Force, Navy, Marine Corps or Coast Guard Reserves and Commissioned Officers of the Public Health Service, and their Spouses or Dependent Children.

(A) - (H) (No change.)

(I) Persons Eligible for Federal Education Benefits for Veterans, their Spouses and Children. Persons eligible for benefits under the federal Post 9/11 Veterans Educational Assistance Act of 2008, or any other federal law authorizing educational benefits for veterans, are eligible to pay the resident tuition rate without regard to the length of time they have been in the state, as are their spouses and children (including stepchildren), if they meet the following conditions:

(i) file a letter of intent with their institution to establish residency in Texas;

(ii) reside in this state while enrolled in the institution;

(iii) if qualifying as a child, be 25 years of age or younger on the first day of the term in which the person is registering unless meeting the hardship provisions described in clause (iv) of this subparagraph; and

(iv) if the child applying for an exemption under this provision is 25 years of age or older but can provide proof to the institution of severe illness or other debilitating condition that affected the person's ability to use the benefit before reaching that age, the child's period of eligibility to use the waiver shall be extended for a length of time equal to the period of illness or incapacity.

(11) (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 June 12, 2009.

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: July 30, 2009
For further information, please call: (512) 427-6114

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SUBCHAPTER II. EDUCATIONAL AIDE EXEMPTION PROGRAM

19 TAC §§21.1081, 21.1083, 21.1084

The Texas Higher Education Coordinating Board proposes amendments to §§21.1081, 21.1083, and 21.1084, concerning the Educational Aide Exemption Program.

Specifically, the proposed amendment to §21.1081 clarifies that program officers are to determine student eligibility. This is a new requirement for the institutions, mandated by Senate Bill 1798, Texas Legislature. The proposed amendment to §21.1083 would add the requirement that an otherwise eligible applicant must submit his or her completed application to the institution by the end of a given term in order to be entitled to an award. The proposed amendments to §21.1084(b)(3), (c) and (d) clarify that, as mandated by Senate Bill 1798, 81st Texas Legislature, the institution is to determine student eligibility rather than forward applications to the Coordinating Board for processing. The proposed amendment to §21.1084(e) reflects that the institution shall determine student eligibility and notify students and school districts of their awards. The Coordinating Board will no longer have the information to post awards on its web site.

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

Ms. Hollis has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of administering the sections will be that the rules will reflect current statutes governing the administration of the program. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6165, lois.hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, §54.214, which provides the Coordinating Board with the authority to adopt rules for the administration of Texas Education Code, §54.214.

The amendments affect Texas Education Code, §54.214.

§21.1081. Definitions.

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

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

(6) Financial need--An indication of a student's inability to meet the full cost of attending a college or university, measured by one of the following methods:

(A) (No change.)

(B) An income methodology, which considers a student to have financial need if his or her adjusted gross annual income is less than income levels set annually by the Commissioner. If the student is a dependent, the family's adjusted gross family income is considered; if the student is independent, only the student's income (and the income of the student's spouse, if he or she is married) is [~~are~~] considered.

(7) Program Officer--The individual named by each participating institution's chief executive officer to serve as agent for the Board. The Program Officer has primary responsibility for all ministerial acts required by the program, including the determination of student eligibility, maintenance of all records and preparation and submission of reports reflecting program transactions. Unless otherwise indicated by the administration, the director of student financial aid shall serve as Program Officer.

(8) (No change.)

§21.1083. Eligible Students.

To receive an award through the Educational Aide Exemption Program, a student must:

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

(7) follow application procedures and schedules as indicated by the Board; [~~and~~]

(8) have a statement on file with the institution of higher education indicating the student is registered with the Selective Service System as required by federal law or is exempt from Selective Service registration under federal law; and

(9) apply for an exemption by the end of the term for which the exemption is to apply.

§21.1084. The Application and Awarding Process.

(a) (No change.)

(b) The application has three parts that must be completed prior to the form's submission to the Board for processing.

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

(3) Part III is to be completed by the Program Officer at the institution, who shall then determine student eligibility and advise the student of his or her status [~~forward the application to the Board for processing~~].

(c) Applications will be processed by the institutions. [~~Board as they are submitted by the institutions. Priority deadlines for submitting applications for the fall-spring terms and for the summer term will be announced in the instructions distributed with the applications. Applications received after those deadlines will be given consideration only if funds remain available after all applications received by the deadline have been processed.~~]

(d) If the student's financial need is based on the income methodology and prior year adjusted gross income is not available at the time of application, eligibility can be temporarily based on a prior prior-year tax return, but the student must provide the institution [~~Board~~] a copy of the prior-year tax return by the deadline set by the institution [~~Board~~] and reported to the student in his or her award announcement [~~letter~~]. If the updated return indicates an income that exceeds the cut-off amount for eligibility, the student will be required to refund to the program any awards received based on prior prior-year data.

(e) As soon as possible after processing applications, the institution [~~Board~~] will notify the relevant [~~institutions,~~] students and school districts of their awards. [~~Institutions will be able to verify approval or a student's award through the Board's web site.~~]

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-200902365
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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19 TAC §§21.1085 - 21.1090

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

The Texas Higher Education Coordinating Board proposes the repeal of §§21.1085 - 21.1090, concerning the Educational Aide Exemption Program.

Specifically, §21.1085 is proposed for repeal in order to delete references to considerations if funding is limited, as these provisions are no longer in statute. The repeal of §21.1085 necessitates the repeal of §§21.1086 - 21.1090.

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

Ms. Hollis has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of administering the sections will be greater clarity in program rules, making it easier for the participants to understand the program's requirements. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6265, lois.hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The repeal is proposed under the Texas Education Code, §54.214, which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, §54.214.

The repeal affects Texas Education Code, §54.214.

§21.1085. Special Considerations if Funding is Limited.

§21.1086. Award Amounts and Processing Cycle.

§21.1087. Reimbursements.

§21.1088. Exemption from Student Teaching.

§21.1089. Hardship Provisions.

§21.1090. Dissemination of Information and Rules.

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

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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19 TAC §§21.1085 - 21.1089

The Texas Higher Education Coordinating Board proposes new §§21.1085 - 21.1089, concerning the Educational Aide Exemption Program.

Specifically, these new sections are being proposed because of the repeal of §21.1085. New §21.1085(c)(2) clarifies that institutions cannot make spring awards or request reimbursements for them unless they have proof the recipient is still employed by their school district. New §21.1085(c)(3) clarifies that the Coordinating Board will notify institutions and school districts of the availability of funds for summer awards. It will not notify current year recipients since it will no longer have current year recipient information.

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

Ms. Hollis has also determined that for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of administering the sections will be that the rules will reflect current statutes governing the administration of the program. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6165, lois.hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new sections are proposed under the Texas Education Code, §54.214, which provides the Coordinating Board with the authority to adopt rules for the administration of Texas Education Code, §54.214.

The new sections affect Texas Education Code, §54.214.

§21.1085. Award Amounts and Processing Cycle.

(a) Amounts. Students receiving awards through the Educational Aide Exemption Program shall be exempted from the payment of (or reimbursed for) resident tuition and required fees, other than laboratory and class fees, for courses taken during the relevant term.

(b) Form of Award--Exemption or Reimbursement.

(1) If applications are processed and announced in time, institutions should exempt recipients from the payment of such charges and then request reimbursement from the Board.

(2) If applications are processed and/or announced too late for the student to be exempted from such payments at registration, the student may be required to pay these charges first, and then be reimbursed by the institution once reimbursement funds are received from the Board.

(c) Unique Requirements for Each Term.

(1) Fall awards are made on the basis of the original fall/spring application.

(2) Spring awards are based on the original fall/spring application. If the student was not a recipient during the fall term, the original application functions as a stand-alone spring application. If the applicant also received a fall award, the spring award shall not be requested by the institution until the school or school district confirms to the institution that it will still be employing the applicant in the spring term.

(3) Summer awards are to be based on a summer application that will be distributed only upon confirmation that there is funding available for summer awards. Institutions and school districts will be advised by the Board of the availability of funds by March 1 of each year. At that time, the Board will distribute copies of the summer application and instructions to institutions and school districts.

§21.1086. Reimbursements.

(a) Source of Funding. The funds used to reimburse institutions or students for awards made through the Educational Aide Exemption program will come from the state's Foundation School Fund and any gifts, grants and donations made to the Texas Education Agency for that purpose.

(b) Requesting Reimbursements. To request reimbursement for student awards, institutions must complete and submit a Request

for Reimbursement Form designed and distributed by the Board. Such forms must be submitted to the Board with sufficient documentation (student billing information) to confirm that the requests are being made for authorized charges.

(c) Disbursements by the Board. The Board will process institutional Requests for Reimbursement at least once a month and will subsequently have appropriate amounts transferred to institutions by the State Comptroller's office. Such funds are to be used by the institutions either to reimburse itself (if it exempted the students from the payment of the relevant charges) or to reimburse students for the relevant charges they paid to the institution.

(d) Transfers from the Foundation Program. At least once a year the Board will request a transfer of funds from the foundation school fund for use in reimbursing institutions or students for their Educational Aide Exemption program awards.

§21.1087. Exemption from Student Teaching.

(a) An individual who receives a bachelor's degree required for a teaching certificate on the basis of higher education coursework completed while receiving an award through this subchapter shall not be required by his or her institution to participate in any field experience or internship consisting of student teaching as a requirement to receive a teaching certificate.

(b) An individual who receives a bachelor's degree prior to receiving his or her first award under this subchapter is not eligible for a student teaching exemption under subsection (a) of this section.

§21.1088. Hardship Provisions.

An individual is considered to meet the employment requirements listed in §21.1083(3) of this chapter (relating to Eligible Students) if he or she was employed at the beginning of the relevant term but was unable to remain employed throughout the term for reasons beyond his or her control. Such situations include, but are not limited to, the following:

(1) a severe illness or other debilitating condition that may affect the individual's ability to continue employment;

(2) responsibility for the care of a temporarily disabled dependent that may affect the recipient's ability to continue employment; or

(3) performance of active duty military service.

§21.1089. Dissemination of Information and Rules.

The Board is responsible for publishing and disseminating general information and program rules for the program described in this subchapter.

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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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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SUBCHAPTER NN. EXEMPTION PROGRAM FOR VETERANS AND THEIR DEPENDENTS (THE HAZLEWOOD ACT)

19 TAC §§21.2100 - 21.2102

The Texas Higher Education Coordinating Board proposes amendments to §§21.2100 - 21.2102, concerning the Exemption Program for Veterans and Their Dependents (The Hazlewood Act).

Specifically, the proposed amendments remove the definition of "citizen of Texas," as that term is no longer relevant; define new terms to reflect statutory changes; and expand the definition for programs having "extraordinary costs" to reflect the passage of Senate Bill 93, Senate Bill 297, and Senate Bill 847, 81st Texas Legislature. This change allows public technical and state colleges, as well as public junior colleges, to charge students the costs associated with operating these higher cost programs. The amendments also clarify the types and amounts of charges that may be exempted and reflect that, in certain cases, veterans' spouses may be eligible for an exemption. Paragraphs have been renumbered as appropriate.

Ms. Lois Hollis, Senior Assistant to the Deputy Commissioner for Business and Finance/Chief Operating Officer, in keeping with the Legislative Budget Board's fiscal note for Senate Bill 93, Senate Bill 297, and Senate Bill 847, 81st Texas Legislature has determined that for each year of the first five years the amendments are in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of administering the sections will be more consistent administration of the program among participating institutions. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6165, lois.hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, §54.203, which provides the Coordinating Board with the authority to adopt rules necessary to administer Texas Education Code, Chapter 54, Subchapter D.

The amendments affect Texas Education Code, §54.203.

§21.2100. Definitions.

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

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

~~[(5) Citizen of Texas--A person who is a resident of Texas.]~~

(5) [~~(6)~~] Contact hours--A unit of measure that represents an hour of scheduled instruction given to students of which 50 minutes must be of direct instruction. Also referred to as clock hours.

(6) [~~(7)~~] Dependent--An individual who was claimed as a dependent for federal income tax purposes by the individual's parent or court-appointed legal guardian in a particular year and in the previous

tax year. A veteran was a dependent if he or she was claimed as such by a parent or legal guardian during the veteran's year of entry into the service and in the previous tax year.

(7) Deployed--A person is deployed if he or she is assigned to active military duty performed in a combat zone outside the United States.

(8) Extraordinary costs--(for public junior colleges, public technical institutes, or public state colleges [~~community/junior colleges~~] only) tuition and fee costs that exceed the average tuition and fee charges at the institution.

(9) Hazlewood Act Exemption--The tuition and partial fee exemption authorized under Texas Education Code, §54.203.

(10) Hazelwood Legacy Act--The tuition and partial fee exemption authorized under Texas Education Code, §54.203, as amended by Senate Bill 93, 81st Texas Legislature, June 1, 2009, which removes certain residency restrictions, extends eligibility to spouses, and permits eligible veterans to assign their unused hours to their child.

(11) [~~(10)~~] Honorably discharged--Released from active duty military service with an Honorable Discharge, General Discharge under Honorable Conditions, or Honorable Separation or Release from Active Duty, as documented by the Certificate of Release or Discharge from Active Duty (DD214) issued by the Department of Defense.

(12) [~~(11)~~] Identification number--An individual's social security number or school-assigned identification number.

(13) [~~(12)~~] Institution--A Texas public institution of higher education as defined in Texas Education Code, §61.003(8).

(14) [~~(13)~~] Deposit fees--Fees that an institution may collect under Texas Education Code, §54.502.

(15) [~~(14)~~] Resident of Texas--A resident of the State of Texas as determined in accordance with Chapter 21, Subchapter B, of this title (relating to Determination of Resident Status and Waiver Programs for Certain Nonresident Persons).

(16) [~~(15)~~] Student service fees--Fees that an institution may, under Texas Education Code, §§54.503, 54.5061 and 54.513, elect to charge to students to cover the cost of student services.

(17) [~~(16)~~] Training--Time spent as a member of the armed forces that is not included in the "Net Active Service" or the sum of "Net Active Service" indicated on the Certificate of Release or Discharge from Active Duty (DD214).

(18) [~~(17)~~] Tuition--All types of tuition that an institution may, under Texas Education Code, Chapter 54, collect from students attending the institution, including statutory tuition, discretionary tuition, designated tuition, and board-authorized tuition.

§21.2101. Hazlewood Act Exemption.

(a) Subject to the following provisions, an institution shall exempt an eligible veteran, spouse, or child from the payment of tuition, [~~and~~] fees, dues, and other required charges, other than deposit and student service fees. The exemption shall not apply to the payment of fees for services or items that are not required for enrollment in general or for items that are not required for the specific courses taken by the student.

(b) If the eligible veteran, spouse, or child is entitled to federal veterans' education benefits during the term or semester for which he or she applies for the Hazlewood Act Exemption, he or she is entitled to receive both federal and state veterans benefits during the same time only if the value of the federal veteran's benefits that may be used only for the payment for tuition and fees for the term or semester is less than the value of the student's tuition [~~and~~] fees, dues, and other required charges, less deposit and student service fees. The total amount a person may receive simultaneously through federal education benefits that may be used only for tuition and fees and the Hazlewood exemption is an amount equal to the total tuition and fees.

(c) An eligible veteran, spouse, or child is not entitled to the Hazlewood Act Exemption for more than 150 attempted credit hours.

(d) An eligible veteran, spouse, or child is entitled to the Hazlewood Act Exemption for an unlimited number of contact hours.

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

(g) The governing board of a public junior college, public technical institute, or public state college as those terms are defined by Texas Education Code, §61.003, [~~district~~] may establish a fee for extraordinary costs associated with a specific course or program.

(h) (No change.)

§21.2102. Eligible Veterans.

In order to be eligible to receive a Hazlewood Act Exemption, a veteran shall demonstrate that he or she:

(1) at the time he or she entered the service, was a resident of Texas, entered the service in the State of Texas, or declared Texas as his or her home of record in the manner provided by the military or other service;

[~~(2) has been classified as a resident by the institution for the term or semester for which the veteran applies for the Hazlewood Act Exemption;~~]

(2) [~~(3)~~] was honorably discharged from service;

(3) [~~(4)~~] has no federal veteran's education benefits, or, if he or she has such benefits, that the value of the benefits that may be used only for the payment of tuition and fees for the semester, including such benefits as those issued under Title 38, United States Code, Chapters 30, 32, and 35, and Title 10, United States Code, Chapters 1606 and 1607 is less than the value of the student's tuition, [~~and~~] fees, and other required charges, less deposit and student service fees for the relevant term;

(4) [~~(5)~~] is not in default on an education loan made or guaranteed by the State of Texas and is not in default on a federal loan if that default is the reason the student cannot use his or her federal veterans' benefits;

(5) [~~(6)~~] has attempted fewer than 150 credit hours using the Hazlewood Act Exemption beginning with fall of 1995;

(6) [~~(7)~~] has followed the application procedures and schedules required by these provisions; and

(7) [~~(8)~~] belongs to one of the following groups of individuals:

(A) nurses and honorably discharged members of the armed forces of the United States who served during the Spanish-American War or during World War I;

(B) nurses, members of the Women's Army Auxiliary Corps, members of the Women's Auxiliary Volunteer Emergency Service, and honorably discharged members of the armed forces of the United States who served during World War II except those who were discharged from service because they were over the age of 38 or because of a personal request on the part of the person that he be discharged from service;

(C) honorably discharged men and women of the armed forces of the United States who served during the Korean War which began on June 27, 1950, and ended on July 27, 1953; and

(D) all persons who:

(i) were honorably discharged from the armed forces of the United States after serving on active military duty for at least 181 days, excluding training; and

(ii) who served a portion of their active duty during:

(I) the Cold War which began on June 27, 1950;

(II) the Vietnam era which began on December 21, 1961, and ended on May 7, 1975;

(III) the Grenada and Lebanon era which began on August 24, 1982, and ended on July 31, 1984;

(IV) the Panama era which began on December 20, 1989, and ended on January 21, 1990;

(V) the Persian Gulf War which began on August 2, 1990, and ended on March 3, 1991;

(VI) the National Emergency by Reason of Certain Terrorist Attacks, which began on September 11, 2001; and

(VII) any future national emergency declared in accordance with federal law.

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 June 12, 2009.

TRD-200902368
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: July 30, 2009
For further information, please call: (512) 427-6114

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19 TAC §§21.2103 - 21.2108

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

The Texas Higher Education Coordinating Board proposes the repeal of §§21.2103 - 21.2108, concerning the Exemption Program for Veterans and Their Dependents (The Hazlewood Act).

Specifically, §§21.2103 - 21.2108 are proposed for repeal due to the creation of new §§21.2103 - 21.2111.

Ms. Lois Hollis, Assistant Commissioner for Student Services, in keeping with the Legislative Budget Board's fiscal note for Senate Bill 93, Senate Bill 297, and Senate Bill 847, Texas Legislature has determined that for each year of the first five years the repeal is in effect, there will be no significant fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of administering the sections will be that the rules will reflect current statutes governing the administration of the program. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, lois.hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The repeal is proposed under the Texas Education Code, §56.203, which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, Chapter 54, Subchapter D.

The repeal affects Texas Education Code, §56.203.

§21.2103. Eligible Children.
§21.2104. The Application.
§21.2105. Supporting Documentation for the Hazlewood Act Exemption Application.
§21.2106. Subsequent Hazlewood Exemption Awards.
§21.2107. Release of Data to the Board and Institutions.
§21.2108. Reporting.

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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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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19 TAC §§21.2103 - 21.2111

The Texas Higher Education Coordinating Board proposes new §§21.2103 - 21.2111, concerning the Exemption Program for Veterans and Their Dependents (The Hazlewood Act).

Specifically, the new sections add eligibility requirements for certain veterans' spouses and reflect expanded eligibility for veterans who entered the service in Texas or declared Texas as their home of record. The new sections add procedures for veterans who wish to assign their unused hours to a child and for a new tuition exemption for children of service members who are deployed overseas. The new sections implement provisions of Senate Bill 93, Senate Bill 297, and Senate Bill 847, 81st Texas Legislature.

Ms. Lois Hollis, Assistant Commissioner for Student Services, in keeping with the Legislative Budget Board's fiscal note for Senate Bill 93, Senate Bill 297, and Senate Bill 847, 81st Texas Legislature has determined that for each year of the first five years the amendments are in effect, there will be no significant fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years the amendments are in effect the public benefit anticipated

as a result of administering the sections will be that the rules will reflect current statutes governing the administration of the program. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, lois.hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new sections are proposed under the Texas Education Code, §54.203 which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, Chapter 54, Subchapter D.

The new sections affect Texas Education Code, §54.203.

§21.2103. Eligible Spouses.

In order to be eligible to receive a Hazlewood Act Exemption, veterans' spouses shall demonstrate that they:

(1) are spouses of:

(A) members of the U.S. Armed Forces who entered the service in the State of Texas, declared Texas as their home of record in the manner provided by the military or other service; or were residents of Texas when they entered the service and who:

(i) were killed in action;

(ii) died while in service;

(iii) are missing in action;

(iv) whose deaths are documented to be directly caused by illness or injury connected with service in the armed forces of the United States; or

(v) became totally disabled for purposes of employability according to the disability ratings of the Department of Veterans Affairs as a result of a service-related injury; or

(B) members of the Texas National Guard or Texas Air National Guard who:

(i) were killed since January 1, 1946 while on active duty either in the service of Texas or the United States; or

(ii) are totally disabled for purposes of employability according to the disability ratings of the Department of Veterans Affairs, regardless of whether the members are eligible to receive disability benefits from the department, as a result of a service-related injury suffered since January 1, 1946, while on active duty either in the service of this state or the United States.

(2) have no federal veteran's education benefits, based on the death or disability of a veteran spouse, or, if eligible for federal benefits, that the value of the benefits that may be used only for the payment of tuition and fees is less than the value of the spouse's tuition, fees, and other required charges, less deposit and student service fees for the term in which the exemption is to be used; and

(3) are classified by their institutions as residents of Texas for the term or semester for which they apply for the Hazlewood Act Exemption.

§21.2104. Eligible Children.

In order to be eligible to receive a Hazlewood Act Exemption, children shall demonstrate that they:

(1) are children of:

(A) members of the U.S. Armed Forces who entered the service in the State of Texas, declared Texas as their home of record in the manner provided by the military or other service; or were residents of Texas when they entered the service and who:

(i) died while in service;

(ii) are missing in action;

(iii) whose deaths are documented to be directly caused by illness or injury connected with service in the armed forces of the United States; or

(iv) became totally disabled for purposes of employability according to the disability ratings of the Department of Veterans Affairs as a result of a service-related injury; or

(B) members of the Texas National Guard or Texas Air National Guard who:

(i) were killed since January 1, 1946 while on active duty either in the service of Texas or the United States; or

(ii) are totally disabled for purposes of employability according to the disability ratings of the Department of Veterans Affairs, regardless of whether the members are eligible to receive disability benefits from the department, as a result of a service-related injury suffered since January 1, 1946, while on active duty either in the service of this state or the United States.

(2) have no federal veteran's education benefits, based on the death or disability of a veteran parent, or, if eligible for federal benefits, that the value of the benefits that may be used only for the payment of tuition and fees is less than the value of the children's tuition, fees, and other required charges, less deposit and student service fees for the term in which the exemption is to be used; and

(3) are classified by their institutions as residents of Texas for the term or semester for which they apply for the Hazlewood Act Exemption.

§21.2105. The Application.

(a) Board staff shall produce and distribute a state-wide Hazlewood Act Exemption Application, requiring institutions to obtain the following information from applicants for the exemption:

(1) general information about the veteran, spouse, and/or child;

(2) point of entry, home of record, or residency information for the time that the veteran entered the service;

(3) residency information for the time that the spouse or child wishes to use the exemption;

(4) a certification of the validity of the information provided by the veteran, spouse, or child; and

(5) a statement granting permission to the institution to release current term or semester and historic credit hour information to the Board and granting permission for the Board to share such data with any institution that the veteran, spouse, or child might attend.

(b) For an otherwise eligible veteran, spouse, or child to be entitled to a Hazlewood Act exemption in a given term or semester, he or she must provide a completed Hazlewood Act Exemption Application and provide the supporting documentation to the institution no later than the census date of that term or semester. If the application or supporting documents are provided after the census date, the institution may make the award but is not required to do so.

(c) All institutions shall require the completed Hazlewood Act Exemption Application Form with supporting documentation for each exemption that is granted.

§21.2106. Supporting Documentation for the Hazlewood Act Exemption Application.

(a) When applying for the first time for the Hazlewood Act Exemption, a veteran shall provide to the institution, along with the Hazlewood Act Exemption Application, the following supporting documentation:

(1) a copy of the veteran's Certificate of Release or Discharge from Active Duty (DD214);

(2) proof of the veteran's current status regarding eligibility for federal veterans' education benefits; and

(3) documentation of point of entry, home of record, or Texas residency at the time the veteran entered the service.

(b) When applying for the first time for the Hazlewood Act Exemption, a spouse or child shall provide to the institution, along with the Hazlewood Act Exemption Application, the following supporting documentation:

(1) proof that the spouse's or parent veteran's death or disability was a result of injury or illness directly associated with service in the U.S. Armed Forces, or that the National Guard spouse or parent was killed or disabled while he or she was on active duty either in the service of Texas or the United States;

(2) proof of the spouse's or child's current status regarding eligibility for federal benefits awarded on the basis of the spouse's or parent's service-related death or disability;

(3) if a child, proof that the child was a dependent of the veteran at the time the veteran died, sustained his or her disabling injury, or was classified as missing in action;

(4) if a spouse, proof that the spouse was the legal spouse of the veteran at the time the veteran died, sustained his or her disabling injury, or was classified as missing in action;

(5) documentation that the veteran spouse or parent, at the time he or she entered the service, was a resident of Texas, entered the service in the State of Texas, or declared Texas as his or her home of record in the manner provided by the military or other service; and

(6) for the spouse or child of a disabled veteran or guardsman documentation that the veteran has been rated by the Veterans' Administration as unemployable due to his or her service-related injuries.

§21.2107. Subsequent Hazlewood Exemption Awards.

(a) For each term or semester of an academic year in which the veteran, spouse, or child receives a Hazlewood Act Exemption, the institution shall confirm that the veteran, spouse, or child:

(1) has not exhausted his or her 150 credit hours of eligibility through the program since Fall 1995;

(2) is still classified as a resident student (applies only to a spouse or child);

(3) has no federal veteran's benefits, or if he or she has federal veterans education benefits that may be used only to pay tuition and fees, that the value of the benefits is less than the student's tuition and required fees less deposit and student service fees for the term; and

(4) is not in default on an education loan made or guaranteed by the State of Texas and is not in default on a federal loan if that default is the reason the student cannot use his or her federal veterans' benefits.

(b) For each term or semester of an academic year in which the veteran, spouse, or child receives a Hazlewood Act Exemption, he or she shall submit the appropriate program application.

§21.2108. Assigning Unused Hours to a Child.

(a) An eligible veteran may elect to waive his or her right to any unused hours for which he or she is eligible (up to the maximum 150 semester credit hours). By completing the relevant forms provided through the Board website and submitting them to the institution, the veteran may:

(1) assign the unused hours to one of his or her children; and

(2) if the child to which the hours have been assigned fails to use all available credit hours, assign the remaining hours to another of his or her children.

(b) For purposes of this section, a child designee must be:

(1) the stepchild, biological, or adopted child of the parent veteran; or

(2) claimed as a dependent on a federal income tax return filed for the preceding year or for the current year.

(c) For an otherwise eligible child to be entitled to a Hazlewood Act exemption in a given term or semester, he or she must:

(1) be a resident of Texas;

(2) make satisfactory academic progress in a degree, certificate, or continuing education program as determined by the institution; except, the child is not required to enroll in a minimum course load;

(3) be 25 years of age or younger on the first day of the semester or other academic term for which the exemption is claimed, unless the child is granted an extension in keeping with subsection (d) of this section;

(4) provide his or her institution a completed Hazlewood Act Exemption Application and the supporting documentation to the institution no later than the census date of that term or semester. If the application or supporting documents are provided after the census date, the institution may make the award but is not required to do so.

(d) An otherwise eligible child assigned hours through this section may use the exemption in a given term at age 25 years or older if the child provides his or her institution documentation from a physician, indicating he or she suffered from a severe illness or other debilitating condition which prevented the child from using the exemption in the required timeframe. In this case, the student's eligibility shall be extended for a period of time equal to the time during which he or she experienced the illness or debilitating condition.

§21.2109. Release of Data to the Board and Institutions.

Prior to the census date of the first term or semester of an academic year in which the veteran, spouse, or child receives a Hazlewood Act Exemption, he or she shall execute a statement, consenting to the release of the number of hours taken in the current academic year and in all previous academic years to the Board and to any institution that the veteran may attend.

§21.2110. Reporting.

(a) All institutions shall report by means of the Texas Higher Education Coordinating Board's CBM 001 report, for each eligible veteran, spouse, and child who is exempted from the payment of tuition

and mandatory and discretionary fees, other than deposit and student service fees, the following information to the Board:

(1) the person's name;

(2) the person's identification number;

(3) the person's date of birth; and

(4) the number of credit hours for which the person received an exemption in the given semester.

(b) All institutions shall submit the report required under this provision to the Board no later than December 31, for the fall term, no later than May 31, for the spring term, and no later than September 30, for the summer term or semester.

(c) If the individual concurrently received federal and state benefits in a given semester, institutions must adjust the data for the Board's report of all students enrolled in credit courses as of the official census date (CBM001 report) to reflect only hours paid through the Hazlewood Act Exemption.

§21.2111. Tuition Exemption for Children of Military Service Members Who Are Deployed.

Institutions shall exempt an eligible child from the payment of resident tuition for every semester or academic term during which a child demonstrates that he or she:

(1) is a dependent child, including a stepchild, of a member of the Armed Forces of the United States who is a Texas resident or entitled to pay resident tuition; and

(2) the member is deployed on active duty for the purpose of engaging in a combative military operation outside of the United States.

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 June 12, 2009.

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS

SUBCHAPTER B. PROVISIONS FOR THE TUITION EQUALIZATION GRANT PROGRAM

19 TAC §§22.21, 22.22, 22.24

The Texas Higher Education Coordinating Board proposes amendments to §§22.21, 22.22 and 22.24, concerning Provisions for the Tuition Equalization Grant Program.

Specifically, the amendments to §22.21 eliminate redundant language and clarify that Tuition Equalization Grants are for students attending private or independent Texas colleges or universities. Amendments to §22.22 clarify that the definitions for enrollment on at least a half-time basis and full-time enrollment pertain to a semester or term, and not to a full academic year. The amendment to the definition of "Program Officer" clarifies the duties of that position. The amendment to the definition of "Resident of Texas" corrects the title of Chapter 21, Subchapter B, of Coordinating Board rules. A definition of three-fourths-time enrollment is added, as required by the passage of House Bill 4476, 81st Texas Legislature. The amendments to §22.24 are mandated by House Bill 4476, 81st Texas Legislature, and reflect the changes to the enrollment requirements for students enrolled for the 2009-2010 academic year and later, from full-time enrollment to three-fourths-time enrollment. Section 22.24(3)(A) - (C), dealing with eligibility for continuation awards and grade-point-average calculations, is deleted.

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

Ms. Hollis has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be more clarity for and consistency among institutions administering the program. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, lois.hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, §61.229, which provides the Coordinating Board with the authority to adopt rules to implement the program.

The amendments affect Texas Education Code, §§61.221 - 61.230.

§22.21. Authority and Purpose.

(a) (No change.)

(b) Purpose. The purpose of the Tuition Equalization Grant Program is to promote the best use of existing educational resources and facilities within this state, both public and private, by providing need-based [~~tuition equalization~~] grants to Texas residents and eligible nonresidents enrolled in any approved private or independent Texas college or university.

§22.22. Definitions.

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

(1) - (8) (No change.)

(9) Enrollment on at least a half-time basis--For undergraduate students, enrolled for the equivalent of six or more semester credit hours per semester or term. For graduate students, enrolled for the equivalent of 4.5 or more semester credit hours per semester or term.

(10) Enrollment on at least a three-fourths basis--For undergraduate students, enrolled for the equivalent of nine or more semester credit hours per semester or term. For graduate students, enrolled for the equivalent of six or more semester credit hours per semester or term.

(11) [~~(10)~~] Expected family contribution--The amount of discretionary income that should be available to a student from his or her resources and that of his or her family, as determined following the federal methodology.

(12) [~~(11)~~] Full-time enrollment--For undergraduate students, enrollment for the equivalent of twelve or more semester credit hours per semester or term. For graduate students, enrollment for the equivalent of nine or more semester credit hours per semester or term.

(13) [~~(12)~~] Financial need--The cost of attendance at a particular public or private institution of higher education less the expected family contribution. The cost of attendance and family contribution are to be determined in accordance with Board guidelines.

(14) [~~(13)~~] Graduate student--A student who has been awarded a baccalaureate degree.

(15) [~~(14)~~] Initial TEG--The first Tuition Equalization Grant ever awarded to a specific student.

(16) [~~(15)~~] Period of enrollment--The term or terms within a state fiscal year (September 1-August 31) for which the student was enrolled in an approved institution and met all the eligibility requirements for an award through this program.

(17) [~~(16)~~] Private or independent institution--Any college or university defined as a private or independent institution of higher education by Texas Education Code, §61.003.

(18) [~~(17)~~] Program or TEG--The Tuition Equalization Grant Program.

(19) [~~(18)~~] Program Maximum--The TEG Program award maximum determined by the Board in accordance with Texas Education Code, §61.227 (relating to Payment of Grant; Amount).

(20) [~~(19)~~] Program Officer--The individual named by each participating institution's chief executive officer to serve as agent for the Board. The Program Officer has primary responsibility for all ministerial acts required by the program, including the selection of recipients, maintenance of all records and preparation and submission of reports reflecting program transactions. Unless otherwise indicated by the administration, the director of student financial aid shall serve as Program Officer.

(21) [~~(20)~~] Regular Semester--A fall or spring semester, typically of 16 weeks' duration.

(22) [~~(21)~~] Resident of Texas--A resident of the State of Texas as determined in accordance with Chapter 21, Subchapter B, of this title (relating to Determination of Resident Status and Waiver Programs for Certain Nonresident Persons [~~Determining Residence Status~~]). Nonresident students who are eligible to pay resident tuition rates are not residents of Texas.

(23) [~~(22)~~] State Fiscal Year--A period of time that begins on September 1 of one calendar year and ends on August 31 of the following calendar year.

(24) [~~(23)~~] Tuition Differential--The difference between the tuition paid at the private or independent institution attended and the tuition the student would have paid to attend a comparable public institution.

(25) [~~(24)~~] Tuition Equalization Grant need (TEG need)--The total amount of TEG funds that full-time students at an approved institution would be eligible to receive if the program were fully funded.

(26) [~~(25)~~] Undergraduate student--An individual who has not yet received a baccalaureate degree.

§22.24. Eligible Students.

To receive an award through the TEG Program, a student must:

(1) be enrolled for a minimum number of semester credit hours, which requires:

(A) if the student received a TEG in a state fiscal year prior to 2005-2006 or was awarded a TEG for the 2005-2006 state fiscal year prior to September 1, 2005, enrollment on at least a half-time basis; [~~or~~]

(B) if the student was awarded a TEG award for the 2009-2010 academic year or later, three-fourths-time enrollment;

[~~(B) if the student was awarded his or her initial TEG award on or after September 1, 2005, full-time enrollment;~~]

(2) show financial need;

(3) maintain satisfactory academic progress in his or her program of study as required by §22.25 of this title (relating to Satisfactory Academic Progress); [~~which requires:~~]

[~~(A) if the student received a TEG in a state fiscal year prior to 2005-2006 or was awarded a TEG for the 2005-2006 state fiscal year prior to September 1, 2005, the student must meet the academic progress requirements as set by the institution; or~~]

[~~(B) if the student was awarded his or her initial TEG award on or after September 1, 2005:~~]

[~~(i)~~] ~~completion of at least 24 semester credit hours in the student's most recent academic year in an undergraduate degree or certificate program; or completion of at least 18 semester credit hours in the student's most recent academic year in a graduate or professional degree program (unless fewer hours are required for the completion of the degree), and~~]

[~~(ii)~~] ~~establishment and maintenance of an overall grade point average of at least 2.5 on a four-point scale or the equivalent on coursework previously attempted at public or private institutions. Grade point average calculations shall be made in accordance with institutional policies except that if a grant recipient's grade point average falls below program requirements and the student transfers to another institution, the receiving institution cannot make a continuation award to the transfer student until he/she provides official transcripts of previous coursework to the new institution's financial aid office and that office re-calculates an overall grade point average, including hours and grade points for courses taken at the old and new institutions that proves the student's overall grade point average now meets or exceeds program requirements.~~]

[~~(C) A first-time entering freshman student enrolling in a participating institution for the second regular term or semester in a given academic year meets the semester-credit-hour requirement outlined in subparagraph (B)(i) of this paragraph for continuing in the program if he or she completes at least 12 semester credit hours or its equivalent during that term or semester.~~]

(4) - (8) (No change.)

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

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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19 TAC §§22.25 - 22.33

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

The Texas Higher Education Coordinating Board proposes the repeal of §§22.25 - 22.33, concerning Provisions for the Tuition Equalization Grant Program.

Specifically, these sections are proposed for repeal in order to propose new §22.25 and §22.26, which would implement House Bill 4476, 81st Texas Legislature.

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

Ms. Hollis has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of administering the repeal will be more clarity for and consistency among institutions administering the program. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the repeal as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, lois.hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The repeal is proposed under the Texas Education Code, §61.229, which provides the Coordinating Board with the authority to adopt rules to implement the program.

The repeal affects Texas Education Code, §§61.221 - 61.230.

§22.25. End of Eligibility.
§22.26. Hardship Provisions for Students Awarded an Initial TEG on or after September 1, 2005.
§22.27. Award Amounts and Uses.
§22.28. Adjustments to Awards Made through Campus-Based Processing.
§22.29. Late Disbursements.
§22.30. Allocation and Reallocation of Funds.
§22.31. Authority to Transfer Funds.
§22.32. Dissemination of Information and Rules.
§22.33. Reporting.

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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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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19 TAC §§22.25 - 22.35

The Texas Higher Education Coordinating Board proposes new §§22.25 - 22.35, concerning Provisions for the Tuition Equalization Grant Program.

New §22.25 and §22.26 would implement House Bill 4476, 81st Texas Legislature, which changed the eligibility requirements for students who receive initial awards for academic year 2009-2010 and later. In addition, this bill changes the renewal criteria for students receiving initial awards for the academic year 2008-2009 and later. New §22.25 and §22.26 necessitate new §§22.27 - 22.35. New §22.30 (current §22.28) is changed to correct the title due to the fact that there is no longer a campus-based process.

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

Ms. Hollis has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be more clarity for and consistency among institutions administering the program. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, lois.hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new sections are proposed under the Texas Education Code, §61.229, which provides the Coordinating Board with the authority to adopt rules to implement the program.

The amendments affect Texas Education Code, §§61.221 - 61.230.

§22.25. Satisfactory Academic Progress.

(a) Students who received a TEG award in a state fiscal year prior to 2005-2006 or who were awarded a TEG for the 2005-2006 state fiscal year prior to September 1, 2005, shall meet the academic progress requirements as determined by institutional policies.

(b) Students awarded a TEG award for the 2008-2009 academic year and later shall, unless granted a hardship postponement in accordance with §22.28 of this title (relating to Hardship Provisions for Students Awarded an Initial TEG on or after September 1, 2005):

(1) As of the end of the first academic year in which the student receives an initial award, meet the academic progress requirements as determined by institutional policies.

(2) At the end of the year in which the student receives a continuation award:

(A) complete at least 75 percent of the hours attempted in his or her most recent full academic year, as determined by institutional policies;

(B) complete at least 24 semester credit hours in his or her most recent full academic year; and

(C) maintain an overall grade-point average of at least 2.5 on a four-point scale or its equivalent for all coursework attempted at an institution or private or independent institution.

§22.26. Grade Point Average Calculation.

Grade-point average calculations shall be made in accordance with institutional policies except that if a grant recipient's grade-point average falls below program requirements and the student transfers to another institution, or has transferred from another institution, the receiving institution cannot make a continuation award to the transfer student until he or she provides official transcripts of previous coursework to the new institution's financial aid office and that office re-calculates an overall grade-point average, including hours and grade points for courses taken at the old and new institutions, that proves the student's overall grade-point average now meets or exceeds program requirements.

§22.27. End of Eligibility.

(a) A student awarded TEG prior to the 2005-2006 state fiscal year or before September 1, 2005, for the 2005-2006 state fiscal year may continue to receive grants as long as he or she meets the relevant eligibility requirements of §22.24 of this title (relating to Eligible Students).

(b) An undergraduate student who is awarded an initial TEG on or after September 1, 2005, shall not be eligible for a TEG on either:

(1) the fifth anniversary of the initial award of a TEG to the student, if the student is enrolled in a degree or certificate program of four years or less; or

(2) the sixth anniversary of the initial award of a TEG to the student, if the student is enrolled in a degree or certificate program of more than four years.

(c) A graduate student who is awarded an initial TEG on or after September 1, 2005, may continue to receive grants as long as he or she meets the relevant eligibility requirements of §22.24 of this title.

§22.28. Hardship Provisions for Students Awarded an Initial TEG on or after September 1, 2005.

(a) In the event of a hardship or for other good cause, the Program Officer at an eligible institution may allow an otherwise eligible student to receive a TEG while enrolled less than full time or if the student's grade point average or number of hours completed falls below the satisfactory academic progress requirements as referred to in §22.24 of this title (relating to Eligible Students). Such conditions may include, but are not limited to:

(1) a showing of a severe illness or other debilitating condition that may affect the student's academic performance;

(2) an indication that the student is responsible for the care of a sick, injured, or needy person and that the student's provision of care may affect his or her academic performance; or

(3) an undergraduate student's need to complete fewer than 12 hours in a given term in order to complete a degree, in which case the award amount should be determined on a pro rata basis for a full-time award.

(b) Each institution shall adopt a hardship policy under this section and have the policy available in writing in the financial aid office for public review upon request.

§22.29. Award Amounts and Uses.

(a) Funding. Funds awarded through this program may not exceed the amount appropriated by the Legislature for that purpose.

(b) Award Amount.

(1) Each state fiscal year, no TEG award shall exceed the least of:

(A) the student's financial need;

(B) the student's tuition differential; or

(C) the program maximum.

(2) A grant to a part-time student whose initial TEG was awarded prior to September 1, 2005 or to any student enrolled for a limited number of hours due to imminent graduation shall be made on a pro rata basis of a full-time award.

(c) Exceptional Need Award. An undergraduate student who has exceptional financial need may receive a grant in an amount not to exceed 150 percent of the program maximum.

(d) Uses. No grant disbursed to a student may be used for any purpose other than for meeting the cost of attending an approved institution.

(e) Term or Semester Disbursement Limit. The amount of any disbursement in a single term or semester may not exceed the student's financial need, tuition differential or the program maximum for the state fiscal year, whichever is the least.

(f) Over Awards. If, at a time after an award has been offered by the institution and accepted by the student, the student receives assistance that was not taken into account in the student's estimate of financial need, so that the resulting sum of assistance exceeds the student's financial need, the institution is not required to adjust the award under this program unless the sum of the excess resources is greater than $300.

§22.30. Adjustments to Awards.

If a student officially withdraws from enrollment, or for some other reason, the amount of a student's disbursement exceeds the amount the student is eligible to receive, the institution shall follow its general institutional refund policy in determining the amount by which the award is to be reduced.

(1) Such funds should be re-awarded to other eligible students attending the institution. If funds cannot be re-awarded in a timely manner, they should be returned to the Board. Such payment shall be accompanied with sufficient documentation to enable the Board to identify the appropriate program for which the funds were originally issued.

(2) Funds returned to the Board shall be returned promptly, and must be returned no later than 60 days from the issue date.

(3) If the student withdraws or drops classes after the end of the institution's refund period, no refunds are due to the program.

§22.31. Late Disbursements.

(a) A student may receive a disbursement after the end of his/her period of enrollment if the student:

(1) Owes funds to the institution for the period of enrollment for which the award is being made; or

(2) Received a student loan that is still outstanding for the period of enrollment.

(b) Funds that are disbursed after the end of the student's period of enrollment must be used following Board procedures to either pay the student's outstanding balance from his/her period of enrollment at the institution or to make a payment against an outstanding student loan received during that period of enrollment. Under no circumstances are funds to be released to the student.

§22.32. Allocation and Reallocation of Funds.

(a) Allocations. Available program funds will be allocated to each participating institution in proportion to each institution's TEG need.

(b) Reallocations. Institutions will have until a date specified by the Board via a policy memo addressed to the Program Officer at the institution to encumber the program funds that have been allocated to them. On that date, institutions lose claim to any funds not yet drawn down from the Board for immediate disbursement to students. The funds released in this manner are available to the Board for reallocation to other institutions. If necessary for ensuring the full use of funds, subsequent reallocations may be scheduled until all funds are awarded and disbursed.

§22.33. Authority to Transfer Funds.

Institutions participating in a combination of the Toward EXcellence, Access and Success Grant, Tuition Equalization Grant, and Texas College Work-Study Programs, in accordance with instructions from the Board, may transfer in a given fiscal year up to the lesser of 10 percent or $10,000 between these programs.

§22.34. Dissemination of Information and Rules.

The Board is responsible for publishing and disseminating general information and program rules for the program described in this subchapter.

§22.35. Reporting.

Each year, the Board shall include as a part of the annual financial aid report mandated in Senate Bill 1, Regular Session, General Appropriations Act (§13, page III-50), 79th Texas Legislature, a breakdown of Tuition Equalization Grant recipients by ethnicity, indicating the percentage of each ethnic group that received Tuition Equalization Grant funds for the academic year at each institution.

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 June 12, 2009.

TRD-200902373
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: July 30, 2009
For further information, please call: (512) 427-6114

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SUBCHAPTER Q. ENGINEERING SCHOLARSHIP PROGRAM

19 TAC §§22.312, 22.313, 22.315

The Texas Higher Education Coordinating Board proposes amendments to §§22.312, 22.313, and 22.315, concerning the Engineering Scholarship Program.

Specifically, the proposed amendments to these sections clarify that students attending private or independent institutions of higher education are eligible to participate in the scholarship program, as mandated by House Bill 2425, 81st Texas Legislature.

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

Ms. Hollis has also determined for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of this change will be that the rules will reflect current statutes governing the administration of the program. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6165, lois.hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, §61.792, which provides the Coordinating Board with the authority to adopt rules for the administration of Texas Education Code, §61.792.

The amendments affect Texas Education Code, §61.792.

§22.312. Authority, Scope, and Purpose.

(a) (No change.)

(b) Scope. Unless otherwise noted, this subchapter applies to any general academic teaching institution or private or independent institution of higher education in Texas (Texas Education Code, §61.003) that offers an engineering degree program and their students.

(c) Purpose. The purpose of this program is to provide scholarships to students pursuing a degree in engineering at a participating general academic teaching institution or private or independent institution of higher education.

§22.313. Definitions.

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

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

(3) Eligible institution--any general academic teaching institution or private or independent institution of higher education that offers one or several undergraduate degree programs in engineering.

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

§22.315. Student Eligibility Requirements.

(a) To qualify for an engineering scholarship, a person must:

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

(3) enroll in an undergraduate engineering program offered by a general academic teaching institution or private or independent institution of higher education in Texas;

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

(b) (No change.)

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

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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SUBCHAPTER R. PROVISIONS REGARDING SCHOLARSHIPS TO RELATIVES OF BOARD MEMBERS OF INSTITUTIONS OF HIGHER EDUCATION AND UNIVERSITY SYSTEMS

19 TAC §22.405

The Texas Higher Education Coordinating Board proposes amendments to §22.405, concerning the Provisions Regarding Scholarships to Relatives of Board Members of Institutions of Higher Education and University Systems.

Specifically, the amendments to §22.405 are proposed as a result of the passage of House Bill 4244, 81st Texas Legislature, which mandates that students must certify at some point prior to receiving an institutional scholarship that they are not related to a current member of the governing board of the institution or system. Prior to the passage of House Bill 4244, students were required to make this certification when applying for a scholarship. The amendment will simplify the process for students of applying for institutional scholarships.

Ms. Lois Hollis, Senior Assistant to the Deputy Commissioner for Business and Finance/Chief Operating Officer, in keeping with the Legislative Budget Board's fiscal note for House Bill 4244, has determined that for each year of the first five years the amendments are in effect, there will be no significant fiscal implications to state or local government as a result of enforcing or administering the rule.

Ms. Hollis has also determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of administering the section will be an easier process for students applying for institutional scholarships. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, lois.hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, §51.969 which provides the Coordinating Board with the authority to adopt any rules necessary to administer this section.

The amendments affect Texas Education Code, §51.969.

§22.405. Declaration of Eligibility.

Prior to receiving [~~A person applying for~~] a scholarship originating from and administered by an institution of higher education or university system, a student must file a written statement [~~with the application~~] indicating whether the person is related within the third degree by consanguinity or the second degree by affinity to a current member of the governing board of the institution or system. The required wording of the statement will be developed by the Board and will be made available to institutions via the Coordinating Board's web site.

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 June 12, 2009.

TRD-200902375

Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: July 30, 2009
For further information, please call: (512) 427-6114

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SUBCHAPTER S. PROFESSIONAL NURSING SHORTAGE REDUCTION PROGRAM

19 TAC §§22.501 - 22.505, 22.507, 22.508

The Texas Higher Education Coordinating Board proposes amendments to §§22.501 - 22.505, 22.507, and 22.508, concerning the Professional Nursing Shortage Reduction Program.

Specifically, in compliance with House Bill 4471, 81st Texas Legislature, the proposed amendments provide two new funding programs to the Professional Nursing Shortage Reduction Program. Qualifying institutions may receive advance funding in order to increase their enrollments and graduates.

Ms. Susan Brown, Assistant Commissioner, Planning and Accountability, has determined that for each year of the first five years the sections are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Brown has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be additional funding provided to the initial licensure nursing programs in Texas. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Ed Buchanan, Program Director, Planning and Accountability, P.O. Box 12788, Austin, Texas 78711, ed.buchanan@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, §§61.0901, 61.9621, 61.96232, 61.96233, and 61.9629.

The amendments affect Texas Education Code, §§61.9621, 61.96232, 61.96233, and 61.9629.

§22.501. Authority, Scope, and Purpose.

(a) (No change.)

(b) Scope.

(1) Unless otherwise noted, this subchapter applies to any public or private institution of higher education [~~institution~~] in Texas that offers a professional nursing program that leads to initial licensure.

(2) Continued Eligibility of Prior Programs. A professional nursing program offered by an entity other than a public or private or independent institution of higher education that was eligible to receive grants from a program under this subchapter before September 1, 2009, remains eligible to receive a grant from such a program if the entity meets all criteria for a grant other than the criterion of being a program offered by an institution of higher education.

(c) (No change.)

§22.502. Definitions.

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

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

(6) CBM Reporting System [~~009~~]--the Coordinating Board's Management reporting system for collecting institution data. [~~report number nine for use by institutions in reporting all graduates to the Coordinating Board~~]

§22.503. Program Announcements [~~Announcement~~].

Annually the Board shall provide [~~a~~] Program Announcements [~~Announcement~~] of the current year's Professional Nursing Shortage Reduction Program to all professional nursing programs in Texas. These announcements [~~This announcement~~] will contain the following information:

(1) Description of the current year's award programs [~~program~~].

(2) A listing of required forms for application to the programs [~~program~~].

(3) Application requirements for qualification to receive an award under the programs [~~program~~].

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

§22.504. Application for an Award.

(a) (No change.)

(b) Applications received after the fifth working day past the required due date as stated in the Program Announcements [~~Announcement~~] will be rejected. Institutions that fail to apply for this program by the fifth working day past the required due date shall not be included in the awards.

(c) (No change.)

§22.505. Required Reporting of Data [~~Nursing Graduates~~].

(a) Institutions that report to the Coordinating Board Management (CBM) system--An institution that wishes to qualify for an award under this program shall submit the data required for this program as outlined in the Program Announcements [~~its nursing graduates to the Coordinating Board on the standard CBM 009 report~~].

(b) Institutions that do not report to the Coordinating Board Management (CBM) system (i.e. Diploma Programs)--An institution shall submit its required data [~~nursing graduates~~] to the Coordinating Board in a format and with the specific content prescribed.

(c) Institutions that fail to report their required data [~~nursing graduates~~] by the reporting deadline [~~required date~~] shall not be eligible for an award.

§22.507. Required Reporting of Award Expenditures.

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

(c) Any award advance funds that remain unearned by the date specified in the program announcement(s) shall be refunded to the Coordinating Board within five calendar days.

(d) [~~(c)~~] The program report shall be in a format and with the specific content prescribed by the Commissioner.

§22.508. Expenditure Restrictions, Accounting Requirements, and Audit Provisions.

(a) (No change.)

(b) Accounting Requirements--Each award [~~Yearly awards~~] from this program shall be accounted for separately in the books and records of receiving institutions.

(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 June 12, 2009.

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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SUBCHAPTER T. EXEMPTION FOR FIREFIGHTERS ENROLLED IN FIRE SCIENCE COURSES

19 TAC §§22.518 - 22.523

The Texas Higher Education Coordinating Board proposes new §§22.518 - 22.523, concerning the Exemption Program for Firefighters Enrolled in Fire Science Courses.

Specifically, House Bill 2013, 81st Texas Legislature, amended Texas Education Code §54.208 and authorized the Board to adopt rules to implement the section, beginning with exemptions awarded for the 2009 fall semester. The new sections establish definitions, identify eligible firefighters, indicate requirements for receiving continuation awards, note restrictions for students who have accumulated excess credit hours, and direct institutions to the Coordinating Board's web site for a listing of eligible programs of study.

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

Ms. Hollis has also determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of administering the sections will be a consistent opportunity for eligible firefighters to use the exemption. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6165, lois.hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new sections are proposed under the Texas Education Code, §54.208 which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, §54.208.

The new sections affect Texas Education Code, §54.208.

§22.518. Authority and Purpose.

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, §54.208, Firefighters Enrolled in Fire Science Courses. These rules establish procedures to administer this exemption program.

(b) Purpose. The purpose of this program is to provide an exemption from tuition and laboratory fees to eligible persons employed as firefighters by a political subdivision of the state or who are active members of an organized volunteer fire department in this state.

§22.519. Definitions.

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

(1) Board--The Texas Higher Education Coordinating Board.

(2) Firefighter--An individual employed as a firefighter by a political subdivision of the state of Texas or who is an active member of an organized volunteer fire department in Texas.

(3) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(4) Fire Science Courses--Courses determined by the staff of the Board to be a part of a Fire Science Curriculum.

(5) Institution of Higher Education or Institution--Any public technical institute, public junior college, public senior college or university, medical or dental unit, public state college, or other agency of higher education as defined in Texas Education Code, §61.003(8).

(6) Laboratory fees--Fees authorized through Texas Education Code, §54.501.

(7) Program--The Exemption Program for Firefighters Enrolled in Fire Science Courses.

(8) Tuition--Includes statutory tuition, designated tuition and Board-authorized tuition.

§22.520. Tuition and Laboratory Fee Exemption.

Each institution of higher education shall exempt all eligible persons from the payment of tuition and laboratory fees for courses offered as part of a fire science curriculum.

§22.521. Eligible Firefighters.

(a) To receive an initial exemption under this program,

(1) A paid firefighter must be employed by a political subdivision of the State of Texas.

(2) A volunteer firefighter must:

(A) currently, and for at least the past year, be an active member of an organized volunteer fire department in this state, as defined by the fire fighters' pension commission; and

(B) hold one of the following credentials:

(i) an Accredited Advanced level of certification, or an equivalent successor certification, under the State Firemen's and Fire Marshals' Association of Texas volunteer certification program; or

(ii) Phase V (Firefighter II) certification, or an equivalent successor certification, under the Texas Commission on Fire Protection's voluntary certification program under Texas Government Code, §419.071.

(b) To receive an exemption in a subsequent semester the student must be in compliance with the institution's financial aid satisfactory academic progress requirements. This provision does not apply to a student who received an exemption under Texas Education Code §54.208 before the 2009 fall semester as long as the student remains enrolled in the same degree or certificate program and is otherwise eligible to continue to receive the exemption under the statutory provisions that existed at that time.

§22.522. Excess Hours.

(a) An exemption under this subchapter does not apply to any amount of additional tuition the institution elects to charge a resident undergraduate student due to excess undergraduate hours as specified in Texas Education Code, §54.014(a) or (f).

(b) An exemption under this subchapter does not apply to any amount of additional tuition the institution charges a graduate student because the student has a number of semester credit hours of doctoral work in excess of the applicable number provided by Texas Education Code, §61.059(1) or (2).

(c) The provisions of subsections (a) and (b) of this section do not apply to a student who received an exemption under Texas Education Code §54.208 before the 2009 fall semester as long as the student remains enrolled in the same degree or certificate program and is otherwise eligible to continue to receive the exemption under the statutory provisions that existed at that time.

§22.523. Degree Programs Eligible for the Exemption.

Degree programs whose courses are eligible for the exemption described in this subchapter shall be identified by the Coordinating Board. A uniform listing of approved degree programs shall be posted on the Coordinating Board web site.

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 June 12, 2009.

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

19 TAC §97.1004

(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 §97.1004 is not included in the print version of the Texas Register. The figure is available in the on-line version of the June 26, 2009, issue of the Texas Register.)

The Texas Education Agency (TEA) proposes an amendment to §97.1004, concerning adequate yearly progress (AYP). The section establishes provisions related to AYP and sets forth the process for evaluating campus and district AYP status. The section also adopts the most recently published AYP guide. The proposed amendment would adopt applicable excerpts, *Sections II-V,* of the *2009 Adequate Yearly Progress Guide.* Earlier versions of the guide will remain in effect with respect to the school years for which they were developed.

Under the accountability provisions in the federal No Child Left Behind Act, all public school campuses, school districts, and the state are evaluated for AYP. Districts, campuses, and the state are required to meet AYP criteria on three measures: reading/English language arts, mathematics, and either graduation rate (for high schools and districts) or attendance rate (for elementary and middle/junior high schools). If a campus, district, or state receiving Title I, Part A, funds fails to meet AYP for two consecutive years, that campus, district, or state is subject to certain requirements such as offering supplemental educational services, offering school choice, or taking corrective actions. To implement these requirements, the agency developed the AYP guide.

Agency legal counsel has determined that the commissioner of education should take formal rulemaking action to place into the *Texas Administrative Code* procedures related to AYP. Through 19 TAC §97.1004, adopted effective July 14, 2005, the commissioner exercised rulemaking authority to establish provisions related to AYP and set forth the process for evaluating campus and district AYP status. Portions of each AYP guide have been adopted beginning with the 2004 AYP Guide, and the intent is to annually update 19 TAC §97.1004 to refer to the most recently published AYP guide.

The proposed amendment to 19 TAC §97.1004 would update the rule to adopt applicable excerpts, *Sections II-V,* of the *2009 Adequate Yearly Progress Guide.* These excerpted sections describe specific features of the system, AYP measures and standards, and appeals. In 2009, the U.S. Department of Education approved changes to specific components of the AYP system, including the areas addressed in the applicable excerpts of the 2009 AYP Guide. Examples of approved changes include the addition of the Texas Projection Measure in AYP performance calculations, discontinued use of confidence intervals and uniform averaging in small numbers analysis, and specific procedures to address evaluation and reporting of information regarding students displaced by Hurricane Ike as approved in the 2009 Texas AYP Workbook.

In addition, subsection (d) would be modified to specify that the AYP guide adopted for the school years prior to 2009-2010 will remain in effect with respect to those school years.

The proposed amendment would establish in rule the specific AYP procedures for 2009. Applicable procedures would be adopted each year as annual versions of the AYP guide 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 AYP rating procedures for 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 June 26, 2009, and ends July 27, 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 June 26, 2009.

The amendment is proposed under the TEC, §7.055(b)(32), which authorizes the commissioner to perform duties in connection with the public school accountability system as prescribed by TEC, Chapter 39; TEC, §39.073, which authorizes the commissioner to determine how all indicators adopted under TEC, §39.051(b), may be used to determine accountability ratings; and TEC, §39.075(a)(4), which authorizes the commissioner to conduct special accreditation investigations in response to state and federal program requirements.

The amendment implements the TEC, §§7.055(b)(32), 39.073, and 39.075(a)(4).

§97.1004. Adequate Yearly Progress.

(a) In accordance with the federal No Child Left Behind Act and Texas Education Code, §§7.055(b)(32), 39.073, and 39.075, all public school campuses, school districts, and the state are evaluated for Adequate Yearly Progress (AYP). Districts, campuses, and the state are required to meet AYP criteria on three measures: reading/English language arts, mathematics, and either graduation rate (for high schools and districts) or attendance rate (for elementary and middle/junior high schools). The performance of a school district, campus, or the state is reported through indicators of AYP status established by the commissioner of education.

(b) The determination of AYP for school districts and charter schools in 2009 [~~2008~~] is based on specific criteria and calculations, which are described in excerpted sections of the 2009 [~~2008~~] AYP Guide provided in this subsection.
Figure: 19 TAC §97.1004(b)
[~~Figure:~~ ~~19 TAC §97.1004(b)~~]

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

(d) The specific criteria and calculations used in the AYP guide adopted for the 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.

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TRD-200902436
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: July 26, 2009
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 71. APPLICATIONS AND APPLICANTS

22 TAC §71.15

The Texas Board of Chiropractic Examiners (Board) proposes new §71.15, relating to recognized specialties, to list the specialty in chiropractic radiology approved by the Board at its meeting on February 26, 2009, and to set forth the qualifications and continuing education requirements for this specialty. At this time, the Board is not imposing a fee for specialties.

Mr. Glenn Parker, Executive Director of the Texas Board of Chiropractic Examiners, has determined that for each year of the first five years that this rule will be in effect there will be no additional cost to state or local governments.

Mr. Parker has also determined that for each year of the first five years that this rule will be in effect that the public benefit of this rule will be greater clarity in the qualifications of chiropractic radiologists. Mr. Parker has also determined that there will be no adverse economic effect to individuals, small or micro businesses during the first five years that this rule will be in effect as this rule imposes no burdens.

Comments on the proposed rule and/or a request for a public hearing on the proposed rule may be submitted to Glenn Parker, Executive Director, Texas State Board of Chiropractic Examiners, 333 Guadalupe St., Tower III, Suite 825, Austin, TX 78701, (512) 305-6705 fax, no later than 30 days from the date that this amendment is published in the *Texas Register.*

The new rule is proposed under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic.

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

§71.15. Recognized Specialties.

The following chiropractic specialties have been approved by the board: Chiropractic Radiology.

(1) Requirements: Diplomate, American Chiropractic Board of Radiology

(2) Continuing education requirements:

(A) Sixty continuing education credits over a period of five years in the field of diagnostic imaging;

(B) Successfully completing an American Chiropractic Board of Radiology certification examination; or

(C) Another manner recognized and approved by the American Chiropractic Board of Radiology.

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 June 10, 2009.

TRD-200902328
Glenn Parker
Executive Director
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: July 26, 2009
For further information, please call: (512) 305-6901

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CHAPTER 76. FORMAL SOAH PROCEEDINGS

22 TAC §76.21

The Texas Board of Chiropractic Examiners (Board) proposes new §76.21, relating to extensions of time, to delegate to the Executive Director the authority to enter into agreements to modify time limits as provided under the Administrative Procedure Act (APA), Texas Government Code §2001.147. This new rule will allow the Board to better coordinate the presentation of proposed decisions in contested cases at the regularly scheduled quarterly meetings of the Board.

Mr. Glenn Parker, Executive Director of the Texas Board of Chiropractic Examiners, has determined that for each year of the first five years that this rule will be in effect there will be no additional cost to state or local governments.

Mr. Parker has also determined that for each year of the first five years that this rule will be in effect that the public benefit of this rule will be better coordination of the timely presentation of proposals for decision to the Board. Mr. Parker has also determined that there will be no adverse economic effect to individuals, small or micro businesses during the first five years that this rule will be in effect. This rule will only affect the scheduling of an existing contested case.

Comments on the proposed rule and/or a request for a public hearing on the proposed rule may be submitted to Glenn Parker, Executive Director, Texas State Board of Chiropractic Examiners, 333 Guadalupe St., Tower III, Suite 825, Austin, TX 78701, (512) 305-6705 fax, no later than 30 days from the date that this amendment is published in the *Texas Register.*

The new rule is proposed under Texas Occupations Code §201.152, relating to rules, and §201.501, relating to disciplinary powers of the Board. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.501(d) provides that the Board's disciplinary proceedings are governed by the APA, Texas Government Code Chapter 2001.

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

§76.21. Extensions of Time.

The Executive Director may enter into an agreement with parties to a contested case to modify time limits as provided under the Administrative Procedure Act, Texas Government Code §2001.147.

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 June 10, 2009.

TRD-200902329

Glenn Parker
Executive Director
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: July 26, 2009
For further information, please call: (512) 305-6901

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS SUBCHAPTER E. REQUIREMENTS FOR LICENSURE

22 TAC §535.51

The Texas Real Estate Commission (TREC) proposes amendments to §535.51, concerning General Requirements. The amendments would correct and clarify the requirements for obtaining an education evaluation and submitting an application for licensure. The proposed amendments also include stylistic changes to improve readability and restore to subsection (e) (relettered as subsection (f)) text that was inadvertently omitted at the time of the last amendments to this section.

The proposed amendments also change the fee schedule on the late renewal application forms adopted by reference to reflect an increase in late renewal fees from $45 to $51 for the annual late renewal of a real estate salesperson or broker license for a person whose license has been expired 90 days or less; and late renewal fee from $60 to $68 for the annual late renewal of a real estate salesperson or broker license for a person whose license has been expired more than 90 days but less than one year. The fee increases are concurrently being proposed in amendments to §535.101. The 81st Legislature in the 2010-2011 General Appropriations Act and riders thereto approved budget appropriations for the commission contingent on those appropriations being paid through fee collections.

The proposed amendments also change the fee schedule on the salesperson original application, late renewal application forms, and the broker step down application form adopted by reference to reflect an increase in the fee paid by such applicants to the Real Estate Center from $17.50 to $20. The fee was increased during the 81st Legislative Session, Regular Session, by Senate Bill 862 which amended Texas Occupations Code §1101.152.

Devon V. Bijansky, Assistant General Counsel, has determined that for the first five-year period the 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 economic cost to persons who are required to comply with the proposed amendments. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the amendments.

Ms. Bijansky also has determined that, for each year of the first five years the amendments as proposed are in effect, the public benefit anticipated as a result of enforcing the amendments will be increased clarity for applicants regarding the requirements for licensure.

Comments on the proposal may be submitted to Devon V. Bijansky, Assistant General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to ensure compliance with the provisions of the Act.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.51. General Requirements.

(a) A person who wishes to be licensed by the commission must file an application for the license on the form adopted by the commission for that purpose. [~~Prior to filing the application, the applicant must pay the required fee for evaluation of the education completed by the person and must obtain a written response from the commission showing the applicant meets current education requirements for the license.~~]

(b) Prior to submitting an application, an applicant must submit a completed education evaluation request form along with the appropriate fee. If the commission determines that the applicant has met current education requirements for the applicable license, 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 commission received the education evaluation request. If the commission determines that the applicant has not completed all required education, the applicant has until one year from the date the commission 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 commission after the new requirements take effect will be based on then-current requirements. If the education requirements change after the commission has notified the applicant that his or her education satisfies the commission'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)~~] A [~~If the commission develops a system whereby a person may electronically file an application for a license, a~~] person who has previously satisfied applicable education requirements and obtained an evaluation from the commission also may apply for a license by accessing the commission's Internet web site, entering the required information on the application form and paying the appropriate fee in accordance with the instructions provided at the site by the commission. If the person is an individual, the person must provide the commission with the person's signature prior to issuance of a license certificate. The person may provide the signature prior to the submission of an electronic application.

(d) [~~(c)~~] The commission shall return the application of an applicant who:[~~applications to applicants when it has been determined that the application fails to comply with one of the following requirements.~~]

(1) [~~The applicant~~] is not 18 years of age;[~~.~~]

(2) [~~The applicant~~] does not meet any applicable residency requirement;[~~.~~]

(3) is not a citizen of the United States or a lawfully admitted alien; [~~An incorrect filing fee or no filing fee is received.~~]

(4) submits the application [~~The application is submitted~~] in pencil;[~~.~~]

(5) submits an incorrect filing fee or no filing fee; or [~~The applicant is not a citizen of the United States or a lawfully admitted alien.~~]

(6) has not satisfied applicable education requirements. [~~The applicant has not obtained, within one year from the date the application is filed, an evaluation from the commission showing the applicant meets education requirements or experience requirements have not been satisfied.~~]

(e) [~~(d)~~] An application is considered void and is subject to no further evaluation or processing when one of the following events occurs:

(1) the applicant fails to satisfy an examination requirement within six months from the date the application is filed;

(2) the applicant, having satisfied any examination requirement, fails to submit a required fee within sixty (60) days after the commission makes written request for payment;

(3) the applicant, having satisfied any examination requirement, fails to provide information or documentation within sixty (60) days after the commission makes written request for correct or additional information or documentation;

(4) the applicant fails to provide fingerprints to the Department of Public Safety within six months from the date the application is filed.

(f) [~~(e)~~] The commission adopts by reference the following forms published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us [~~approved by the commission which are as 78711-2188~~]:

(1) Application for a Real Estate Broker License, TREC Form BL-9;

(2) Application for a Real Estate Broker License by a Corporation, TREC Form BLC-6;

(3) Application for Late Renewal of A Real Estate Broker License, TREC Form BLR-10 [~~9~~];

(4) Application for Late Renewal of Real Estate Broker License by a Corporation, TREC Form BLRC-7 [~~6~~];

(5) Application for Real Estate Salesperson License, TREC Form SL-13 [~~12~~];

(6) Application for Late Renewal of Real Estate Salesperson License, TREC Form SLR-11 [~~10~~];

(7) Application for Moral Character Determination, TREC Form MCD-6;

(8) Application for Real Estate Broker License by a Limited Liability Company, TREC Form BLLLC-6;

(9) Application of Currently Licensed Real Estate Broker for Salesperson License, TREC Form BSL-8 [~~7~~]; and

(10) Application for Late Renewal of a Real Estate Broker License by a Limited Liability Company, TREC Form BLRLLC-7 [~~6~~].

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 June 12, 2009.

TRD-200902386
Devon V. Bijansky
Assistant General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: July 26, 2009
For further information, please call: (512) 465-3900

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SUBCHAPTER F. EDUCATION, EXPERIENCE, EDUCATIONAL PROGRAMS, TIME PERIODS AND TYPE OF LICENSE

22 TAC §535.64, §535.66

The Texas Real Estate Commission (TREC) proposes amendments to §535.64, concerning Accreditation of Schools and Approval of Courses and Instructors, and §535.66, concerning Payment of Annual Fee, Audits, Investigations and Enforcement Actions. The amendments would reduce the period of accreditation of schools from five years to two years in order to better implement the statutory requirement that schools demonstrate a 55% examination passage rate to renew their accreditation. The proposed rules also define how a school's passage rate will be calculated and published by the commission and clarify that the commission will consider a number of factors in determining whether to renew the accreditation of a school with a pass rate below 55%. The amendments would also update the Education Provider Application, form ED 1-0, to form ED 1-1 to reflect a revised fee for a two-year accreditation instead of a 5-year accreditation plus annual fees. Elsewhere in this issue, proposed amendments to §535.101 would change the accreditation fee to $480 for a two-year period, incorporating the previous $400 fee for a 5-year accreditation and the $200 annual fee paid at the beginning of years 2-5 of the accreditation period. The amendments would eliminate the annual fee for schools that are accredited for a 2-year period but retains the annual fee for the duration of any remaining 5-year accreditation periods. Last, the amendments propose to adopt a revised application for instructor approval pursuant to changes to requirements to teach the required legal update and ethics courses, proposed elsewhere in this issue in §535.71.

Devon V. Bijansky, Assistant General Counsel, has determined that for the first five-year period the 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 economic cost to persons who are required to comply with the proposed amendments. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the amendments.

Ms. Bijansky also has determined that, for each year of the first five years the amendments as proposed are in effect, the public benefit anticipated as a result of enforcing the amendments will be compliance with the statutory requirement to consider examination pass rate in reaccrediting real estate schools and greater efficiency in regulating these schools.

Comments on the proposal may be submitted to Devon V. Bijansky, Assistant General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission

to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to ensure compliance with the provisions of the Act.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.64. Accreditation of Schools and Approval of Courses and Instructors.

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

(d) Approval of application for accreditation. If it determines that the applicant meets the standards for accreditation and has furnished the bond or other acceptable security required by the Act, §1101.302, the commission shall approve the application and provide a written notice of the accreditation to the applicant. Unless surrendered or revoked for cause, the accreditation will be valid for a period of two [~~five~~] years.

(e) Subsequent application for accreditation. No more than six months prior to the expiration of its current accreditation, a school may apply for accreditation for another two-year [~~five year~~] period.

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

(4) A school's passage rate will be calculated and published quarterly by dividing the number of that school's graduates, as defined in paragraph (2) of this subsection, who passed the examination on their first attempt in the two-year period ending on the last day of the previous quarter by the total number of the school's graduates who took the exam for the first time in the same period. If a school offers courses toward multiple license types, the exam results for that school will be calculated and posted by license type and aggregated into the school's overall passage rate for that period. The passage rate that will be used to determine whether the accreditation standard has been met is the most current aggregate rate published by the commission as of the date the commission receives the timely application for reaccreditation or, if the accreditation expired before being renewed, the most recent rate published by the commission as of the expiration date of the school's accreditation.

(5) In determining whether a school qualifies for reaccreditation based on its examination passage rate, the commission or a committee established pursuant to Texas Occupations Code §1101.305 shall consider multiple factors, including the separate passage rates for sales, broker, and inspector applicants and trends within the school's passage rate over the course of the two-year accreditation period.

(f) (No change.)

(g) Forms. The Texas Real Estate Commission adopts by reference the following forms approved by the commission. These documents are published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

(1) Form ED 1-1 [~~0~~], Education Provider Application;

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

(4) Form ED 4-2 [~~1~~], Instructor Application - Core, Legal Update and Ethics;

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

(h) (No change.)

(i) Standards for instructor approval. The application for commission approval of an instructor must be filed on forms adopted by the commission. To be approved as an instructor, a person must satisfy the commission as to the person's competency in the subject matter to be taught and ability to teach effectively. Each instructor must also possess the following qualifications:

(1) a college degree in the subject area or five years professional experience in the subject area[~~;~~] and

[~~(2)~~] three years experience in teaching or training; or

(2) [~~(3)~~] the equivalent of paragraph [~~paragraphs~~] (1) [~~and (2)~~] of this subsection as determined by the commission after due consideration of the applicant's professional experience, research, authorship or other significant endeavors in the subject area.

(j) - (o) (No change.)

§535.66. Payment of Annual Fee, Audits, Investigations and Enforcement Actions.

(a) Payment of annual fee. A school that is within a five-year accreditation period shall pay the fee prescribed by § [~~Section~~] 1101.152(a)(11) of Texas Occupations Code, Chapter 1101 (the Act) and by §535.101 of this title (relating to Fees) no later than the anniversary of the date of the school's accreditation. At least 30 days prior to the day the fee is due, the commission shall send a written notice to the school to pay the fee, but the school's obligation to pay the fee is not affected by any failure to receive the notice. There is no annual fee for schools operating within a two-year accreditation period.

(b) - (g) (No change.)

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

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Devon V. Bijansky
Assistant General Counsel
Texas Real Estate Commission
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SUBCHAPTER G. MANDATORY CONTINUING EDUCATION

22 TAC §535.71

The Texas Real Estate Commission (TREC) proposes amendments to §535.71, concerning Mandatory Continuing Education: Approval of Providers, Courses and Instructors. The amendments to §535.71 add the TREC web site address to subsection (d) concerning availability of forms and adopts by reference MCE Form 16-1 which has been revised for use as an instructor application for MCE elective courses only. The amendments to §535.71 also change the requirements for approval of instructors of Mandatory Continuing Education required legal update and ethics courses. Currently instructors of such courses meet minimum requirements by certifying attendance at an instructor training course. The amendments would require persons to have a college degree in the subject area of real estate or five years professional experience in the subject areas of Principles of Real Estate, Law of Agency, and Law of Contracts; and three years experience in teaching or training; or the equivalent of those requirements as determined by the commission.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the 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 small businesses, micro-businesses or local or state employment as a result of implementing the amendments.

Ms. DeHay also has determined that for each year of the first five years the amendments as proposed are in effect the public benefit anticipated as a result of enforcing the amendments will be better qualified instructors of required MCE legal courses. There is no anticipated economic cost to persons who are required to comply with the proposed amendments other than the costs of obtaining copies of the forms, which would be available at no charge through the TREC web site.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1101; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapter 1101 and ensure compliance with Chapter 1101.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.71. Mandatory Continuing Education: Approval of Providers, Courses and Instructors.

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

(d) Forms. The commission adopts by reference the following forms published and available from the commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us:

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

(13) MCE Form 16-1 [~~0~~], [~~MCE~~] Instructor Application - MCE Elective.

(e) - (p) (No change.)

(q) Instructor certification. Only instructors certified by the commission may teach the required legal courses or develop distance learning courses for the presentation of required legal courses. An instructor must obtain prior commission approval under subsection (r) [~~(m)~~] of this section prior to attending an instructor training program. The commission shall issue a written certification to an instructor to teach the applicable required legal course(s) upon the instructor's satisfactory completion of a training program to teach the required legal course(s) that is acceptable to the commission. An instructor may obtain certification to teach either one or both required legal courses. A certified legal course instructor may teach the required legal courses for any approved provider after the instructor has attended an instructor training program. A certified legal course instructor may not independently conduct a required legal course unless the instructor has also obtained approval as a provider. An instructor must obtain written certification from the commission prior to teaching the required legal courses and prior to representing to any provider or other party that he or she is certified or may be certified as a legal course instructor. An instructor's certification to teach a required legal course expires on December 31 of every odd-numbered year. An instructor may obtain recertification by attending a new instructor training program.

(r) Standards for approval of instructors of required legal courses. Prior to attending an instructor training course, a person must obtain commission approval to be an instructor using Form ED 4-2, Instructor Application - Core, Legal Update, and Ethics, adopted by the commission. To be approved as an instructor of a required legal update or ethics course, a person must possess the following qualifications:

(1) a college degree in the subject area of Real Estate, or five years professional experience in the subject areas of Principles of Real Estate, Law of Agency, and Law of Contracts; and

(2) three years experience in teaching or training; or

(3) the equivalent of paragraphs (1) and (2) of this subsection as determined by the commission after due consideration of the applicant's professional experience, research, authorship or other significant endeavors in the subject area.

(s) Approval of instructor. If the commission determines that the applicant meets the standards for instructor approval, the commission shall approve the application and provide a written notice of the approval to the applicant. Unless surrendered or revoked for cause, the approval will be valid for a period of five years.

(t) [~~(r)~~] Elective credit courses. To be approved to offer a course for MCE elective credit, the provider must demonstrate that the course subject matter is appropriate for a continuing education course for real estate licensees and that the information provided in the course will be current and accurate by submitting a brief statement that describes the objective of the course and explains how the subject matter is related to activities for which a real estate license is required, including but not limited to relevant issues in the real estate market or topics which increase or support the licensee's development of skill and competence.

(u) [~~(s)~~] Elective course application. A provider applicant must submit an MCE Form 3A-3, MCE Course Application and receive written acknowledgment from the commission prior to offering an MCE elective course. Prior to advertising or offering a course offered by another provider, the subsequent provider must submit an MCE Form 3B-3, Course Application Supplement and receive written acknowledgment from the commission.

(v) [~~(t)~~] Legal update and legal ethics course application. A provider must submit an MCE form 3B-3, Course Application Supplement and receive written acknowledgment from the commission prior to offering a required legal update or required legal ethics course.

(w) [~~(u)~~] Core courses for elective credit. Courses approved by the commission for core real estate course credit provided in the Act, §1101.356 and §1101.358, may be accepted for satisfying MCE elective credit course requirements provided the student files a course completion certificate with the commission.

(x) [~~(v)~~] Acceptable combined courses. An elective credit course offered by a provider to satisfy all or part of the nine hours of other than legal topics required by the Act, §1101.455, may be offered with the required legal update course or required legal ethics course.

(y) [~~(w)~~] Required legal courses for real estate related courses. MCE legal update and legal ethics courses may be accepted by the commission as real estate related courses for satisfying the education requirements of §1101.356 and §1101.358, of the Act.

(z) [~~(x)~~] Correspondence courses for elective credit. An MCE provider may register an MCE elective course by correspondence with the commission if the course is subject to the following conditions:

(1) the course must be offered by a college or university accredited by a regional accrediting association, such as the Commission on Colleges of the Southern Association of Colleges and Schools, or its equivalent, which offers correspondence courses, whether credit or noncredit, in other disciplines;

(2) the content of the course must satisfy the requirements of the Act, §1101.455, and these sections; and

(3) the course does not include a request for required legal course credit.

(aa) [~~(y)~~] Alternative delivery method courses for elective credit. An MCE provider may register an MCE elective course by alternative delivery method with the commission if the course is subject to the following conditions:

(1) the content of the course must satisfy the requirements of the Act, §1101.455, and these sections;

(2) the course does not include a request for required legal course credit; and

(3) every provider offering a registered course under this subsection shall:

(A) ensure that a qualified person is available to answer students' questions or provide assistance as necessary;

(B) provide that procedures are in place to ensure that the student who completes the work is the student who is enrolled in the course; and

(C) certify students as successfully completing the course only if the student:

(i) has completed all instructional modules; and

(ii) has attended any hours of live instruction and/or testing required for a given course.

(bb) [~~(z)~~] Correspondence courses for required legal credit. The commission may approve a provider to offer an MCE required legal ethics course by correspondence subject to the following conditions:

(1) the course must be offered by a college or university accredited by a regional accrediting association, such as the Commission on Colleges of the Southern Association of Colleges and Schools, or its equivalent, which offers correspondence courses, whether credit or noncredit, in other disciplines;

(2) the content of the course must satisfy the requirements of the Act, §1101.455 and these sections, and must be substantially similar to the legal courses disseminated and updated by the Commission;

(3) students receiving MCE credit for the course must pass either:

(A) a proctored final examination administered under controlled conditions to positively identified students, at a location and by an official approved by the commission and graded by the instructor or, if the examination is being graded mechanically or by use of a computer, by the provider, using answer keys approved by the instructor or provider; or

(B) an examination by use of a computer under conditions that satisfy the commission that the examinee is the same person who seeks MCE credit; and

(4) written course work required of students must be graded by an approved instructor or the provider's coordinator or director, who is available to answer students' questions or provide assistance as necessary, using answer keys approved by the instructor or provider.

(cc) [~~(aa)~~] Each required legal course offered by correspondence must contain the following:

(1) course description;

(2) learning objectives;

(3) evaluation techniques;

(4) lessons;

(5) learning activities;

(6) final examination;

(7) source materials disseminated by the Commission including all updates; and

(8) instructor grading guidelines, including acceptable answers for lessons, assessments and examinations.

(dd) [~~(bb)~~] Alternative delivery method courses for required legal credit. The commission may accept required legal courses offered by alternative delivery method subject to the following conditions.

(1) The content of the course must satisfy the requirements of the Act, §1101.455 and these sections, and must be substantially similar to the legal courses disseminated and updated by the Commission.

(2) Every course accepted under this subsection shall teach to mastery. Teaching to mastery means that the course must, at a minimum:

(A) divide the material into major units of instruction that follows the outline of the applicable required legal course for delivery on a computer or other approved interactive audio or audiovisual programs;

(B) specify the learning objectives for each unit of instruction;

(C) specify an objective, quantitative criterion for mastery used for each learning objective;

(D) implement a structured learning method by which each student is able to attain each learning objective;

(E) provide a means of diagnostic assessment of each student's performance on an ongoing basis during each unit of instruction, measuring what each student has learned and not learned at regular intervals throughout each unit of instruction;

(F) provide a means of tailoring the instruction to the needs of each student as identified in subparagraph (D) of this paragraph. The process of tailoring the instruction shall ensure that each student receives adequate remediation for specific deficiencies identified by the diagnostic assessment;

(G) continue the appropriate remediation on an individualized basis until the student demonstrates achievement of mastery of each unit; and

(H) require that the student demonstrate mastery of all material covered by the learning objectives for the module before the module is completed.

(3) The commission must approve the method by which each of the above elements of mastery in paragraph (2)(A) - (H) of this subsection is accomplished.

(4) The rationale for the education processes implemented in the course must be based on sound instructional strategies which have been systematically designed and proven effective through educational research and development. The basis and rationale for any proposed instructional approach must be specified in the application for approval. Programs which consist primarily of text material will not be approved.

(5) An approved instructor or the provider's coordinator/director shall grade the written course work.

(6) Every provider offering an approved course under this subsection shall:

(A) ensure that a qualified person is available to answer students' questions or provide assistance as necessary;

(B) satisfy the commission that procedures are in place to ensure that the student who completes the work is the student who is enrolled in the course;

(C) certify students as successfully completing the course only if the student;

(i) has completed all instructional modules required to demonstrate mastery of the material;

(ii) has attended any hours of live instruction and/or testing required for a given course; and

(iii) has passed either:

(I) a proctored final examination administered under controlled conditions to positively identified students, at a location and by an official approved by the commission and graded by the instructor or, if the examination is being graded mechanically or by use of a computer, by the provider, using answer keys approved by the instructor or provider; or

(II) an examination by use of a computer under conditions that satisfy the commission that the examinee is the same person who seeks MCE credit; and

(D) provide the students with the same materials given to students who attend the same course by live instruction.

(ee) [~~(cc)~~] Supervised Video Instruction for elective course credit. A provider may register a course under subsection (u) [~~(s)~~] of this section to be taught by supervised video instruction if:

(1) the provider complies with §535.72 of this chapter when offering and advertising the course and when completing rosters and retaining records;

(2) a proctor is present during the time the video is shown; and

(3) the provider discloses in any advertisement for the course that the instruction will be by supervised video instruction

(ff) [~~(dd)~~] Supervised Video Instruction for required legal course credit. A provider may register a course under subsection (o) of this section to be taught by supervised video instruction if the provider:

(1) complies with subsection (ee) [~~(cc)~~](1) - (3) of this section;

(2) ensures that a certified instructor is available to answer students' questions or provide assistance as necessary; and

(3) ensures that students receiving MCE credit for the course passed a proctored final examination administered under controlled conditions to positively identified students, at a location and by an official approved by the commission and graded by the instructor or, if the examination is being graded mechanically or by use of a computer, by the provider, using answer keys approved by the instructor or provider.

(gg) [~~(ee)~~] An applicant must submit an MCE Form 3B-3, MCE Course Application Supplement to seek approval to offer an MCE distance learning required legal course and receive written acknowledgment from the commission prior to offering the course. Distance learning legal courses may be offered on or after July 1, 2005.

(hh) [~~(ff)~~] For a distance learning course, an online course will not be considered complete until credit is awarded by the provider. The provider shall award the student credit for the course no earlier than 24 hours after the student starts the course and after the student completes the course requirements for credit. The provider shall report the awarding of credit to the commission either by filing a completed MCE Form 9-8, Alternative Instructional Methods Reporting Form, signed by the student, or submitting the information contained in MCE Form 9-8 by electronic means acceptable to the commission.

(ii) [~~(gg)~~] A provider may use as guest speakers persons who have not been approved as instructors, provided that no more than a total of 50% of the course is taught by the unapproved persons for a registered MCE elective credit course. The commission-registered instructor must remain in the classroom during the guest speaker's presentation.

(jj) [~~(hh)~~] A provider may use guest speakers who have not been approved as instructors to conduct a registered MCE elective credit course if:

(1) the provider is an accredited college or university or a professional trade association as defined by §535.62(b) of this chapter; and

(2) the course is supervised and coordinated by a commission-approved instructor who is responsible for verifying the attendance of all who request MCE credit.

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 June 12, 2009.

TRD-200902384
Loretta R. DeHay
Interim Administrator and General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: July 26, 2009
For further information, please call: (512) 465-3900

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SUBCHAPTER J. FEES

22 TAC §535.101

The Texas Real Estate Commission (TREC) proposes amendments to §535.101, concerning Fees. The amendments would increase the salesperson and broker annual renewal fees from $30 to $34; late renewal fee from $45 to $51 for the annual late renewal of a real estate salesperson or broker license for a person whose license has been expired 90 days or less; and late renewal fee from $60 to $68 for the annual late renewal of a real estate salesperson or broker license for a person whose license has been expired more than 90 days but less than one year.

The justification for the amendments is to generate sufficient revenue to fund appropriations by the 81st Legislature (2009).

In addition, the amendments would change the accreditation fee for education programs from $400 to $480 and limit the $200 renewal fee for education programs to those who are subject to a 5-year accreditation under the rules in place before they were amended to better implement the statutory requirement that schools demonstrate a 55% examination passage rate to renew their accreditation. The fees are adjusted for a two-year accreditation instead of a 5-year accreditation plus annual fees. Amendments to §535.64 and §535.66 to set the accreditation period to two years are concurrently being proposed and are published elsewhere in this issue of the *Texas Register.*

The 81st Legislature in the 2010-2011 General Appropriations Act and riders thereto approved budget appropriations for the commission contingent on those appropriations being paid through fee collections. The amendments would permit TREC to raise the necessary revenue to offset the additional costs incurred by the commission to implement new programs required by laws passed by the 81st Legislature.

Karen Alexander, Staff Services Director, has determined that for the first five-year period subsection (b)(2), (4), (15), and (16) are in effect there will be fiscal implications for the state, but not to units of local government as a result of enforcing or administering the amendments. The amendments would increase the salesperson and broker annual renewal fees from $30 to $34; late renewal fee from $45 to $51 for the annual late renewal of a real estate salesperson or broker license for a person whose license has been expired 90 days or less; and late renewal fee from $60 to $68 for the annual late renewal of a real estate salesperson or broker license for a person whose license has been expired more than 90 days but less than one year.

Approximately 60,000 licensees and 8,000 late applicants may be required to pay the increased fees in Fiscal Year 2010 for a total estimated revenue of $569,200. For Fiscal Year 2011, approximately 60,000 licensees and 8,000 late applicants are estimated to be required to pay the fees for total estimated revenue of $569,200. For each of the three years after (2012-2014), approximately 60,000 applicants, and 8,000 late applicants are estimated to be required to pay the fees for a total estimated revenue of $569,200 per year.

Ms. Alexander has determined that there is no anticipated impact on local or state employment as a result of implementing the amendments. However, there is an anticipated impact on small businesses and micro-businesses. The Commission has approximately 150,000 real estate brokers and salespersons licensed in Texas. It is estimated that nearly all of these entities are small businesses and many of them are micro-businesses. The projected economic impact of this rule amendment on these small businesses will be slightly negative due to the increased renewal and late renewal fee under §2006.002, Texas Government Code, an agency is required to consider alternative regulatory methods only if the alternative methods would be consistent with the health, safety and environmental and economic welfare of the state. TREC has developed this proposed rule in accordance with a legislative mandate under contingent revenue riders for TREC appropriations under Senate Bill 1, 81st Legislature, Regular Session (2009). Consequently, any variance from the legislative mandate would not be consistent with the health, safety, and environmental and economic welfare of the state, and no alternative regulatory methods have been considered.

Ms. Alexander also has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments is that the agency will raise sufficient revenue to fund the items requested by the agency in its Legislative Appropriations request and granted under Senate Bill 1, 81st Legislature, Regular Session, 2009.

Comments on the proposal may be submitted to Devon V. Bijansky, Assistant General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to ensure compliance with the provisions of the Act.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.101. Fees.

(a) (No change.)

(b) The commission shall charge and collect the following fees:

(1) (No change.)

(2) a fee of $34 [~~$30~~] for annual renewal of a real estate broker license;

(3) (No change.)

(4) a fee of $34 [~~$30~~] for annual renewal of a real estate salesperson license;

(5) - (8) (No change.)

(9) a fee of $480 [~~$400~~] for filing an application for accreditation of an education program under Texas Occupations Code (the Act), §1101.301;

(10) a fee of $200 a year for operation of a real estate education program under the Act, §1101.301, if the school is operating under a five-year accreditation;

(11) - (14) (No change.)

(15) a fee of $51 [~~$45~~] for the annual late renewal of a real estate salesperson or broker license for a person whose license has been expired 90 days or less;

(16) a fee of $68 [~~$60~~] for the annual late renewal of a real estate salesperson or broker license for a person whose license has been expired more than 90 days but less than one year;

(17) - (18) (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 June 12, 2009.

TRD-200902383
Devon V. Bijansky
Assistant General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: July 26, 2009
For further information, please call: (512) 465-3900

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SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.212

The Texas Real Estate Commission (TREC) proposes an amendment to §535.212, concerning Education and Experience Requirements for an Inspector License. The amendment updates a reference to the recently revised standard inspection report form, which was not changed when the REI 7A-0 form was replaced by the REI 7A-1, effective February 1, 2009, and adds a reference to form REI 7-2, concurrently being proposed as an amendment to 22 TAC §535.223.

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

Ms. Bijansky also has determined that for each year of the first five years the amendment as proposed is in effect, the public benefit anticipated as a result of enforcing the amendment is to ensure that education providers are offering training, and persons pursuing licensure as inspectors are properly trained, in the use of the current inspection report form.

Comments on the proposed amendment may be submitted to Devon V. Bijansky, Assistant General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to ensure compliance with the provisions of the Act.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendment.

§535.212. Education and Experience Requirements for an Inspector License.

(a) Education requirements.

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

(5) The following subjects shall be considered core real estate inspection courses for purposes of additional education requirements under subsection (b)(1)(B) of this section.

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

(J) Standard Report Form/Report Writing, which shall include the following topics:

(i) required use of report form REI 7A-1 ~~[0]~~ or REI 7-2;

(ii) - (vi) (No change.)

(K) (No change.)

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

(b) (No change.)

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

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

TRD-200902381
Devon V. Bijansky
Assistant General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: July 26, 2009
For further information, please call: (512) 465-3900

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22 TAC §535.223

The Texas Real Estate Commission (TREC) proposes amendments to §535.223, concerning standard inspection report forms. The amendments would adopt by reference a revised standard inspection report form. TREC has a statutory duty to adopt standard inspection report forms and to adopt rules requiring licensed inspectors to use the report forms under Senate Bill Number 1100, 75th Legislature (1997). To create a grace period during which inspectors may use either the new form, REI 7-2, or the old form, REI 7A-1, the rule will require inspectors to use either the 7-2 form or the 7A-1 form for inspections of one-to-four family residential properties. The amended form corrects the rule reference on the first page of the form, modifies the header on pages 3-6 to indicate that "D=Deficient," and makes minor stylistic revisions to the form.

The proposed amendments have been recommended by the Texas Real Estate Inspector Committee, an advisory committee of six professional inspectors and three public members appointed by TREC, resulting from revisions to the inspector standards of practice that became effective on February 1, 2009.

Devon V. Bijansky, Assistant General Counsel, has determined that for the first five-year period the 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 small businesses, micro-businesses or local or state employment as a result of implementing the amendments.

Ms. Bijansky also has determined that, for each year of the first five years the amendments as proposed are in effect, the public benefit anticipated as a result of enforcing the amendments will be increased clarity for consumers regarding the inspection process.

Comments on the proposal may be submitted to Devon V. Bijansky, Assistant General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to ensure compliance with the provisions of the Act.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

§535.223. Standard Inspection Report Form.

The Texas Real Estate Commission adopts by reference Property Inspection Report Form REI 7A-1, approved by the Commission in 2008, and Property Inspection Report Form REI 7-2, approved by the Commission in 2009, for use in reporting inspection results. These documents are [~~This document is~~] published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

(1) Except as provided by this section, inspections performed for a prospective buyer or prospective seller of one-to-four family residential property shall be reported on Form REI 7A-1 or Form REI 7-2 adopted by the Commission ("the standard form").

(2) - (6) (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 June 12, 2009.

TRD-200902379
Devon V. Bijansky
Assistant General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: July 26, 2009
For further information, please call: (512) 465-3900

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 21. TEXAS LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT COMMISSION

CHAPTER 675. 1995 - 2045 WASTE VOLUME ESTIMATE

31 TAC §675.1

The Texas Low-Level Radioactive Waste Disposal Compact Commission ("Commission") proposes new §675.1 to be captioned "1995 - 2045 Waste Volume Estimate" and to be contained in a new Chapter 675, Part 21, Title 31, Texas Administrative Code.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

The Commission was created by an Act of the Texas Legislature in 1993. The language of that Act, as subsequently amended, now appears in Chapter 403, Texas Health and Safety Code. The text of the Compact is set out under §403.006, Texas Health and Safety Code. Originally, the State of Texas entered into a Low-Level Waste Disposal Compact with the States of Maine and Vermont. After ratification, the State of Maine withdrew from the Compact leaving Texas and Vermont as the current member states.

In November, 2008, Texas Governor Rick Perry named the six Texas members of the Commission. The State of Vermont also named two commissioners with the last commissioner being named in March, 2009.

Under the provisions of Section 3.04(11) of the Compact, there is an instruction to the Commission that:

"By no later than 180 days after all members of the commission are appointed under Section 3.01 of this article, establish by rule the total volume of low-level radioactive waste that the host state will dispose of in the compact facility in the years 1995 - 2045, including decommissioning waste. The shipments of low-level radioactive waste from all non-host party states shall not exceed 20 percent of the volume estimated to be disposed of by the host state during the 50-year period. When averaged over such 50-year period, the total of all shipments from non-host party states shall not exceed 20,000 cubic feet a year. The commission shall coordinate the volumes, timing, and frequency of shipments from generators in the non-host party states in order to assure that over the life of this agreement shipments from the non-host party states do not exceed 20 percent of the volume projected by the commission under this paragraph."

It should be noted that the sole requirement in the provision is one of estimating volume. Nothing is said in the law and in the Compact about the character or classification of the waste, nor of the number of curies associated with the waste, nor with the half-life of the waste, nor of the form of the waste. The sole direction to the Commission is that it adopt a rule estimating the volumes of radioactive waste that the host state will dispose of in the compact facility in the years 1995 - 2045.

In response to this requirement of statute, the Commission scheduled and then held a stakeholders' meeting on April 14, 2009 in Austin, Texas. At that meeting there was discussion with respect to two studies combining volume of radioactive waste disposal that had been prepared by the State of Texas. The first of those studies was done in 1994 and the second in 2000. Generators stated that disposal volume estimates were dependent on disposal costs and disposal alternatives. Additionally, there were remarks at the stakeholder meeting about how technologies had changed since some early estimates of volume had been made. There was some discussion at the stakeholder meeting about the potential for expansion of nuclear generating capacity in Texas between 2009 and 2045 as well as discussion about whether the Vermont Yankee facility license would be extended and when decommissioning of that facility might take place. Finally, no one present objected to the Commission issuing a rule that contains a higher estimate of disposal volume given the uncertainties in making the estimate of a quantity of waste sent to a site for disposal. (Those present did say that there was somewhat more certainty in making estimates of generated waste quantities than there was in making estimates of disposed waste quantities.)

An analysis of the wording of the entire waste volume estimate provision in the Compact compels a conclusion that there are really two parts to the estimate. One is of the requirement that there be an estimate ". . . for the total volume of low-level radioactive waste that the host state will dispose of in the compact facility in the years 1995 - 2045. . . .". The other is that "[t]he shipments of low-level radioactive waste from all non-host party states shall not exceed 20 percent of the volume estimated to be disposed of by the host state during the 50-year period." There is a further limitation on the last part of the volume estimate that ". . . over the life of this agreement shipments from the non-host party states do not exceed 20 percent of the volume projected by the commission under this paragraph." Finally, there is an ultimate "cap" on the quantity of waste from non-host party states. That cap is that "[w]hen averaged over such 50-year-period, the total of all shipments from non-host party states shall not exceed 20,000 cubic feet a year." In other words, as long as Vermont is the only non-host party state, its total volume sent to the site

for disposal cannot exceed 1,000,000 cubic feet no matter how large the volume of Texas waste that is going into the site.

Thus, in practical terms, given that there are now only two states in the Compact, the requirement is to project a waste disposal volume for Texas and, from that, get an estimate of the total waste disposal volume for the site in Texas--the host state--and then determine whether twenty percent of that volume was sufficient for Vermont's projected needs. At the same time Vermont's projected volumes cannot be more that 1,000,000 cubic feet.

When asked, Vermont indicated that its needs would probably meet or exceed 1,000,000 cubic feet of capacity based on observed experiences during decommissioning of the Maine Yankee generating facility. There are similar decommissioning requirements in Vermont that indicate the volume could be similar to that generated in the Maine decommissioning process. The question then became whether the Texas disposal volume would be sufficient to allow Vermont to have 1,000,000 cubic feet of disposal capacity.

Given the previous estimates made by Texas of volumes; given that there are four existing generating units in Texas that are similar in size to those decommissioned in Maine and that the licenses of those facilities may expire during the 50-year estimate period; given that decommissioning waste volumes resulting form the closure of the Maine Yankee facility were approximately 1,000,000 cubic feet and there are radioactive wastes being generated in Texas that will require disposal in addition to the decommissioning wastes; given that there are plans for the addition of new generating units in Texas during the 50-year estimate period; given that the generators state that there is a relationship between waste generation and KW size of generating plants and that additions of nuclear generating capacity in Texas will increase the need for yearly disposal capacity; given that no one present at the stakeholder meeting objected to an estimate of waste disposal volume that may be in excess of actual disposal volume during the estimate period, and given the uncertainties in attempting to finely estimate the quantity of waste that will be tendered to any disposal site in Texas during the period, there is no need to estimate the Texas radioactive waste disposal capacity in Texas at less than a total of 5,000,000 cubic feet.

There may be a question of whether an estimate for Texas of 5,000,000 cubic feet of disposal capacity is sufficient. For the initial estimate being done by the Commission even before a site to take the waste is established and operating, there is simply no information on which to judge the actual disposal annual volume, particularly when the costs of disposal are unknown. As the stakeholders stated, the cost of disposal does impact the volume of waste being sent to any site for disposal.

There is nothing in the Compact or in the statute creating the Commission that prevents the Commission from revisiting the question of the volume of radioactive waste to be disposed of when more information becomes known and thence making appropriate amendments to its affected rule or rules.

The action being taken by the Commission to fulfill its duty and establish by rule an estimated quantity of waste that will be disposed of by the host state and by the non-host party state does not speak to the question of whether the site in Texas has capacity or is licensed to accept for disposal the quantity of waste being estimated by the Commission. Whether the disposal facility is able to accommodate the volume or is granted a license for a greater volume than established for Compact party states is a matter between the disposal site's licensee and the licensing agency. The Compact Commission does not have the authority or power to grant any license to any disposal site. The Compact Commission anticipates that there will be no relationship between the permitted capacity of any disposal site and the Compact Commission's estimate of the volume of Texas waste to be disposed of at the site because it is likely that any such site will be licensed for its capacity during its life as a result of business decisions of the applicant and the length of terms of the required licenses and permits as those matters may be reflected by conditions existing at particular times during the 50-year planning period for this estimate.

SECTION BY SECTION DISCUSSION

The proposed new chapter contains only one section that has two parts. The first part (subsection (a) of §675.1) is an estimate of the total quantity of waste generated in Texas that is estimated to be disposed of in the Texas site during the period 1995 through 2045. The second part (subsection (b) of §675.1) recites the statutory requirement that the Commission coordinate the shipments from generators in the non-host party state (Vermont) in order to assure that the shipments do not exceed 20% (1,000,000 cubic feet) of the volume projected for Texas by the Commission.

The proposed rule is required by the Texas Low-Level Radioactive Waste Compact as the Compact is compiled at §403.06, Texas Health and Safety Code.

As noted, the proposed rule does not affect the capacity of any disposal site in the host state because the Compact Commission does not issue licenses for disposal. Therefore, the capacity of the licensed site can be more or less than the capacities estimated in this rule.

Because of the need for Vermont to have at least 1,000,000 cubic feet of capacity in the Texas site, and because the need for Texas generators is currently estimated to be at least 5,000,000 cubic feet, and because of the uncertainties associated with making fine estimates of the anticipated capacity need, the Compact Commission's estimate is a total waste disposed quantity from the party states of Texas and Vermont of 6,000,000 cubic feet, of which 5,000,000 would be available to generators in Texas and 1,000,000 available to generators in Vermont.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Mr. Bob Wilson, Chair of the Committee of the Commission charged with developing this rule, has determined that there will be no fiscal implications to state or local governments as a result of the establishment, administration or enforcement of the proposed rule.

PUBLIC BENEFITS; SMALL AND MICRO BUSINESS COSTS

Mr. Wilson has determined that for each of the first five years the proposed rule is in effect, the public benefit anticipated from the adoption of the proposed rule will be compliance with state and federal law, clear and concise rules for affected entities, and protection of the public health and environment. There will be no effect on small or micro businesses. There are no anticipated costs to individuals for compliance with this rule. There will be costs associated with the actual disposal of waste when such operations begin. However, actual disposal costs to waste generators are not impacted by the estimate of disposed radioactive waste volume in the host state's site by virtue of the quantity estimated by this rule. In any event, the Commission is mandated

by statute to adopt a rule estimating the volume of low-level radioactive waste to be disposed of by the host state (Texas).

TAKINGS IMPACT ASSESSMENT

The Commission has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.43, Texas Government Code.

REGULATORY ANALYSIS

The Commission has determined that this proposal is not a "major environmental rule" as defined by §2001.0225, Texas Government Code. "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 the state or a sector of the state.

LOCAL EMPLOYMENT IMPACT STATEMENT

The Commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the years that the proposed rules are in effect.

PUBLIC COMMENT

Written comments on this proposed rule may be submitted to Robert Wilson, 711 West 7th Street, Austin, Texas 78701, or faxed to (512) 225-5565. Additionally, comments may be submitted via e-mail to bwilson@jacksonsjoberg.com. The comment period closes 30 days from day this proposed rule is published in the *Texas Register.* Copies of the proposed rulemaking can be obtained from Robert Wilson. For further information, please contact the Commission in care of Robert Wilson, 711 West 7th Street, Austin, Texas 78701, or via FAX, telephone or e-mail at the locations set out in this paragraph.

STATUTORY AUTHORITY

The rule is being proposed under authority of Section 3.04(11) of the Texas Low-Level Radioactive Waste Compact as set out in §403.006, Texas Health and Safety Code.

No other statute is affected by the proposed rule.

§675.1. 1995 - 2045 Waste Disposal Volume Estimate.

(a) The Commission estimates that Texas will dispose of Five Million (5,000,000) Cubic Feet of Low-Level Radioactive Waste at a Compact disposal site to be established in Texas during the period from 1995 - 2045.

(b) The Commission shall coordinate the volumes, timing, and frequency of shipments from Vermont in order to assure that shipments from Vermont during the period from 1995 - 2045 do not exceed One Million (1,000,000) cubic feet.

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 June 8, 2009.

TRD-200902291

Robert Wilson
Commission Member
Texas Low-Level Radioactive Waste Disposal Compact Commission
Earliest possible date of adoption: July 26, 2009
For further information, please call: (512) 225-5595

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION

CHAPTER 211. ADMINISTRATION

37 TAC §211.30

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes new §211.30, concerning Chief Administrator Responsibilities for Class B Waivers.

This new section will explain the chief administrator's responsibilities for the waiver request process for individuals with a Class B conviction or deferred adjudication within five years.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by providing a clearer understanding to of the waiver procedure allowed under §215.15 and §217.1.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no additional cost to small business, individuals, or both as a result of the proposed section.

Comments may be submitted electronically to public.comment@tcleose.state.tx.us or in writing to Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. 290 East, Austin, Texas 78723.

The new section is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The section as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.255, Enrollment Qualifications and §1701.307, Issuance of License.

No other code, article, or statute is affected by this proposal.

§211.30. Chief Administrator Responsibilities for Class B Waivers.

(a) A chief administrator may request the executive director that an individual be considered for a waiver of either the enrollment or initial licensure requirements regarding a Class B conviction or deferred adjudication. An individual is eligible for one waiver request. This request must be submitted at least 45 days prior to a regularly scheduled commission meeting.

(b) The request must include:

(1) a complete description of the mitigating factors identified in §215.15 and §217.1 of this title;

(2) all court and community supervision documents;

(3) the applicant's statement;

(4) all offense reports;

(5) victim(s) statement(s), if applicable;

(6) letters of recommendation;

(7) statement(s) of how the public or community would benefit; and

(8) chief administrator's written statement of intent to hire the applicant as a full time employee.

(c) Commission staff will review the request and notify the chief administrator if the request is incomplete. The chief administrator must provide any missing documents before the request can be scheduled for a commission meeting. Once a completed request is received, it will be placed on the agenda of a regularly scheduled commission meeting.

(d) The chief administrator will be notified of the meeting date and must be present to present the request to the commissioners. The applicant must be present at the meeting to answer questions about the request. Staff will present a report on the review process.

(e) After hearing the request, the commissioners will make a decision and take formal action to approve or deny the request.

(f) The effective date of this section is October 26, 2009.

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 June 12, 2009.

TRD-200902393

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Proposed date of adoption: October 26, 2009

For further information, please call: (512) 936-7700

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CHAPTER 215. TRAINING AND EDUCATIONAL PROVIDERS AND RELATED MATTERS

37 TAC §215.15

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §215.15, Enrollment Standards. Subsection (b) is amended to identify factors considered for mitigating circumstances. Subsection (c) is amended to clarify enrollments requirements for basic peace officer licensing courses. Subsection (d) is amended to identify examinations required for enrollment to basic peace officer licensing courses. Subsection (e) is amended to clarify that academies may establish additional enrollment standards. Subsection (f) is added to reflect the effective date.

These amendments are necessary to clarify enrollment requirements and to identify which factors will be considered for mitigating circumstances.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by identifying which factors will be considered for mitigating circumstances.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments may be submitted electronically to public.comment@tcleose.state.tx.us or in writing to Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. 290 East, Austin, Texas 78723.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.255, Enrollment Qualifications.

No other code, article, or statute is affected by this proposal.

§215.15. Enrollment Standards.

(a) (No change.)

(b) In evaluating whether mitigating circumstances exist, the commission will consider the following factors:

(1) the applicant's history of compliance with the terms of community supervision;

(2) the applicant's continuing rehabilitative efforts not required by the terms of community supervision;

(3) the applicant's employment record;

(4) whether the disposition offense contains an element of actual or threatened bodily injury or coercion against another person under the Texas Penal Code or the law of the jurisdiction where the offense occurred;

(5) the required mental state of the disposition offense;

(6) whether the conduct resulting in the arrest resulted in the loss of or damage to property or bodily injury;

(7) the type and amount of restitution made by the applicant;

(8) the applicant's prior community service;

(9) the applicant's present value to the community;

(10) the applicant's post-arrest accomplishments;

(11) the applicant's age at the time of arrest; and

(12) the applicant's prior military history.

(c) In order for an individual to enroll in any basic peace officer training program that provides instruction in defensive tactics, arrest

procedures, firearms, or use of a motor vehicle for law enforcement purposes, the academy must have on file:

(1) a high school diploma;

(2) a high school equivalency certificate and evidence of successful completion of at least 12 hours from an institution of higher education with at least a 2.0 grade point average on a 4.0 scale; or

(3) an honorable discharge from the armed forces of the United States after at least 24 months of active duty service.

(d) In order for an individual to enroll in any basic peace officer training program that provides instruction in defensive tactics, arrest procedures, firearms, or use of a motor vehicle for law enforcement purposes, the academy must have on file:

(1) written documentation that the individual has been examined by a physician, selected by the appointing, employing agency, or the academy, who is licensed by the Texas Medical Board. The physician must be familiar with the duties appropriate to the type of license sought. The individual must be declared in writing by that professional to be:

(A) physically sound and free from any defect which may adversely affect the performance of duty appropriate to the type of license sought; and

(B) show no trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test; and

(2) written documentation that the individual has been examined by a psychologist, selected by the appointing, employing agency, or the academy, who is licensed by the Texas State Board of Examiners of Psychologists. The psychologist must be familiar with the duties appropriate to the type of license sought. This examination may also be conducted by a psychiatrist. The individual must be declared in writing by that professional to be in satisfactory psychological and emotional health to serve as the type of officer for which the license is sought. The examination must be conducted pursuant to professionally recognized standards and methods:

(A) the commission may allow for exceptional circumstances where a licensed physician performs the evaluation of psychological and emotional health. This requires the appointing agency to request in writing and receive approval from the commission, prior to the evaluation being completed; or

(B) the examination may be conducted by qualified persons identified by §501.004, Occupations Code. This requires the appointing agency to request in writing and receive approval from the commission, prior to the evaluation being completed.

(e) The enrollment standards established in this section do not preclude the licensed academy from establishing additional requirements or standards for enrollment in law enforcement training programs.

(f) The effective date of this section is October 26, 2009.

[(b) In order for an individual to enroll in any basic peace officer training program that provides instruction in defensive tactics, arrest procedures, firearms, or use of a motor vehicle for law enforcement purposes, the academy must have on file:]

[(1) a high school diploma;]

[(2) a high school equivalency certificate and evidence of successful completion of at least 12 hours from an institution of higher education with at least a 2.0 grade point average on a 4.0 scale; or]

[(3) an honorable discharge from the armed forces of the United States after at least 24 months of active duty service.]

[(c) In order for an individual to enroll in any basic peace officer training program that provides instruction in defensive tactics, arrest procedures, firearms, or use of a motor vehicle for law enforcement purposes, the academy must have on file:]

[(1) written documentation that the individual has been examined by a physician, selected by the appointing, employing agency, or the academy, who is licensed by the Texas Medical Board. The physician must be familiar with the duties appropriate to the type of license sought. The individual must be declared in writing by that professional to be:]

[(A) physically sound and free from any defect which may adversely affect the performance of duty appropriate to the type of license sought; and]

[(B) show no trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test; and]

[(2) written documentation that the individual has been examined by a psychologist, selected by the appointing, employing agency, or the academy, who is licensed by the Texas State Board of Examiners of Psychologists. The psychologist must be familiar with the duties appropriate to the type of license sought. This examination may also be conducted by a psychiatrist. The individual must be declared in writing by that professional to be in satisfactory psychological and emotional health to serve as the type of officer for which the license is sought. The examination must be conducted pursuant to professionally recognized standards and methods:]

[(A) the commission may allow for exceptional circumstances where a licensed physician performs the evaluation of psychological and emotional health. This requires the appointing agency to request in writing and receive approval from the commission, prior to the evaluation being completed; or]

[(B) the examination may be conducted by qualified persons identified by §501.004, Occupations Code. This requires the appointing agency to request in writing and receive approval from the commission, prior to the evaluation being completed.]

[(d) The enrollment standards established in this section do not preclude the licensed academy from establishing additional requirements or standards for enrollment in law enforcement training programs.]

[(e) The effective date of this section is May 1, 2009.]

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 June 12, 2009.

TRD-200902388
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Proposed date of adoption: October 26, 2009
For further information, please call: (512) 936-7700

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CHAPTER 217. LICENSING REQUIREMENTS

37 TAC §217.9

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §217.9, concerning Continuing Education Credit for Licensees. Subsection (b) is amended to provide for refusal of licensing or certification courses by unlicensed or non-contractual training providers. Subsection (d) is amended to reflect the effective date of this change.

This amendment will ensure that licensing or certification courses are provided by training providers that follow guidelines established by the Commission.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there could be an effect on state or local governments as a result of administering this section. Agencies that wish to become training providers would incur costs associated with this process.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by ensuring that licensing or certification courses are provided by training providers that follow guidelines established by the Commission.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments may be submitted electronically to public.comment@tcleose.state.tx.us or in writing to Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. 290 East, Austin, Texas 78723.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter

The amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.251, Training Programs; Instructors, §1701.353, Continuing Education Procedures, and §1701.402, Proficiency Certificates.

No other code, article, or statute is affected by this proposal.

§217.9. Continuing Education Credit for Licensees.

(a) (No change.)

(b) The commission may refuse credit for:

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

(5) an instructor claiming credit for a basic licensing course or more than one presentation of a non-licensing course by an instructor, per 24 month unit of a training cycle; [~~or~~]

(6) (No change.)

(7) courses provided by the same training provider and taken more than two times within one training unit; or [.]

(8) legislatively mandated or certification courses reported by unlicensed or non-contractual training providers.

(c) (No change.)

(d) The effective date of this section is October 26, 2009 [~~January 1, 2009~~].

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 June 12, 2009.

TRD-200902392

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Proposed date of adoption: October 26, 2009

For further information, please call: (512) 936-7700

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CHAPTER 219. PRELICENSING AND REACTIVATION COURSES, TESTS, AND ENDORSEMENTS

37 TAC §219.2

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §219.2, concerning Reciprocity for Out-of-State Peace Officers and Federal Criminal Investigators. The title will be amended to reflect the addition of military police personnel. Subsection (c) is amended to provide clarity for the eligibility requirements for out-of-state peace officers to qualify for an endorsement to attempt a state licensing examination. Subsection (f) is proposed to add the military police occupational specialties. Subsection (g) is proposed to add the military training and service time requirements. The existing subsections were re-lettered due to these additions. Subsection (m) is amended to reflect the effective date of these changes.

The amendments to subsections (c) and (g) will provide a clearer understanding for out-of-state peace officers regarding the eligibility and service time requirements for endorsements issued under §219.2. The amendments to subsections (f) and (g) will provide a clearer understanding for military police personnel regarding the eligibility and service time requirements for endorsements issued under §219.2.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by providing a clearer understanding to out-of-state peace officers and military police personnel regarding the eligibility and service time requirements for endorsements issued under §219.2.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no additional cost to small business, individuals, or both as a result of the proposed section.

Comments may be submitted electronically to public.comment@tcleose.state.tx.us or in writing to Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. 290 East, Austin, Texas 78723.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.304, Examination.

No other code, article, or statute is affected by this proposal.

§219.2. Reciprocity for Out-of-State Peace Officers, [and] Federal Criminal Investigators, and Military Police.

(a) To be eligible to take a state licensing examination, an out of state, [or] federal criminal investigator, or military police must comply with all provisions of §219.1 of this title and this section.

(b) Prospective out-of-state peace officer, [and] federal criminal investigator, and military police applicants for peace officer licensing in Texas must:

(1) (No change.)

(2) successfully complete a supplementary peace officer training course, the curriculum of which is developed by the Commission;[,] and

(3) (No change.)

(c) Requirements (Peace Officers): applicants who are peace officers from other U.S. states must meet the following requirements:

(1) provide proof of successful completion of a state POST-approved (or state licensing authority) basic police officer training academy (with equivalent course topics and hours of training at the time of initial certification or licensure);

(2) have honorably served (employed, benefits eligible) as a sworn peace officer for twelve consecutive months, following initial basic training, with an agency in the state where the license or certificate was issued;

(3) be subject to continued employment or eligible for rehire (excluding retirement); and

(4) the applicant's license or certificate must never have been, nor currently be in the process of being, surrendered, suspended, or revoked.

[(1) demonstrate a successful completion of a state POST-approved (or state licensing authority) basic police officer training academy (with equivalent course topics and hours of training at the time of initial certification or licensure);]

[(2) be currently licensed or certified as a peace officer by a state POST (or state licensing authority),]

[(3) the applicant's license or certificate must never have been, nor currently be in the process of being, surrendered, suspended, or revoked; and]

[(4) have honorably served (employed, benefits eligible) as a sworn peace officer for twelve consecutive months, following initial basic training, with an agency in the state where the license or certificate was issued.]

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

(f) Requirements (Military): must have a military police military occupation specialty (MOS) or air force specialty code (AFSC) classification in one of the following:

(1) United States Army 95B or 31B;

(2) United States Marine Corps 5811;

(3) United States Air Force 3PO51, 3PO71, or 3PO91;

(4) United States Navy Master at Arms or NEC 9545 and successfully completed NAVEDTRA 14137; or

(5) United States Coast Guard equivalent.

(g) Qualifying military personnel must provide proof of:

(1) successfully completed basic military police course for branch of military served; and

(2) served at least 24 months active duty in the designated career field.

(h) Procedures for requesting an endorsement to take state licensing examination:

(1) complete the Commission application for endorsement and have it properly notarized;

(2) attach a certified check or money order for the currently required fee (non-refundable); and

(3) submit the application and fee with all required documents to the Commission by U.S. mail, by courier, or in person.

(i) Required documents to accompany the application for endorsement:

(1) a certified or notarized copy of the basic training certificate for a peace officer, a certified or notarized copy of a federal agent's license or credentials, or a certified or notarized copy of the peace officer license or certificate issued by the state POST or proof of military training (to include the United States Coast Guard);

(2) a notarized statement from the state POST, current employing agency or federal employing agency revealing any disciplinary action(s) that may have been taken against any license or certificate issued by that agency or any pending action;

(3) a notarized statement from each applicant's employing agency confirming time in service as a peace officer or federal office or agent;

(4) a certified or notarized copy of the applicant's valid state-issued driver's license;

(5) a certified copy of the applicant's military discharge (DD-214), if applicable; and

(6) a passport-sized color photograph (frontal, shoulders and face), signed with the applicant's full signature on the back of the photograph.

(j) The Commission may request that applicants submit a copy of the basic and advanced training curricula for equivalency evaluation and final approval.

(k) All out-of-state, federal, and military applicants will be subject to a search of the National Decertification Database (NDD), NCIC/TCIC, and National Criminal History Databases to establish eligibility.

(l) All documents must bear original certification seals or stamps.

(m) The effective date of this section is October 26, 2009.

[(f) Procedures for requesting an endorsement to take state licensing examination:]

[(1) complete the Commission application for endorsement and have it properly notarized;]

~~[(2) attach a certified check or money order for the currently required fee (non-refundable); and]~~

~~[(3) submit the application and fee with all required documents to the Commission by U.S. mail, by courier, or in person.]~~

~~[(g) Required documents to accompany the application for endorsement:]~~

~~[(1) a certified or notarized copy of the basic training certificate for a peace officer, a certified or notarized copy of a federal agent's license or credentials, or a certified or notarized copy of the peace officer license or certificate issued by the state POST;]~~

~~[(2) a notarized statement from the state POST, current employing agency or federal employing agency revealing any disciplinary action(s) that may have been taken against any license or certificate issued by that agency or any pending action;]~~

~~[(3) a notarized statement from the applicant's employing agency confirming time in service as a peace officer or federal office or agent;]~~

~~[(4) a certified or notarized copy of the applicant's valid state-issued driver's license;]~~

~~[(5) a certified copy of the applicant's military discharge (DD-214) (if applicable);]~~

~~[(6) a passport-sized color photograph (frontal, shoulders and face), signed with the applicant's full signature on the back of the photograph; and]~~

~~[(7) an attached certified check or money order in the amount listed in the agency fee schedule.]~~

~~[(h) The Commission may request that applicants submit a copy of the basic and advanced training curricula for equivalency evaluation and final approval.]~~

~~[(i) All out-of-state or federal applicants will be subject to a search of the National Decertification Database (NDD), NCIC/TCIC, and National Criminal History Databases to establish eligibility.]~~

~~[(j) All documents must bear original certification seals or stamps.]~~

~~[(k) The effective date of this section is March 1, 2007.]~~

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 June 12, 2009.

TRD-200902395

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Proposed date of adoption: October 26, 2009

For further information, please call: (512) 936-7700

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CHAPTER 221. PROFICIENCY CERTIFICATES AND OTHER POST-BASIC LICENSES

37 TAC §221.15

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

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes the repeal of §221.15, concerning Crime Prevention Inspector Proficiency. The authority for that certificate, Section 5.33A, was repealed from the Insurance Code.

The Commission has determined that for each year of the first five years the repeal as proposed will be in effect, there will be no effect on state or local governments as a result of administering this repeal.

The Commission has determined that for each year of the first five years the repeal as proposed will be in effect, there will be a positive benefit to the public by matching the rules with the current Insurance Code.

The Commission has determined that for each year of the first five years the repeal as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed repeal of this section.

Comments may be submitted electronically to public.comment@tcleose.state.tx.us or in writing to Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. 290 East, Austin, Texas 78723.

The repeal is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter

The proposed repeal is in compliance with Texas Occupations Code, Chapter 1701, §1701.402, Proficiency Certificates.

No other code, article, or statute is affected by this proposal.

§221.15. Crime Prevention Inspector Proficiency.

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 June 12, 2009.

TRD-200902390

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Proposed date of adoption: October 26, 2009

For further information, please call: (512) 936-7700

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37 TAC §221.21

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §221.21, concerning Firearms Proficiency for Community Supervision Officers. Subsection (b) is amended to reflect weapons proficiency requirements for community supervision officers. Subsection (c) is added to reflect the expiration date for certificates issued under this section and stipulates requirements for renewal of the certificate for community supervision officers. Existing subsection (c) is re-lettered as (d) and amended to reflect the effective date of the amendments.

The amendments to subsections (b) and (c) will provide a clearer understanding for the community supervision officers regarding the expiration dates and renewal requirements for certificates issued under §221.21. The amendment to subsection (d) will provide the effective date of the amendments.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by providing a clearer understanding to community supervision officers regarding the expiration dates and renewal requirements for certificates issued under §221.21.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no additional cost to small business, individuals, or both as a result of the proposed section.

Comments may be submitted electronically to public.comment@tcleose.state.tx.us or in writing to Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. 290 East, Austin, Texas 78723.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.257, Firearms Training Program for Supervision Officers.

No other code, article, or statute is affected by this proposal.

§221.21. Firearms Proficiency for Community Supervision Officers.

(a) (No change.)

(b) The holder of a certificate issued under this section must meet the firearms proficiency requirements at least once every 12 months. [~~Certificates issued under this section expire two years from date of issuance. Upon expiration, a supervision officer may apply for issuance of a renewal certificate. Renewal certificate requirements are the same as those for a new certificate, excluding subsection (a)(2) of this section.~~]

(c) Certificates issued under this section expire two years from date of issuance. Upon the expiration of a certificate, a supervision officer may apply for the issuance of a renewal. Supervision officers must meet the requirements in subsections (a)(1) and (b) of this section in order to renew the certificate.

(d) [~~(c)~~] The effective date of this section is October 26, 2009 [~~March 1, 2001~~].

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 June 12, 2009.

TRD-200902391

Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Proposed date of adoption: October 26, 2009
For further information, please call: (512) 936-7700

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CHAPTER 223. ENFORCEMENT

37 TAC §223.7

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §223.7, concerning Contested Cases and Hearings. Subsection (b) is added to allow for the Commission to recover transcription fees as allowed under §2001.059 of the Government Code. Existing subsection (b) is re-lettered as (c) and is amended to reflect the effective date of this amendment.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by requiring individuals to reimburse the Commission for any costs related to transcription of their administrative hearing.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, individuals may be assessed the costs for the transcription of their administrative hearing. There will be no additional cost to small business as a result of the proposed section.

Comments may be submitted electronically to public.comment@tcleose.state.tx.us or in writing to Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. 290 East, Austin, Texas 78723.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.505, Administrative Procedure and Texas Government Code Chapter 2001, §2001.059.

No other code, article, or statute is affected by this proposal.

§223.7. Contested Cases and Hearings.

(a) (No change.)

(b) The Commission may assess transcript costs to one or more parties.

(c) [~~(b)~~] The effective date of this section is October 26, 2009 [~~March 1, 2001~~].

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 June 12, 2009.

TRD-200902394

Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Proposed date of adoption: October 26, 2009
For further information, please call: (512) 936-7700

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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 10. COMMUNITY DEVELOPMENT

PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

CHAPTER 300. ADMINISTRATION

10 TAC §300.13, §300.15

The Texas Residential Construction Commission withdraws proposed new §300.13 which appeared in the April 10, 2009, issue of the *Texas Register* (34 TexReg 2339) and withdraws proposed new §300.15 which also appeared in the April 10, 2009, issue of the *Texas Register* (34 TexReg 2342).

Filed with the Office of the Secretary of State on June 11, 2009.

TRD-200902336
Susan K. Durso
General Counsel
Texas Residential Construction Commission
Effective date: June 11, 2009
For further information, please call: (512) 463-3926

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CHAPTER 301. GENERAL PROVISIONS

10 TAC §301.3

The Texas Residential Construction Commission withdraws the proposed repeal of §301.3 which appeared in the April 10, 2009, issue of the *Texas Register* (34 TexReg 2347).

Filed with the Office of the Secretary of State on June 11, 2009.

TRD-200902337
Susan K. Durso
General Counsel
Texas Residential Construction Commission
Effective date: June 11, 2009
For further information, please call: (512) 463-3926

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 13. FINANCIAL PLANNING

SUBCHAPTER L. ENGINEERING SUMMER PROGRAM

19 TAC §§13.200 - 13.202

The Texas Higher Education Coordinating Board withdraws the proposed amendments to §§13.200 - 13.202 which appeared in the May 8, 2009, issue of the *Texas Register* (34 TexReg 2744).

Filed with the Office of the Secretary of State on June 9, 2009.

TRD-200902299
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: June 9, 2009
For further information, please call: (512) 427-6114

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TITLE 22. EXAMINING BOARDS

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS

SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.212

The Texas Real Estate Commission withdraws the proposed amendment to §535.212 which appeared in the March 13, 2009, issue of the *Texas Register* (34 TexReg 1779).

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

TRD-200902380
Devon V. Bijansky
Assistant General Counsel
Texas Real Estate Commission
Effective date: June 12, 2009
For further information, please call: (512) 465-3900

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION

CHAPTER 221. PROFICIENCY CERTIFICATES AND OTHER POST-BASIC LICENSES

37 TAC §221.1

The Texas Commission on Law Enforcement Officer Standards and Education withdraws the proposed amendment to §221.1 which appeared in the March 27, 2009, issue of the *Texas Register* (34 TexReg 2112).

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

TRD-200902397
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: June 12, 2009
For further information, please call: (512) 936-7700

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CHAPTER 223. ENFORCEMENT

37 TAC §223.19

The Texas Commission on Law Enforcement Officer Standards and Education withdraws the proposed amendment to §223.19 which appeared in the March 27, 2009, issue of the *Texas Register* (34 TexReg 2116).

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

TRD-200902398
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: June 12, 2009
For further information, please call: (512) 936-7700

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ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 6. ORGANIZATION AND ADMINISTRATION

SUBCHAPTER A. GENERAL RULES

1 TAC §6.5

The Texas Ethics Commission (the commission) adopts an amendment to §6.5, relating to the Texas Ethics Commission's authority to adopt rules. The amendment is adopted without changes to the proposed text as published in the May 8, 2009, issue of the *Texas Register* (34 TexReg 2729) and will not be republished.

Currently under §6.5, the commission may not adopt a rule that in the opinion of the commission directly addresses the subject of pending litigation known to the commission. The amendment clarifies the term litigation by providing that it does not include the subject matter of a sworn complaint if the sworn complaint has not reached the formal hearing stage.

No comments were received regarding the proposed rule during the comment period.

The amendment to §6.5 is adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

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 June 11, 2009.

TRD-200902330
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Effective date: July 1, 2009
Proposal publication date: May 8, 2009
For further information, please call: (512) 463-5800

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CHAPTER 8. ADVISORY OPINIONS

1 TAC §8.3

The Texas Ethics Commission (the commission) adopts an amendment to §8.3, relating to the subject matter of an advisory opinion issued by the Texas Ethics Commission. The amendment is adopted without changes to the proposed text as published in the May 8, 2009, issue of the *Texas Register* (34 TexReg 2729) and will not be republished.

Currently under §8.3, the commission may not issue an advisory opinion that concerns the subject matter of pending litigation known to the commission. The amendment clarifies the term litigation by providing that it does not include the subject matter of a sworn complaint if the sworn complaint has not reached the formal hearing stage.

No comments were received regarding the proposed amendment during the comment period.

The amendment to §8.3 is adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

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 June 11, 2009.

TRD-200902331
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Effective date: July 1, 2009
Proposal publication date: May 8, 2009
For further information, please call: (512) 463-5800

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PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 73. STATUTORY DOCUMENTS

SUBCHAPTER F. DISCLOSURE STATEMENT OF CONDITIONAL GIFTS

1 TAC §73.91

The Office of the Secretary of State adopts an amendment to 1 TAC §73.91, concerning disclosure of conditional gifts. This nonsubstantive change corrects an outdated citation to the United States Code. The amendment is adopted without change to the text proposed in the May 8, 2009, issue of the *Texas Register* (34 TexReg 2731).

Two specific changes are adopted: (1) capitalization of the "f" in "Federal" in two places where the word modifies "Department of Education"; and (2) correction of an outdated citation to "20 United States Code 1145d" to "20 United States Code 1011f".

COMMENTS

The Secretary of State received no comments concerning the proposed amendment.

STATUTORY AUTHORITY

This amendment is adopted under the authority of §51.573, Texas Education Code, which provides that the secretary of state shall prescribe the form and contents of a disclosure statement of conditional gifts in accordance with federal law.

Chapter 51, Texas Education Code, is affected by the amended rule.

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 June 9, 2009.

TRD-200902300
Lorna Wassdorf
Director of Business and Public Filings
Office of the Secretary of State
Effective date: June 29, 2009
Proposal publication date: May 8, 2009
For further information, please call: (512) 463-5562

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 357. HEARINGS

The Health and Human Services Commission (HHSC) adopts the repeal of Chapter 357, Subchapters A, D, E, F, G, and H and adopts new Chapter 357, Subchapter A. Specifically, HHSC repeals: Subchapter A, §§357.1, 357.3, 357.5 - 357.7, 357.9, 357.11 - 357.13, 357.15, 357.17, 357.19, 357.21, 357.23, 357.25, 357.27 and 357.29, concerning Medicaid Fair Hearings; Subchapter D, §§357.301 - 357.305, concerning Fair Hearings; Subchapter E, §§357.351 - 357.360, concerning Appeals Process; Subchapter F, §§357.401 - 357.417, concerning Hearing Procedure; Subchapter G, §357.441 and §357.442, concerning Social Service Appeals, and Subchapter H, §§357.461 - 357.463, concerning Medicaid Services Appeals. HHSC replaces the repeal with new Subchapter A, §§357.1, 357.3, 357.5, 357.7, 357.9, 357.11, 357.13, 357.15, 357.17, 357.19, 357.21, 357.23 and 357.25, concerning Uniform Fair Hearing Rules. HHSC also adopts the amendments to Subchapter R, §357.702 and §357.703, concerning Judicial and Administrative Review of Hearings. New §§357.1, 357.3, 357.9, 357.11, 357.13, 357.17, 357.19, 357.21, 357.23 and 357.25 are adopted with changes to the proposed text as published in the January 16, 2009, issue of the *Texas Register* (34 TexReg 309). The text of the rules will be republished. The repeal of §§357.1, 357.3, 357.5 - 357.7, 357.9, 357.11 - 357.13, 357.15, 357.17, 357.19, 357.21, 357.23, 357.25, 357.27, 357.29, 357.301 - 357.305, 357.351 - 357.360, 357.401 - 357.417, 357.441, 357.442, and 357.461 - 357.463, new §§357.5, 357.7, and 357.15 and the amendments to §357.702 and §357.703 are adopted without changes to the proposed text and will not be republished.

Background and Justification

The Health and Human Services Commission (HHSC) is required to have procedural rules that direct the conduct of client fair hearings. At consolidation of the human services agencies, the fair hearing rules at Texas Department of Human Services were transferred to HHSC. At that time, only fair hearing rules for Medicaid appeals already existed at HHSC.

The adopted rules will repeal the existing sets of fair hearing rules and provide a much clearer picture in new §§357.1 - 357.21 of the rules that govern client appeals at HHSC. They will provide more streamlined procedures for the conduct of these hearings. In addition, the proposed rules conform to Commission practice and fulfill the purpose intended by Government Code §531.0055: that performance of administrative support services for health and human services agencies, including legal support, is the responsibility of HHSC.

The adopted changes to §357.702 and §357.703 clarify the definition of "notice" and that the administrative review is limited to the record considered by the hearing officer. The adopted changes also provide an exception to the 30-day timeframe for requesting an administrative review.

Comments

The 30-day comment period ended February 16, 2009. Since February 16, 2009 was a holiday, comments were accepted through February 17, 2009. During this period, HHSC received comments from Advocacy Incorporated and the Texas Legal Services Center. A summary of the comments relating to the proposed rule and HHSC's responses follows. It should also be noted that references to the "Food Stamp Program" have been changed to "Supplemental Nutrition Assistance Program" (SNAP) in order to track the new federal name of the program.

Comment: Advocacy Incorporated noted that proposed §357.1(2) defines "Action Effective Date" as "the date the agency action becomes effective." They would prefer HHSC use the "Date of Action" used in the federal regulations.

Response: Those terms defined in the rules are those that are included throughout and are necessary for a common understanding of the appeals process. These include "Action Effective Date," which is the date the agency's action becomes effective, and "Date of Notice of Agency Action," which is the date that appears on the written notice informing the client of the action. These terms are specific and important when calculating time limits in the appeal process. "Date of Action" is not used in these rules. There is no requirement that every specific term defined in federal regulations be used and defined in a State's rules so long as they do not conflict with federal hearing rules. No changes were made in response to this comment.

Comment: Advocacy Incorporated argues that the definition of "Across the Board Reduction of Services" in §357.1 does not strictly comply with federal regulations and limits the beneficiary's right to a fair hearing. Specifically, they note that the definition of "Across-the-Board Reduction of Services," found in proposed §357.1(1) (which is related to proposed §357.3(b)(4)), is not in compliance with 42 C.F.R. §431.220(b), which only allows the agency to not grant a hearing "if the sole issue is a Federal or State *law* requiring an automatic change adversely affecting some or all recipients." (Emphasis added).

Response: The rule is changed to track the federal rules in order to reflect the comment.

Comment: The commenters believe that a fuller statement that includes all of the various federal program requirements should

be used in lieu of proposed §357.1(3), the definition of "adequate notice." Texas Legal Services Center and Advocacy Incorporated stated the current definition for adequate notice is not comprehensive enough to comply with federal regulations and should be changed. They believe that the wording in the current fair hearing rules is informative and useful to the applicants and recipients to understand why an action was taken and be aware of the right to appeal. They also note that, besides the content-of-notice requirements found in various federal regulations, the First Agreement in *Alberto N., et al. v. Hawkins, et al.* set out, with specificity, the requirements of adequate notice and that the relevant language of this agreement should also be included in the rule.

Response: While agreeing about the importance of notice to recipients, the Commission disagrees with the suggestion that the hearing rules are the place to address all of the many program requirements of adequate notice, whether from federal rules or settlements in various lawsuits. The federal requirements for the required notices vary depending on the program and the purpose of the notice. The proposed HHSC program rules require these notices to be consistent with each program's laws, rules and regulations; they are the responsibility of the dozens of program areas that involve fair hearings. The rule language was not changed in response to this comment.

Comment: Advocacy Incorporated stated that proposed definition of "Agency Action" in §357.1(6) fails to comply with federal regulations, in that it limits the right to appeal an agency's decision to "reduce, suspend, terminate, or deny *benefits,"* which would deny applicants or beneficiaries who are challenging a termination, suspension, or reduction of Medicaid *eligibility.* The federal regulations use the terms "eligibility" and "services."

Response: It has always been the practice of the Appeals Division to interpret "denial of benefits" as including "eligibility." However, the proposed rule language was changed to add "eligibility" in response to this comment to ensure clarity.

Comment: Texas Legal Services Center and Advocacy Incorporated stated that proposed §357.1(9) regarding the designation of a representative at the hearing should not be required to be "in writing." The commenter believes this requirement limits applicants for or recipients of assistance right to be assisted by whomever they choose.

Response: The purpose of the "in writing" requirement is to ensure that vendors or providers are not able to act on behalf of an appellant who has not approved their actions. This has been a serious problem in Medicaid. However, HHSC hearing officers will accept designations when the appellant confirms on the record that he or she has an authorized representative or designates someone else to speak on his behalf. Rule language was changed to specify this practice in response to the comment.

Comment: Advocacy Incorporated stated that proposed definition of a "Fair Hearing" in §357.1(19) fails to account for or otherwise allow appeals for "inaction."

Response: The failure of an agency to act upon a request for services has always been subject to appeal. The failure to "act upon a request with reasonable promptness" is covered under the Right to Appeal section (§357.3) of the rules. The rule was not changed in response to the comment.

Comment: Advocacy Incorporated stated that proposed §357.1(36) states that THSteps was "formerly known as EPSDT." The commenter noted that HHSC calls the EPSDT benefit THSteps.

Response: The rule language was not changed in response to the comment because HHSC believes the rule already reflects this point.

Comment: Advocacy Incorporated stated that the proposed definitions are missing a definition for "Adverse Determination" which should be included.

Response: A definition for "adverse determination" was not included because the term is not used in these rules. The rule language was not changed in response to the comment.

Comment: Advocacy Incorporated stated that the proposed rule regarding the "Right to Fair Hearing," §357.3(b), fails to comply with federal law since it limits the right to appeal to actions that "reduce, suspend, terminate or deny benefits," which does not include "eligibility".

Response: It has always been the practice of HHSC and its predecessor agencies to allow appeals of eligibility issues, as a logical interpretation of "denial of benefits" encompasses that term. However, the rule language was changed to specify "eligibility" in response to this comment.

Comment: Advocacy Incorporated stated that there is no need to change the wording related to a "Hearings Officer's Responsibility," §357.5(c). They assert a preference to keep the current fair hearing rule language, which does not mention the Rules of Civil Procedure.

Response: The proposed rule expands the language of the current rule in order to better preserve the informal nature of the fair hearing, by stating that the Texas Rules of Evidence and the Texas Rules of Civil Procedure are not followed. The proposed rule was not changed in response to this comment.

Comment: Advocacy Incorporated stated that the proposed rules do not require the attendance of the medical director in appeals related to the denial or reduction of nursing services as required in the Second Partial Settlement Agreement in the *Alberto N.* lawsuit.

Response: The agreement in *Alberto N.* applies only to cases involving appellants who are under the age of 21 and seeking private duty nursing. The Medical Director, in appropriate circumstances, serves as an agency representative, attends hearings, and provides testimony in support of the decision to deny or reduce nursing services - but this requirement is limited. The rule language was not changed in response to this comment.

Comment: Advocacy Incorporated stated that proposed §357.5(c)(2)(D), which allows the hearing officer to limit the number of persons in attendance at a hearing, is unnecessary. They assert that the hearings officer should have sufficient phone lines and/or space to accommodate all participants and that the appellant's right to present testimony through witnesses may not be compromised due to a lack of phone capacity or office space.

Response: This rule follows current HHSC hearing rules and federal regulations which permit limiting the number of attendees at a hearing when space limitations exist. The hearings officer applies the same considerations to telephone hearings when appropriate, since telephone lines are likewise not unlimited. However, despite restrictions, hearing officers are able to ensure that all witnesses are heard. The rule language was not changed in response to the comment.

Comment: Advocacy Incorporated stated that proposed §357.5(c)(3)(D) should be re-written to include the same requirements of proposed §357.5(c)(3)(E), as the federal regulations require the same specificity. *See, e.g.,* 42 C.F.R. §431.244(d) and (e) (decision must "summarize the facts"; "specify the reasons for the decision").

Response: All fair hearing decisions include Findings of Fact, which summarize the facts that were proven and which are pertinent to the appeal, and Conclusions of Law, which state the hearings officer's decision and the legal basis for that decision. The rule language was not changed in response to the comment.

Comment: Advocacy Incorporated notes that proposed §357.7(d) states that if advance notice is provided and if a hearing is requested within ten days of the mailing of the notice, and "*the operating agency or its designee determines that the action resulted from something other than the application of federal or state law or policy,* the operating agency or its designee will reinstate and continue an individual's services until a hearing decision is rendered." They believe that this proposed rule violates 42 C.F.R. §431.230 (Maintaining services), in that "the agency may not terminate or reduce services until a decision is rendered after the hearing unless - (1) It is determined *at the hearing* that the sole issue is one of Federal or State Law . . . ." Pursuant to federal law, services must be maintained unless it is determined *at the hearing* that the sole issue is one of federal or state law. They argue that the proposed rule, however, improperly lets the agency or its designee determine, *prior to the hearing,* whether the action was caused by the "application of federal or state law" (which is also different than "sole issue is one of Federal or State Law").

Response: The proposed rules do not contain a §357.7(d). However, assuming the comment refers to §357.3(b)(4)(B), that rule is changed to allow this determination at a preliminary hearing conference.

Comment: Advocacy Incorporated disagreed with that portion of proposed §357.9 requiring the appellant to bear the burden of proof to prove an affirmative defense. The commenter stated the rule allows the agency to "unlawfully flip the burden of proof to the beneficiary."

Response: HHSC disagrees that requiring an appellant to bear the burden of proof on an affirmative defense is improper or illegal. However, HHSC has concluded that the affirmative defense concept is possibly too confusing for informal hearings, especially when so few appellants have legal representation. The rule requiring an appellant to bear the burden of proof in these special circumstances has been changed as a result of this comment.

Comment: Texas Legal Services Center stated that in regard to continuation of benefits, addressed in part by §357.11(a)(7), due process may require continuation of benefits by virtue of the state or federal constitution, judicial decisions (whether reported or not, and whether in the form of a decision by the court or a decision by the court to approve a consent decree), and/or policies that provide a reasonable expectancy of continuation of benefits. The commenter requested these additional sources be added to the rule.

Response: HHSC agrees that continued benefits may be affected in the instances cited by the commenter but believe that the reference to "law" in the proposed rule covers those circumstances. Given the great variety of HHSC programs which are the subject of fair hearings, and varied circumstances under which benefits are continued, the proposed rule language was clarified in response to this comment to specify that benefits should be continued in accordance with the requirements of the program at issue.

Comment: Advocacy Incorporated stated that §357.13 should be revised to require the hearing officer or the agency or it's designee to provide the case file and copies of all documentation and evidence to be used in the fair hearing, at no cost. The commenter believes the beneficiary should, as a matter of course, receive his or her case file and evidence to be used at hearing, without having to request it.

Response: HHSC understands the point of this comment to be that the entire case file should be provided automatically whenever an appellant requests a fair hearing. The documents program staff used to make the decision being appealed are furnished at no cost to the appellant and to the hearings officer prior to the hearing. Automatically copying and forwarding the entire case file to the appellant is not required by Federal regulations, nor is it cost-effective. In addition, automatically furnishing the complete file would seldom be beneficial to an appellant, since it is rare that an entire case file would be relevant to the issue on appeal. The rule language was not changed in response to this comment.

Comment: Advocacy Incorporated stated that, according to the First Settlement Agreement in the *Alberto N.* lawsuit and federal regulations, an appellant has the right to request and expect an in-person hearing. The commenter suggested revising §357.13 to allow an in-person hearing upon the request of the appellant.

Response: HHSC receives approximately 33,000 fair hearing requests per year. Scheduling hearings by telephone allows them to be heard much more quickly than if all hearings were conducted face-to-face, and federal regulations permit hearings to be conducted in this manner. In-person hearings must be coordinated between appellants, hearings officers, program representatives, and often attorneys and witnesses. Hearings staff often learn that appellants prefer to have their hearing by telephone, as this fits their schedules better. Hearings officers are provided extensive training on conducting telephone hearings, to ensure that appellants' due process rights are preserved and in-person hearings provided where required.

The settlement agreement in the *Alberto N.* lawsuit requires an in-person hearing when requested, for certain appellants 21 years of age or younger, and HHSC complies with this requirement in all respects. Rule language was not changed in response to this comment.

Comment: Advocacy Incorporated notes that proposed §357.17(b)(2)(A) states that "expedited hearings are granted if the health plan or health plan provider determines that taking the time for resolution of a fair hearing could seriously jeopardize the individual's life or health . . . ." The commenter believes that this determination should be made by the hearings officer, the appellant or the appellant's physician.

Response: The portion of the rule in question is derived from federal regulations regarding the appeals process of managed care organizations; this federal provision is confusing in the context of the hearing rules. The rule is amended to remove references to the federal process and to make it clear that any Medicaid patient whose health is threatened by a delay in the fair hearings process may request and be promptly granted an expedited hearing.

Comment: Texas Legal Services Center stated that the scope for review of TANF decisions should be expanded to include constitutional provisions, regulations, statutes, judicial decisions, policies and consent decrees.

Response: Section 357.19(f)(3) addresses the scope of attorney reviews provided for TANF decisions. If an appellant disagrees with a decision in a TANF case, a procedural review is available to him, since TANF decisions by statute are not accorded administrative or judicial review rights. HHSC believes that the proposed scope is so wide as to be inappropriate for an administrative review of an agency decision. The rule language was not changed in response to this comment.

Comment: Advocacy Incorporated stated that, with regard to §357.21(a), the hearings officer should be allowed to make a determination as to whether an interpreter is needed before the hearing begins. They believe that this is more practical since, especially in rural areas, an interpreter may not be so easily obtained in time if the hearing is scheduled.

Response: Appellants are given an opportunity to request an interpreter when they make a request for a fair hearing. Information on how to request an interpreter is included with the Appointment Notice sent to the appellant. If a hearings officer knows in advance that an interpreter is needed, he will be free to makes necessary arrangements. Despite being provided this information, appellants often do not notify the hearings officer that they need an interpreter until the hearing begins. At that time, the hearings officer makes needed arrangements and may have to reschedule the hearing. If the hearing is held by telephone and requires an interpreter, the hearings officer includes the interpreter in the conference call before officially beginning the hearing. The rule language was clarified in response to this comment.

Comment: Advocacy Incorporated stated that proposed §357.21(a)(2) should contain more clarification regarding how a hearing office determines whether deaf or hard of hearing participants are "sufficiently fluent" in the same language so that no barrier is present.

Response: The fair hearing rules are consistent with laws, statutes, regulations and agency agreements. More detailed information is provided to the hearings officers during training on how to determine whether all participants are able to communicate clearly, in order that there are no barriers to their participation in the hearing. The rule language was clarified in response to this comment by adopting "able to communicate" in lieu of "sufficiently fluent."

Comment: Advocacy Incorporated stated that proposed §357.21(a) should include language that requires the hearing officer to use the primary consideration standard in evaluating the needs of a deaf or hard of hearing participant. They also state that the proposed rule be amended to be consistent with the terms used in other Texas state laws concerning the certification or licensing of interpreters, which includes for spoken languages and sign language. They suggest that HHSC provide a BEI or RID certified sign language interpreter. Moreover, the commenter stated that a deaf or hard of hearing appellants should be allowed to request another form of auxiliary aid or services other than an interpreter.

Response: HHSC agrees that clear communication is necessary between all parties to a fair hearing. HHSC contracts for interpretation services for fair hearings, and these contracts require all interpreters to be BEI or RID certified at a minimum of level III or IV, as appropriate.

All hearings participants are provided form H4805, Fair Hearing Procedures, which informs them of what to do if they need special accommodations. If, at the time of the hearing, it becomes evident that special accommodations are needed, the hearings officer makes necessary arrangements to ensure that all parties are able to communicate effectively. Greater detail in terms of the form of the assistance is appropriate for training and the Fair Hearings Handbook but not for rules as it may be subject to frequent change. The rule has been changed in subsection (b) to emphasize that the hearing officer will use all available means required by law to provide assistance to those requiring it at the hearing.

Comment: Advocacy Incorporated stated with regard to §357.23(a)(3) there is nothing in federal law which allows the agency to extend the ninety day time limit on issuing the hearing decision. The commenter suggested an additional clause requiring a written notice to the appellant advising them of the new deadline. They believe that it might be acceptable for the proposed rule to be revised by the addition of a further clause, namely, "the appellant will be sent notice of any such extension at least ten days prior to the time limit that would otherwise obtain and the notice will inform the appellant of the revised date by when the decision will be issued."

Response: HHSC allows an appellant to request a 30-day postponement of his hearing. The time limit to issue a decision in the hearing may be extended by the number of days the hearing was postponed at the appellant's request. The settlement agreement reached in the *Villarreal* lawsuit provides for this extension.

The hearings officer may also allow a hearing record to remain open to receive additional information, and granting the extension will be clearly stated on the record during the hearing. Leaving the record open benefits the appellant as it allows him to reschedule the hearing and/or provide additional evidence if he wishes. Requiring staff to send another notice each time an appellant requests an extension for this purpose is not necessary, as the appellant made the request and participated in the hearing where the extension was granted. The proposed language was not changed in response to this comment.

Comment: Advocacy Incorporated stated a hearings officer should only be able to re-issue a decision at the request of the appellant or appellant's representative. The commenter notes that although an appellant has the right to request administrative review within 30 days of the hearing officer's decision, there is not a concept that the decision "lies in repose out of effect for some period of days after it is issued; to the contrary, the decision is effective when issued and if it is to be withdrawn, revised, or re-issued, that should only occur at the request of the appellant."

Response: Section 357.23(g) authorizes the hearings officer to promptly withdraw a decision and issue a new one when appropriate, to correct an error of fact or law - whether in favor of the agency or the appellant. Proposed §357.23(f) provides a mechanism for the appellant to request that a hearing be re-opened. Moreover, if a new decision is issued, appellant has the right to request administrative review of that decision. The rule language was not changed in response to this comment.

Comment: Advocacy Incorporated stated that proposed §357.25(a) should be revised to include various documents associated with the appeal. The commenter believes that hearings decision should be available to the public indefinitely, not just for a period of a few years.

Response: HHSC believes that the rule language regarding the items to be retained in a record of the decision includes all items required by law. Regarding the time these documents are retained, there is no law requiring state agencies to retain hearing records indefinitely. Many of HHSC's programs have amended their retention schedules to require that records be kept for six years from the date a case is closed, in order to comply with certain HIPAA requirements. The Appeals Division, including the Fair and Fraud Hearings Section, will amend its retention schedule to retain records for six years from the last action in an administrative appeal, and the rule language was changed in response to this comment.

Comment: Advocacy Incorporated stated that all decisions should be redacted and made available to the public within 30 days of the date of the decision as is the case with decisions related to the *Alberto N.* settlement, i.e., all fair hearing decisions, not just Texas Health Steps appeals.

Response: HHSC complies with all known rules, regulations, and settlements that relate to redacting records and making records available to the public. The provisions of the *Alberto N.* settlement do not apply to all Medicaid decisions and redacting those other decisions would serve no apparent purpose. The rule language was not changed in response to this comment.

Comment: Advocacy Incorporated stated that the proposed rules are missing sections on the reinstatement of services, corrective action, and Federal Financial Participation which provides for, among other things, payments for continued services, payments for corrective action, and administrative costs for the beneficiary, his or her representative, and witnesses to travel to and from the hearing. They believe that these omissions deprive beneficiaries of rights provided by federal law, and therefore, must be cured.

Response: The fair hearing rules comply with all applicable federal regulations regarding continuing benefits and complying with the hearings officers' decision. The fair hearing rules do not address Federal Financial Participation requirements or other matters included in the State Plan. Decisions involving FFP or the State Plan are not made in the Appeals Division, and HHSC has elected not to provide for paying administrative and travel costs for appellants and witnesses to and from fair hearings.

It is important to note that these rules must agree with federal regulations, but there is no requirement that they reiterate every related or tangentially related federal provision already covered in those regulations. No changes were made to this rule in response to the comment.

SUBCHAPTER A. MEDICAID FAIR HEARINGS

1 TAC §§357.1, 357.3, 357.5 - 357.7, 357.9, 357.11 - 357.13, 357.15, 357.17, 357.19, 357.21, 357.23, 357.25, 357.27, 357.29

The repeals are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code, §31.034, which provides clients the right to appeal an action or failure to act by a local administrative unit relating to the financial assistance; Texas Human Resources Code, §32.035 makes the provisions of §31.034 applicable to applicants for medical assistance; and Human Resources Code, §35.003, provides an individual with the opportunity to request a hearing if an application for person with disabilities support services is denied.

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 June 9, 2009.

TRD-200902306
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: June 29, 2009
Proposal publication date: January 16, 2009
For further information, please call: (512) 424-6900

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SUBCHAPTER D. FAIR HEARINGS

1 TAC §§357.301 - 357.305

The repeals are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code, §31.034, which provides clients the right to appeal an action or failure to act by a local administrative unit relating to the financial assistance; Texas Human Resources Code, §32.035 makes the provisions of §31.034 applicable to applicants for medical assistance; and Human Resources Code, §35.003, provides an individual with the opportunity to request a hearing if an application for person with disabilities support services is denied.

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

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TRD-200902307
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
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Proposal publication date: January 16, 2009
For further information, please call: (512) 424-6900

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SUBCHAPTER E. APPEALS PROCESS

1 TAC §§357.351 - 357.360

The repeals are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code, §31.034, which provides clients the right to appeal an action or failure to act by a local administrative unit relating to the financial assistance; Texas Human Resources Code, §32.035 makes the provisions of §31.034 applicable to applicants for medical assistance; and Human Resources Code, §35.003, provides an individual with the opportunity to request a hearing if an application for person with disabilities support services is denied.

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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Steve Aragón
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Texas Health and Human Services Commission
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SUBCHAPTER F. HEARING PROCEDURE

1 TAC §§357.401 - 357.417

The repeals are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code, §31.034, which provides clients the right to appeal an action or failure to act by a local administrative unit relating to the financial assistance; Texas Human Resources Code, §32.035 makes the provisions of §31.034 applicable to applicants for medical assistance; and Human Resources Code, §35.003, provides an individual with the opportunity to request a hearing if an application for person with disabilities support services is denied.

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

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SUBCHAPTER G. SOCIAL SERVICES APPEALS

1 TAC §357.441, §357.442

The repeals are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code, §31.034, which provides clients the right to appeal an action or failure to act by a local administrative unit relating to the financial assistance; Texas Human Resources Code, §32.035 makes the provisions of §31.034 applicable to applicants for medical assistance; and Human Resources Code, §35.003, provides an individual with the opportunity to request a hearing if an application for person with disabilities support services is denied.

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SUBCHAPTER H. MEDICAL SERVICES APPEALS

1 TAC §§357.461 - 357.463

The repeals are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code, §31.034, which provides clients the right to appeal an action or failure to act by a local administrative unit relating to the financial assistance; Texas Human Resources Code, §32.035 makes the provisions of §31.034 applicable to applicants for medical assistance; and Human Resources Code, §35.003, provides an individual with the opportunity to request a hearing if an application for person with disabilities support services is denied.

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SUBCHAPTER A. UNIFORM FAIR HEARING RULES

1 TAC §§357.1, 357.3, 357.5, 357.7, 357.9, 357.11, 357.13, 357.15, 357.17, 357.19, 357.21, 357.23, 357.25

The new rules are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code, §31.034, which provides clients the right to appeal an action or failure to act by a local administrative unit relating to the financial assistance; Texas Human Resources Code, §32.035 makes the provisions of §31.034 applicable to applicants for medical assistance; and Human Resources Code, §35.003, provides an individual with the opportunity to request a hearing if an application for person with disabilities support services is denied.

§357.1. Definitions.

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

(1) Across the Board Reduction of Services--The agency need not grant a hearing if the sole issue is a Federal or State law requiring an automatic change adversely affecting some or all recipients.

(2) Action Effective Date--The date the agency action becomes effective.

(3) Adequate Notice--Notice in accordance with applicable law, rules, and regulations of the programs.

(4) Agency--Any one of the agencies listed under the Health and Human Services Agencies.

(5) Agency Action--The agency's decision to:

(A) reduce, suspend, terminate or deny benefits or eligibility;

(B) deny certification of a household; or

(C) grant a benefit in an amount less than requested.

(6) Agency Representative--An individual from an agency or its designee who is authorized to represent the agency or its designee in a fair hearing.

(7) Appeal--A request for a review of an agency action or failure to act that may result in a fair hearing.

(8) Appellant--A client who requests a fair hearing.

(9) Authorized Representative--A person designated by the appellant in writing or designated by statute, regulation, or rule or named by the appellant on the record who may act on behalf of the appellant at the fair hearing.

(10) Benefit--A service administered or assistance provided by the agencies or their designees, including determining eligibility for services in the SNAP, TANF, and Medicaid-funded programs, and other agency programs in which state or federal law or rules provide a client the right to a fair hearing.

(11) Certified Spanish/English Interpreter--An interpreter who is certified by one of the following entities:

(A) American Translators Association;

(B) Federally Certified Court Interpreter through the Federal Court Interpreter Certification Examination;

(C) Interpreter Certification offered through a four-year college or university;

(D) State Certification Programs;

(E) United States Department of State (Escort, Seminar, or Conference level); or

(F) Any other nationally recognized certification program.

(12) CFR--Code of Federal Regulations.

(13) Client--A person who applies for or receives benefits from one of the HHS Agencies.

(14) Date of Appeal Request--The date on which the appellant or the appellant's authorized representative clearly expresses, in writing or orally as required, a desire to appeal.

(15) Date of Decision--The date of the hearings officer's decision, as noted on the decision document.

(16) Date of Notice of Agency Action--The date on the written notice informing the client of the agency action.

(17) Day--Calendar day, unless otherwise specified.

(18) Designee--A contractor, employee, or other agent designated to act for an agency.

(19) Fair Hearing--An informal proceeding held before an impartial HHSC hearings officer in which a client appeals an agency action. These hearings are not open to the public.

(20) Health and Human Services (HHS) Agencies:

(A) Health and Human Services Commission (HHSC);

(B) Department of Aging and Disability Services (DADS);

(C) Department of Assistive and Rehabilitative Services (DARS);

(D) Department of Family and Protective Services (DFPS);

(E) Department of State Health Services (DSHS); and

(F) A reference to an agency includes a designee.

(21) Health Plan--Includes MCO's, ICM and PCCM plans.

(22) Hearings Administrator--The administrator for fair and fraud hearings in the HHSC Appeals Division who oversees daily operations and staff conducting fair hearings.

(23) Hearings Officer--An HHSC employee designated by the Director of the Appeals Division who is responsible for conducting fair hearings and issuing decisions.

(24) Integrated Care Management (ICM) Program--A Medicaid managed care plan where an ICM Contractor manages and coordinates acute care services and long term services and supports for eligible Medicaid clients.

(25) Language Services--Any services that ensure effective communication for full participation of all parties in a hearing.

(26) Managed Care Organization (MCO)--An entity that has a current Texas Department of Insurance certificate of authority to operate as a health maintenance organization (HMO) or as an approved nonprofit health corporation under the Texas Insurance Code.

(27) Nursing Home Action--The nursing home's decision to transfer or discharge a client.

(28) Party--An appellant or his authorized representative or an agency or its representative.

(29) PASARR--Pre-Admission Screening and Resident Review Determination.

(30) Preponderance--The greater weight of the evidence required in a civil lawsuit for the trier of fact to decide in favor of one side or the other. This preponderance is based on the more convincing evidence and its probable truth or accuracy, and not on the amount of evidence.

(31) Primary Care Case Management (PCCM)--A managed care model allowed under federal regulations in which the Commission contracts with providers to form a managed care provider network.

(32) Person with Limited English Language Proficiency (LEP)--Person who does not speak English as a primary language and who has a limited ability to read, speak, write, or understand English.

(33) Prior Authorization Request--A request for services that is reimbursable only if authorization or approval for the services is obtained before services are rendered.

(34) SNAP--Supplemental Nutrition Assistance Program, formerly known as Food Stamps.

(35) TANF--Temporary Assistance for Needy Families.

(36) Texas Health Steps (THSteps)--A program under Medicaid that provides medical and dental check-ups, diagnosis, and treatment to eligible clients from birth through age 20. THSteps was formerly known as EPSDT.

§357.3. Authority and Right to Appeal.

(a) Health and Human Services (HHS) System Authority and Responsibilities.

(1) The Health and Human Services Commission (HHSC) is authorized by law to adopt and implement rules to administer the programs it oversees. These uniform fair hearing rules apply to the TANF program, the Supplemental Nutrition Assistance Program (formerly the Food Stamp Program), all Medicaid-funded services, and all other agency programs that are required by state or federal law or rules to provide the right to a fair hearing. HHSC delegates to the Appeals Division the authority to appoint hearings officers and to hear fair hearings.

(2) HHSC Appeals Division is responsible for:

(A) publishing fair hearing rules;

(B) receiving fair hearings appeal requests;

(C) conducting fair hearings; and

(D) issuing decisions.

(b) Right to Fair Hearing.

(1) Clients of Medicaid-funded services, TANF, the Supplemental Nutrition Assistance Program, and other agency programs in which state or federal law or rules provides a right to a fair hearing, are entitled to appeal the following actions:

(A) an action to reduce, suspend, terminate, or deny benefits or eligibility;

(B) a failure to act with reasonable promptness on a client's claim for benefits or services;

(C) a decision to transfer or discharge a resident from a skilled nursing facility or nursing facility;

(D) an adverse determination made regarding preadmission screening and resident review (PASARR);

(E) the denial of a prior authorization request; and

(F) the failure to reach a service authorization decision within the time period specified by federal law.

(2) Time for Fair Hearing. The client has the right to appeal:

(A) the current level of SNAP benefits anytime within SNAP certification period; and

(B) in all other actions, within 90 days from the date on the notice of agency action.

(3) Manner of Requesting Fair Hearing. The client may appeal more than one action at the same time and, unless otherwise provided in program rules or notices, in writing or orally.

(4) The Right to a Fair Hearing--Exceptions:

(A) Under the Supplemental Nutrition Assistance Program the household may request a fair hearing when it is aggrieved by a mass change in benefits.

(B) Under all other programs, the agency is not required to grant a hearing if the sole issue is a federal or state law requiring an automatic change adversely affecting some or all clients. This may be determined at a preliminary hearings conference.

(C) The client can appeal the application to him of an across-the-board reduction in benefits or services on the ground that he is not in the class affected by the automatic change.

§357.9. Burden of Proof in a Fair Hearing.

The burden of proof in a fair hearing regarding a specific issue is proof by a preponderance of the evidence. The party that bears the burden of proof meets the burden if the stronger evidence, on the whole, favors that party, as determined by the hearings officer. Depending on the type of hearing, the following apply:

(1) The agency or its designee bears the burden of proof.

(2) The nursing facility bears the burden of proof in transfer and discharge hearings.

§357.11. Notice and Continued Benefits.

(a) The agency must:

(1) follow the notice requirements set forth in the appropriate state or federal law or regulation for the affected program;

(2) give clients timely and adequate notice, as appropriate, of the right to a fair hearing;

(3) explain the right of appeal;

(4) explain the procedures for requesting an appeal;

(5) explain the right to be represented by others, including legal counsel;

(6) provide information about legal services available in the community;

(7) continue benefits if required to do so by state or federal law or regulations of the affected program; and

(8) not reinstate or continue SNAP benefits if a client requests a fair hearing after the date his certification period has ended.

(b) In Medicaid cases, except as specifically provided in federal regulations, the following apply:

(1) The written notice to an individual of the individual's right to a hearing must:

(A) contain an explanation of the circumstances under which Medicaid is continued if a hearing is requested; and

(B) be mailed at least 10 days before the date the individual's Medicaid eligibility or service is scheduled to be terminated, suspended, or reduced, except as provided by federal rules.

(2) If a hearing is requested before the date a Medicaid recipient's service, including a service that requires prior authorization, is scheduled to be terminated, suspended, or reduced, the agency may not take that proposed action before a decision is rendered after the hearing unless:

(A) it is determined at the hearing that the sole issue is one of federal or state law or policy; and

(B) the agency promptly informs the recipient in writing that services are to be terminated, suspended, or reduced pending the hearing decision.

§357.13. Appellant Rights and Responsibilities.

(a) Requesting an Appeal. Only the appellant or the appellant's authorized representative has the right to appeal an action by an agency.

(b) During the appeal process, the appellant has the right to:

(1) reapply for assistance;

(2) receive continued benefits if required by state or federal regulation or statute;

(3) confer with supervisory staff within the appropriate agency about the case prior to the hearing;

(4) continue with the fair hearing after a case adjustment or correction is made;

(5) request that reasonable accommodations due to disability or language comprehension be provided at the hearing at no cost;

(6) make an audio recording of the fair hearing;

(7) examine at a reasonable time before the date of the hearing and during the hearing:

(A) the content of the appellant's case file; and

(B) all documents and records to be used by the agency or the skilled nursing facility or nursing facility at the hearing;

(8) review the appeal procedures outlined in agency policy; and

(9) request a copy of the official recording at no charge after the decision is issued.

(c) An appellant or an authorized representative or legal counsel may send written interrogatories or request a pre-hearing conference to get additional information. The written interrogatories must be clear and concise, contain no more than 30 questions, and be submitted no less than 20 days prior to the hearing.

(d) Procedural Rights. The appellant has the right to:

(1) present the case personally or with the aid of others, including but not limited to the appellant's representative or legal counsel;

(2) bring witnesses;

(3) present information about all pertinent facts and circumstances;

(4) present arguments or address anything about the case without undue interference;

(5) confront and cross-examine adverse witnesses; and

(6) submit documentary evidence to the hearings officer before, during, or after the hearing as allowed by the hearings officer. Evidence submitted after the hearing, if accepted, must be entered into the record and shared with all parties.

(e) Appellant's Responsibilities. The appellant or the appellant's authorized representative is responsible for:

(1) participating in the fair hearing; and

(2) informing the hearings officer prior to the fair hearing that the appellant needs an interpreter or other accommodation due to a disability.

§357.17. Types of Hearings.

(a) Telephone and In-Person Hearings.

(1) The hearings officer conducts fair hearings by telephone ensuring that all parties are able to hear and respond to each other;

(2) An appellant may request that a hearing be conducted in person; and

(3) The hearings officer determines whether good cause for an in-person hearing exists.

(b) Expedited Appeals. The following hearings are expedited:

(1) Hearings for Transients--Transient appeals are SNAP and/or TANF appeals submitted by an appellant who plans to move from the jurisdiction of the hearings officer before the hearing decision would normally be issued. An example of a transient appeal is an appeal filed by a household that includes migrant farm workers. The hearing must be held and a decision made within 15 working days from the date the hearings officer receives the hearing request if:

(A) the appellant agrees to the reduced notice of the time, date, and place of the hearing; and

(B) the hearings officer has sufficient information available to make a decision without requesting additional information.

(2) Hearings for Individuals Whose Health Is Jeopardized--Any individual who believes and can demonstrate that a delay in his Medicaid hearing could seriously jeopardize his life or health may request an expedited fair hearing.

(c) Group Hearings--The hearings officer may consolidate hearings, upon request of multiple appellants, if the sole issue involved in the cases is one of Federal or State law or policy. In all cases except SNAP cases, the request must be in writing, signed by each appellant, and state the common issue(s). Requests for group hearings in SNAP cases may be made orally or in writing. An appellant may also withdraw from a group hearing at any time before a final decision is issued. If an appellant wishes to withdraw, he must submit a signed request in writing. Group hearings follow the same procedures as individual hearings.

§357.19. Other Procedures.

(a) Postponement. The hearings officer considers a postponement for a hearing only if the appellant or his authorized representative contacts the appropriate appeals office before the scheduled hearing is to occur.

(1) SNAP Fair Hearings--The appellant is entitled to receive one postponement of up to 30 days. Additional postponements may be approved if the hearings officer determines that there is good cause.

(2) All other Fair Hearings--The hearings officer may postpone a fair hearing if the hearings officer determines that good cause exists.

(3) The hearings officer must state in writing the decision on the request to postpone and send it to the appellant and agency.

(b) Dismissals.

(1) The hearings officer dismisses the fair hearing if the appellant fails to appear at the scheduled hearing.

(2) The appellant will have 30 days to submit in writing a request to re-open the hearing and the reasons that he failed to appear at the scheduled fair hearing.

(3) The hearings officer will consider the request and determine whether the appellant had good cause for missing the scheduled hearing. If the hearings officer determines the appellant had good cause

for failing to appear, the hearings officer will re-open the hearing and set a new hearing date.

(4) The hearings officer documents the dismissal in writing and sends the decision to the parties.

(c) Withdrawals.

(1) Only the appellant or his or her authorized representative can withdraw the request for appeal.

(2) The appellant or his or her authorized representative must make the request to withdraw in writing to the hearings officer, an agency representative, or designee.

(3) If the appellant or his authorized representative orally requests to withdraw the appeal, he must confirm the request in writing. If a written request is not submitted, the hearings officer must notify the appellant in writing that if the written request is not received within 10 days, the appeal will be withdrawn based upon the original oral request.

(4) An oral request to withdraw during a hearing will be accepted in lieu of a written withdrawal.

(5) If an appellant dies during the appeal process, the hearings officer considers the appeal withdrawn unless the hearings officer is notified that the authorized representative or the appellant's executor intends to pursue the appeal.

(d) Recessed Fair Hearings. Once the hearing has begun, the hearings officer may recess the hearings proceedings if the hearings officer finds good cause for the recess. Following notice to both sides, the hearings officer may reconvene the hearing, if necessary.

(e) Administrative Review. Except for TANF decisions, an administrative review of a hearings decision is provided as set forth in §§357.701 - 357.703 of this chapter (relating to Purpose and Application, Definitions and Process and Timeframes).

(f) Review of TANF Decisions.

(1) An appellant or his or her authorized representative may make a timely request for a review of the decision.

(2) A request for a review of the decision must be postmarked within 30 days of the date of notice of the hearings officer's decision, and must be addressed to the hearings administrator.

(3) The scope of the review is limited to determining whether the hearings officer followed laws, procedures, and program rules introduced in the hearing.

§357.21. Interpreters in Fair Hearings.

(a) Determining the Need for Interpreters.

(1) The hearings officer informs the appellant on the record that he will be provided an interpreter at no cost if the appellant can show that the appellant or required participants are not able to participate in the hearing due to a communication barrier.

(2) No interpreter is required if the hearings officer determines that all participants are sufficiently able to communicate so that no barrier is present.

(3) The basis of the hearings officer's decision will be stated on the record.

(b) Types of Interpreters.

(1) Spanish/English--HHSC Appeals Division uses a certified interpreter;

(2) Other Spoken languages--HHSC Appeals Division makes every effort to use the most qualified interpreter for a person with limited English proficiency whose native language is not English or Spanish;

(3) Sign Language--HHSC Appeals Division provides a qualified sign language interpreter for a person who is hearing impaired and requests the service; and

(4) Other Methods of Interpretation--If required by the circumstances, the HHSC Appeals Division will arrange to provide other assistance in accordance with Commission policy.

(c) Effectiveness of Interpretation. If a party or authorized representative, during a fair hearing, makes a legitimate objection concerning the interpretation by an interpreter, the hearings officer:

(1) informs the authorized representative and the appellant of the right to request that the case be reheard;

(2) addresses the objection or complaint concerning the quality of the interpretation, including a request to rehear the case;

(3) finishes the hearing with the original interpreter; or

(4) provides a new interpreter at a later date.

§357.23. Hearings Officer Decision and Actions.

(a) Time Limits for Issuing Decisions.

(1) SNAP hearings--60 days from the date the appeal request is received by the agency or designee.

(2) Non-SNAP hearings--90 days from the date the appeal request is received by the agency or designee.

(3) The time limit for issuing a decision may be extended by as many days as the fair hearing is postponed or recessed at the request of the appellant.

(b) Decisions by Hearings Officer. The hearings officer issues a decision based exclusively on testimony and evidence introduced at the hearing. The hearings officer must:

(1) issue a written decision in English;

(2) provide the appellant with a copy of the decision; and

(3) provide a translated cover letter in Spanish for hearing decisions where a Spanish interpreter was used. The cover letter instructs the appellant to call the hearings officer if he needs assistance to understand the decision. An appellant who indicates by telephone, in person, or in writing that assistance is needed to understand the decision must receive an explanation of the hearing decision from bilingual personnel within a reasonable period.

(c) Sustained Decisions in THSteps Appeals--If the decision sustains the agency action reducing, suspending, denying, or terminating a requested service:

(1) on the basis that there is no federal financial participation, the decision must contain an explanation of the basis for the hearings officer's decision, applying the state and federal law to the individual's particular request; or

(2) on the basis that the service is not medically necessary, the decision must contain an explanation of the medical basis for the hearings officer's decision, applying the agency's policy or the accepted standards of medical practice to the individual's particular medical circumstances; and

(3) All THSteps decisions must contain legal authority, purpose of the hearing, procedural history, summary of evidence, relevant authorities, findings of fact, and conclusions of law.

(d) Decisions that are Reversed. The hearings officer reverses a decision of the agency or designee if the action or inaction is not supported by the evidence introduced at the hearing, and is not supported by statutes, policies, or procedures applicable at the time the action or inaction occurred. The agency may be instructed to issue retroactive payments or restored benefits in accordance with applicable rules, regulations, and statutes.

(e) Decisions that are Upheld. The hearings officer upholds a decision of the agency or its designee if the action is in accordance with statutes, policies, and procedures introduced at the hearing.

(f) Reopened Hearings--Appellant. The hearings officer may reopen an appeal and reconsider the decision if, within 12 months of the decision date, the appellant presents evidence that:

(1) the hearings officer has determined the information would have affected the outcome of the original decision;

(2) shows the original decision was not valid; and

(3) was not presented at the hearing by the appellant.

(g) Authority of the Hearing Officer to Re-issue a Decision. The hearings officer has the authority to withdraw, revise, and re-issue a decision. The hearings officer may re-issue the decision within 20 days of the date of the original decision if the hearings officer becomes aware of an error of law or fact that would have affected the outcome of the decision.

§357.25. Records and Confidential Information.

(a) Record Maintenance. The official record of the hearing includes the exhibits offered to the hearings officer, the exhibits admitted, the recording of the hearing, any briefs or memoranda filed in connection with the hearing, the hearings officer's decision, and any items filed in connection with administrative review and the decision on administrative review.

(b) Hearing Record Retention. The official record of a hearing is retained by the HHSC Appeals Division according to the HHSC Records/Retention Schedule.

(c) Public Access.

(1) HHSC Appeals Division records and decisions are available for public inspection and copying, but are also subject to federal and state rules and statutes regarding confidentiality.

(2) Names, addresses, and other identifying information about household members and other individuals who provide information about the household, medical information, and the status of pending criminal prosecutions are confidential.

(3) An appellant or authorized representative may record the hearing or request a copy of the recording, at no cost, from the hearings officer.

(4) All other public access to hearings records and decisions is subject to the Texas Public Information Act.

(5) The agency will redact all confidential information from the hearings decision and make the decision available to the public, without cost, within 30 days of the date of the hearing decision in Texas Health Step appeals.

(d) Confidential Information. Confidential information that can not be shared with hearing participants may not be considered by the hearings officer.

(e) Privileged Communication. No party to a fair hearing is required to disclose at the hearing information that is privileged from discovery by federal or state law, including communications between a lawyer and an appellant, a husband and a wife, a member of the clergy and a person seeking spiritual advice, or the name of an informant whose identity is protected from compelled disclosure.

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

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SUBCHAPTER R. JUDICIAL AND ADMINISTRATIVE REVIEW OF HEARINGS

1 TAC §357.702, §357.703

The amendments are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code, §31.034, which provides clients the right to appeal an action or failure to act by a local administrative unit relating to the financial assistance; Texas Human Resources Code, §32.035 makes the provisions of §31.034 applicable to applicants for medical assistance; and Human Resources Code, §35.003, provides an individual with the opportunity to request a hearing if an application for person with disabilities support services is denied.

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TITLE 10. COMMUNITY DEVELOPMENT

PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

CHAPTER 307. INSPECTIONS OF HOMES IN AREAS WITHOUT MUNICIPAL INSPECTIONS

10 TAC §307.7

The Texas Residential Construction Commission adopts amendments to §307.7, relating to failure to comply with inspection requirements. The rule amendments apply to residential construction in areas not subject to municipal inspections. The rule

amendments are adopted with changes to the text as proposed and published in the April 10, 2009, issue of the *Texas Register* (34 TexReg 2348), as discussed herein.

Effective on September 1, 2008, builders and remodelers who undertake certain residential construction projects in areas not subject to municipal inspections are required to have those projects inspected at several stages of construction. The adopted amendments result in homes that are in greater compliance with the accepted residential building standards and with fewer construction defects.

The amendments revise the commission's rule to clarify the consequences that may result when a builder/remodeler fails to conduct the required phase inspections and the penalties associated with that failure. The adopted amendments provide incentives for builders/remodelers to have post-construction forensic evaluations performed when phase inspections have not been timely performed in accordance with the law. The adopted amendments recognize that a builder or remodeler's unintentional failure to have the required inspections performed should not subject the builder to the same penalties that an intentional failure to abide by the law would require.

The commission received only one set of comments regarding the proposed rule amendments. Ned Munoz submitted three comments on behalf of the Texas Association of Builders (TAB). The first of TAB's comments addresses subsections (b)(3), (c)(3), and (e) of §307.7. TAB expresses concern that the rule language directs the commission to take disciplinary action and requires the commission to presume certain intentions. TAB suggests that the term "will" be replaced with the term "may" in order to allow the commission to weigh the severity of a builder's actions and to make case-by-case determinations as to whether a builder acted intentionally.

In response to TAB's comment, the commission declines to modify its rule as requested. The phase inspections required for residential construction in an unincorporated area and in other areas not subject to municipal jurisdiction are mandated by Property Code, Subtitle F. However, the commission's disciplinary powers and authority to assess appropriate administrative penalties promulgated under Property Code Title 16, give the commission discretion to assess a builder's actions and to respond accordingly. The commission has determined that a strong policy of enforcement is necessary to achieve compliance with the new requirements of Subtitle F. Moreover, the commission finds that Subtitle F embodies a policy of the State to provide homebuyers and homeowners with assurances that construction meets applicable building standards. Therefore, the commission believes that its rule must support both deterrence and consumer assurance. Accordingly, if evidence supports a finding that a builder or remodeler's failure to have phase inspections performed was not intentional, the commission has determined that the commission's response must be an action that serves to encourage strict compliance with the requirements of Subtitle F or at least provide consumer assurances of quality construction. So the commission has determined that certain actions *will* be taken in the event that a builder or remodeler fails to have the legally required phased inspections performed in a timely manner. The commission *will* notify the homeowner. The commission *will* provide the builder or remodeler with a copy of the law and regulations requiring phase inspections *and* the commission will impose a minimum penalty.

As a part of the scheme to enforce Subtitle D, the commission has incorporated varied levels of minimum penalties to reflect the degree to which the evidence supports a finding of intention If evidence demonstrates that a builder or remodeler has failed to comply with Subtitle F intentionally, the minimum penalty increases.

TAB's second comment addresses subsection (g). The commission proposed subsection (g) to provide that "[i]f a builder/remodeler neglects to have a phase inspection performed . . . but has a post-construction forensic evaluation performed and submits the results of the evaluations to the commission and to the homeowner for the subject property before receiving a notice of the failure to comply from the commission, the commission will presume that the failure to comply was not intentional." TAB suggests modifying the text by adding the following language to the end of subsection (g) ", provided that a builder's failure to do so before receiving notice of the failure from the commission will not be deemed as evidence that the failure to comply was intentional." TAB suggests the added language is needed to ensure that a builder who fails to have a post-construction forensic evaluation performed before receiving a notice of failure from the commission will not necessarily be deemed to have done so intentionally.

In response to TAB's comment, the commission notes that the law requires phase inspections of residential construction in areas not subject to municipal inspections. If a builder/remodeler did not have the phase inspection conducted or failed to have completed all of the phase inspections, the builder/remodeler would be out of compliance with the law. The proposed rule reflects the commission's intention, which is to encourage any builder/remodeler that is out of compliance to conduct post-construction forensic tests and to submit those tests to the commission and to the homeowner without prompting by the commission. As proposed, the rule promotes voluntary compliance and self-reporting and encourages the builder/remodeler to resolve the compliance failure as early as possible without need of commission intervention. If a builder/remodeler realizes that it is out of compliance, but voluntarily chooses to have the post-construction forensic testing completed, it is a reasonable assumption that the builder/remodeler was not attempting to circumvent the law. In other words, the builder/remodeler's actions were likely unintentional.

On the other hand, a builder/remodeler's failure to act to resolve the phase inspection omission unless and until the commission issues a notice of that failure would not encourage voluntary compliance or self reporting. The totality of the evidence regarding that builder/remodeler, including the builder/remodeler's practice, allows the commission to make the determination whether the builder/remodeler's failure to comply was intentional. The commission may discern that the builder/remodeler's omission and failure to act is an intentional disregard of the law and rule requirements. For example, if a builder/remodeler were to rely upon post-construction forensic testing more than one time, it is within the commission's discretion to consider such evidence an indication that the builder/remodeler was intentionally failing to conduct the required phase construction inspections. If a builder/remodeler fails to conduct the required phase construction inspections and does not voluntarily conduct post-construction forensic testing, but instead chooses to wait to determine whether the commission or the homeowner discover the omission of one or more of the phase inspections that is required by the law, then the commission might consider such evidence an indication that the builder/remodeler intentionally failed to conduct the required phase construction inspections.

TAB's suggested language modification contradicts the commission's intention and does not comport with the overall action/consequence and action/reward plan created by the commission's rule. The commission finds that TAB's suggested language modification could be limiting to the commission's enforcement actions and might discourage voluntary compliance. Therefore, the commission declines to modify the rule in response to TAB's second comment.

TAB's third comment addresses §307.7(h)(1) and (3). TAB suggests that in two instances where the phrase "the forensic tests" appears, the commission should change the text to "any forensic tests." TAB states its reasons for this suggested modification are threefold: for consistency with the references to measurements that are taken, for consistency with the references in §307.7(h)(2) to forensic tests and measurements, and to take into account that some tests may or may not be performed in accordance with a particular forensic evaluation.

The commission agrees with TAB that the references to the forensic tests should be consistent and the references to the measurements should be consistent. However, the proposed rule amendment requires an opinion letter, accompanied by a report on the inspection, including forensic tests performed and measurements taken. Use of the phrase "any forensic tests" may create ambiguity for some readers who might assume that forensic tests are optional. They are not. The licensed professional engineer or the fee inspector qualified under Chapter 307 is required to conduct forensic testing to support the conclusion of the opinion letter regarding the construction.

For example, a licensed professional engineer must determine that the foundation will serve its intended purpose. The report created by the engineer must describe the forensic tests that were conducted and the measurements taken. Even if the engineer conducts some forensic testing that is inconclusive or upon which the engineer does not base the opinion, the report must describe the forensic testing and report measurements. The report should describe the destructive forensic testing and resulting measurements, core drilling sample locations and resulting measurements, X-rays and resulting measurements, elevation shoot locations and resulting measurements, etc. Knowing which forensic tests were performed and the measurements taken support the engineer's opinion and provides valuable information to the builder and to the homeowner. Should the foundation fail or a problem arise, the description of the forensic tests and the measurement data may be helpful to the builder and homeowner. The phrase "any forensic tests" might suggest that forensic testing is not required; however, there is no option for the engineer to write an opinion letter without having conducted forensic testing.

Similarly, the builder and homeowner should be made aware of which forensic tests a fee inspector performed to demonstrate that the framing and mechanical systems were installed by the builder in compliance with applicable Code. The builder and homeowner should be made aware of which forensic tests a fee inspector performed to demonstrate that installation, operation, and performance of each aspect of the substantially completed project meets all applicable Code. When post-construction forensic testing is conducted in lieu of the required phase inspections, the fee inspector's report should describe the forensic tests performed and the measurements taken which support the fee inspector's opinion letter.

For example, the builder and homeowner should know whether the fee inspector removed the electric plug plates to confirm that the correct size wiring was used; opened the panel box to determine whether the correct size wiring was used; conducted an air or water test on the drain, waste, and ventilation systems; removed the grills of the air conditioner vents to confirm that the correct size duct work was installed; went into the attic to evaluate the condition of the duct work; conducted a dielectric test to determine whether the wire insulation has nicks; sent a camera through the sewer lines to observe bellies or humps; used a peppermint test in the sewer system to check the viability of the system; or performed any destructive testing in various locations throughout the home. This is not an exhaustive list. Rather, these examples demonstrate that there are many forensic tests that may be performed to support the fee inspector's opinion letter. In some instances, more than one test may be used to examine the home for similar potential construction defects.

The phrase "any forensic tests" suggested by TAB to replace the phrase "the forensic test" may create ambiguity for some readers who might assume that the forensic tests are optional or that the fee inspector does not have to check the entire home. However, there is no option for the fee inspector to write an opinion letter without having conducted adequate forensic testing in support of the fee inspector's opinion.

Therefore, in response to TAB's comment and in an effort to reduce or eliminate potential ambiguity regarding the rule requirements, the phrases "the forensic tests" and "any forensic tests" will be replaced by "all forensic tests" and the phrase "any measurements taken" will be replaced by "all measurements taken."

The rule amendments are adopted under Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16 of the Property Code. The rule amendments implement Property Code §408.001 and House Bill 1038.

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

§307.7. Failure to Comply with Inspection Requirements.

(a) A builder or remodeler who fails to comply with the inspection requirements of this chapter will be subject to disciplinary action pursuant to the provisions of Chapter 305 of this title.

(b) The first time that the commission becomes aware that a builder/remodeler has neglected to have a phase inspection performed as required by this chapter, if the builder/remodeler brings the matter to the attention of the commission or is forthcoming with the commission about the oversight in response to a commission inquiry, and the builder/remodeler demonstrates that its failure to have the proper inspections performed was not the result of an intentional disregard for the law requiring inspections of new residential construction in areas in which a municipal inspection is not conducted, the commission will:

(1) notify the homeowner by letter that the builder/remodeler failed to comply with the County Inspection Program and the letter will identify the phases of construction that the new home or construction project should have been inspected;

(2) provide the builder/remodeler with a copy of the law and a link to the commission website for information about the inspection program and requirements; and

(3) undertake disciplinary action pursuant to subsection (a) of this section, in which the commission will offer the builder/remodeler an opportunity to enter an agreed order for disciplinary action including a reprimand and a minimum penalty of $1,500 for each phase of the inspection not timely performed or in lieu of accepting a reprimand and monetary penalty, the builder/remodeler can choose the option to

have post-construction forensic evaluations performed for all required phases of construction that were not timely performed, as further described in subsection (h) of this section.

(c) The first time that the commission becomes aware that a builder/remodeler has neglected to have a phase inspection performed as required by this chapter, if the builder/remodeler has not been forthcoming with the commission about the oversight, but demonstrates that its failure to have the proper inspections performed was not the result of an intentional disregard for the law requiring inspections as described in this chapter, the commission will:

(1) notify the homeowner by letter that the builder/remodeler failed to comply with the County Inspection Program and the letter will identify the phases of construction that the new home or construction project should have been inspected;

(2) provide the builder/remodeler with a copy of the law and a link to the commission website for information about the inspection program and requirements; and

(3) undertake disciplinary action pursuant to subsection (a) of this section, in which the commission will offer the builder/remodeler an opportunity to enter an agreed order for disciplinary action including a reprimand and a minimum penalty of $3,000 for each phase inspection not timely performed or in lieu of accepting the monetary penalty, the builder/remodeler can choose the option to have post-construction forensic evaluations performed for all required phases of construction that were not timely performed, as further described in subsection (h) of this section.

(d) The first time that the commission becomes aware that a builder/remodeler has neglected to have a phase inspection performed as required by this chapter, if the builder/remodeler is not forthcoming with the commission about the oversight and cannot demonstrate that its failure to have the proper inspections performed was not the result of an intentional disregard for the law requiring inspections as described in this chapter, the commission will:

(1) notify the homeowner by letter that the builder/remodeler failed to comply with the County Inspection Program and the letter will identify the phases of construction that the new home or construction project should have been inspected;

(2) provide the builder/remodeler with a copy of the law and a link to the commission website for information about the inspection program and requirements; and

(3) undertake disciplinary action pursuant to subsection (a) of this section, in which the commission will offer the builder/remodeler an opportunity:

(A) to enter an agreed order for disciplinary action including a reprimand and a penalty of $5,000 for each phase of inspection not timely performed; or

(B) to accept a reprimand and a total penalty of not greater than $10,000 and have post-construction forensic evaluations performed for all required phases of construction that were not timely performed, as further described in subsection (h) of this section.

(e) For all instances after the first time that the commission becomes aware that a particular builder/remodeler has failed to have a phase inspection performed as required by this chapter, the commission will presume that the failure is the result of an intentional disregard for the law requiring phase inspections and will pursue appropriate disciplinary action for the violation under Chapter 305 of this title.

(f) After notification by the commission that it has become aware that builder or remodeler failed to timely have a phase inspection performed as required by this chapter under subsections (b), (c), (d), and (e) of this section, the builder or remodeler will be provided an opportunity to present information to the commission that the builder/remodeler's failure to have a phase inspection performed as required by this chapter is not the result of an intentional disregard for the law and that information will be considered in determining the appropriate disciplinary action for the violation of this chapter.

(g) If a builder/remodeler neglects to have a phase inspection performed as required by this chapter but has a post-construction forensic evaluation performed and submits the results of the evaluations to the commission and to the homeowner for the subject property before receiving a notice of the failure to comply from the commission, the commission will presume that the failure to comply was not intentional.

(h) A builder/remodeler that has post-construction forensic evaluation performed under subsection (g) of this section or as a part of the penalty for failure to comply with this chapter must submit the following documentation for each applicable phase of construction not timely performed:

(1) For a foundation inspection, the builder/remodeler must submit an opinion letter signed and sealed by a licensed professional engineer that the engineer has performed an inspection of the foundation in accordance with generally accepted standards of engineering practice and has determined that the foundation will serve its intended purpose to the best of the engineer's knowledge. The letter must include a report on the inspection, including all forensic tests performed and all measurements taken, regardless of whether relied upon to make the determination.

(2) For an inspection of the framing and mechanical systems prior to the installation of insulation, wall board, or other wall covering facing the home's interior, the builder/remodeler must submit an opinion letter from a fee inspector qualified under this chapter to perform phase inspections affirming that the fee inspector has determined that the framing and mechanical systems are installed in compliance with the applicable Code. The letter must include a report on the inspection performed including all forensic tests performed and all measurements taken, regardless of whether relied upon to make the determination.

(3) For a final inspection upon substantial completion of the project, the builder/remodeler must submit an opinion letter from a fee inspector qualified under this chapter to perform phase inspections affirming that the fee inspector has determined that installation, operation, and performance of each aspect of the substantially completed project meets all applicable Code. Final inspection upon substantial completion of the project includes but is not limited to plumbing, electric, and mechanical delivery systems; yard grading; attic insulation; ventilation; egress; International Residential Code (IRC); and National Electric Code (NEC) requirements. The letter must include a report of all forensic tests performed and all measurements taken, regardless of whether relied upon to make the determination that all Code requirements are met.

(i) If a builder/remodeler has a post-construction forensic evaluation performed as part of the penalty for failure to comply with this chapter under subsection (h) of this section, the commission will provide that information to the homeowner.

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 June 11, 2009.

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

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TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 3. STATE PUBLICATIONS DEPOSITORY PROGRAM

13 TAC §§3.2, 3.3, 3.6

The Texas State Library and Archives Commission adopts amendments to 13 TAC §§3.2, 3.3 and 3.6, regarding the State Publications Depository Program, without changes to the proposed text as published in the April 24, 2009, issue of the *Texas Register* (34 TexReg 2579).

The revisions require state agencies to print the date of issuance on their publications. For publications that are available on the agency's website as well as in print, agencies are required to include the publications' internet locations on the printed documents and on a form that is submitted to the program. The rules also add clarification to the existing language of the rule that exempts certain items from deposit.

No comments were received during the comment period.

The amendments are adopted under Government Code §441.102, which authorizes the commission to establish procedures for distribution of state publications to depository libraries and to establish a system to provide access to publications in electronic format and §441.105, which authorizes the commission to exempt publications from the program.

The amendments affect Government Code §§441.101 - 441.106.

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

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) adopts amendments to the Tariff for Retail Delivery Service, §25.214, relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities, and amendments to §25.474, relating to Selection of Retail Electric Provider with changes to the proposed text as published in the February 13, 2009, issue of the *Texas Register* (34 TexReg 920). The amendments will facilitate more rapid transfers from one retail electric provider (REP) to another when a customer decides to switch retail providers. Under current rules, switching REPs can take as long as 45 calendar days; these amendments will shorten that time to seven business days or less. The amendments will modify the switch notification sent to the customer by the registration agent upon receipt of a switch request from a REP, and will require transmission and distribution utilities (TDUs) to process meter reads for customers who are switching REPs within four business days of receiving a request. The amendments will also require REPs to request switches consistent with the customer's requested switch date. The commission has adopted new §25.475, relating to General Retail Electric Provider (REP) Requirements and Information Disclosures to Residential and Small Commercial Customers, that requires REPs to notify customers of the termination of a term contract for electric service at least 14 days before the termination date. The changes in this rulemaking and §25.475 will require the registration agent, TDUs, and REPs to implement a shorter switching timeline and allow customers to be served by their chosen provider more quickly. This rule is a competition rule subject to judicial review as specified in PURA §39.001(e). Project Number 36536 is assigned to this proceeding.

In its Proposal for Publication, Staff noted that a public hearing would be held if requested. As no request for a hearing was received, none was held.

The commission received initial comments on the proposed amendments from the following: Accent Energy, Amigo Energy, Cirro Energy, Green Mountain Energy, Hudson Energy, U.S. Energy Savings, StarTex Power, Stream Energy, Tara Energy, and Tri-Eagle Energy, collectively as the Texas Electric Association of Marketers (TEAM); AEP Texas Central Company, AEP Texas North Company, CenterPoint Energy Houston Electric, LLC, and Texas-New Mexico Power Company (Joint TDUs, collectively); Direct Energy, LP, Gexa Energy, LP, Green Mountain Energy Company, Sempra Energy Solutions, LLC, and Stream Energy, collectively as the Association of Retail Marketers (ARM); the Electric Reliability of Texas (ERCOT); Office of Public Utility Counsel (OPC); Oncor Electric Delivery Company, LLC (Oncor); Reliant Retail Services, LLC (Reliant); Steering Committee of Cities Served by Oncor (Cities); Texas Ratepayers Organization to Save Energy and Texas Legal Services (Texas ROSE/TLSC, collectively); the Texas Industrial Energy Consumers (TIEC); and TXU Energy Retail Company, LLC (TXU Energy).

The commission received reply comments from Joint TDUs; OPC; ERCOT; ARM, CPL Retail Energy, Reliant, TEAM, TXU Energy, and WTU Retail Energy (REP Coalition, collectively); Oncor; TIEC; Cities; Texas ROSE/TLSC; and ARM, CPL Retail Energy, Direct Energy, TEAM, TXU Energy, and WTU Retail Energy (Retail Electric Companies, collectively).

The commission received supplemental comments from CenterPoint Energy Houston Electric, LLC (CenterPoint); CPL Retail Energy, Direct Energy, Gexa Energy, Green Mountain Energy, Reliant Energy, First Choice Power, Stream Energy, TXU Energy Retail Company, TLC and WTU Retail Energy (Retail Electric Companies, collectively).

The commission received replies to supplemental comments from AEP Texas Central Company and AEP Texas North Company (jointly, AEP Texas); and CenterPoint.

In addition to comments on the proposed amendments, the commission requested interested persons to file comments in response to the following questions:

1. What additional customer protections need to be added to PUC rules to address the removal of the "ERCOT postcard"?

Texas ROSE/TLSC supported retention of the ERCOT postcard notification process as a safeguard against slamming. They stated that elimination of the postcard would encourage more slamming, complicate resolution of slamming problems for customers, and result in an increase in slamming complaints filed at the commission. They referred to an alternative postcard that was discussed at a February 24, 2009 meeting with commission, OPC, and ERCOT staffs. As discussed at that meeting, the existing postcard message would be modified to simply inform the customer that an order has been placed to switch the customer's service to a new REP. The customer would be directed to call the REP receiving the new account if the customer did not authorize the switch. Texas ROSE/TLSC preferred the current arrangement in which the customer is given a telephone number to initiate an automatic cancellation process, saying this arrangement offered the highest protection against slamming. But they also noted that the alternative postcard notification still provided the customer notice of the switch prior to receipt of an invoice from the new REP. They further noted that this arrangement should help simplify slamming complaint resolution at the commission. Texas ROSE/TLSC further recommended that within twelve months: (1) customers be directed to a toll-free telephone number that would automatically notify one or both REPs of the customer's contact; (2) REP customer service lines have a touch-tone selectable option to connect to trained, dedicated staff for handling switch cancellations; (3) REPs be required to notify ERCOT pursuant to §25.495(a)(1) within two business hours; (4) REPs be required to inform customers of their right to rescind a switch while it is being processed and of their right to complain to the commission if a rescission request is not readily carried out by the REP; (5) ERCOT protocols be retained and developed to ensure that all switches in process are honored during mass transitions; (6) discretionary service fee language be modified to make it clear that fees will be charged only when it is necessary to send a technician to read the meter; and (7) discretionary service fees for meter reads for expedited switches be charged by the TDU to the customer requesting the service.

In reply comments, Cities said that while they oppose elimination of the current ERCOT notification process, if the alternative postcard is adopted they concurred with Texas ROSE/TLSC regarding a toll-free telephone number to automatically alert REPs of a customer's wish to cancel a switch and a requirement for quick action by REPs to cancel the switch, at the customer's request.

In reply comments, the REP Coalition said that while they were open to the continued use of a postcard for notification purposes that did not affect switching timelines, they took issue with recommendations of Texas ROSE/TLSC regarding timely REP responses to customer switch cancellations, creation of a special REP customer service calling category for customers wishing to cancel switches, and customer counseling regarding switch cancellation during enrollment. The REP Coalition said that each of these recommendations sent a message of caution to the customer when switching REPs, implying that the customer should have second thoughts about the switching decision. They said that repeated warning messages to customers are counterproductive in the development of a vibrant market, and that there is no public policy rationale for requiring a business to repeatedly offer a customer information on how to cancel an affirmatively made purchase decision. Retail Electric Companies expressed support for these comments.

ERCOT replied that the Texas ROSE/TLSC proposals would require significant cost and changes to the existing process, including six to eight months to modify call procedures and 12 to 14 months to develop new Texas SET transactions to notify REPs of customer switch cancellations.

Joint TDUs supported the proposal by Texas ROSE/TLSC, saying it would result in shortening the maximum switch time from 45 to 35 days. The average switch time would be diminished from 26 to 16 days, and more than 75% of customer switches would be completed within 22 days and at no cost to the switching customer or to customers as a whole. Joint TDUs stated that there is no basis for assuming that customers would be dissatisfied with this timeline. Further, if REPs were to offer customers the option of paying for an out-of-cycle meter read, then those who wanted a shorter timeline could be accommodated under the current rules.

OPC and Cities expressed strong concern for a change in the process that resulted in the customer who has been switched without their permission first learning of the switch when they receive an invoice from a new REP. Cities said that some customers might not even respond to the invoice, assuming it is a mistake. This would further exacerbate the situation in the case of a slam. Cities were also concerned that elimination of the postcard might lead some agents contracted by REPs to believe that illegal practices will be profitable. Like Texas ROSE/TLSC, OPC favored the alternative postcard message and requirements that, upon notice by the customer, the new REP will be responsible for initiating and executing the process to return the customer to the customer's REP of record in accordance with §25.495.

Joint TDUs stated that the current postcard requirements allow time to correct switching errors before a switch takes place. They noted that 15% of switch requests in 2008 were not completed. They predicted that the result will be more incorrect switches, inadvertent gains, costs to correct switches, and impacts on retail customers and market participants.

Texas ROSE/TLSC noted that ERCOT sent out 674,000 postcard notifications in 2008 at a cost of just under one dollar each, and that of that number 23,887 customers exercised their option for rescission. Cities opined that it was not unreasonable to assume that some of these rescissions involved slamming or some other unlawful practice. Cities pointed out that the postcard may spur customers to review REP disclosure information more closely.

Reliant pointed out that customer slamming complaints were down 72% in 2008, compared to the 2003 peak. They stated that the postcard notification process was instituted at the beginning

of retail choice to combat slamming, but that the retail market has matured significantly since retail competition began. Reliant cited Commissioner Nelson's January 14, 2009 memo, stating that no other industry provides postcard notification of a change of service provider, and that the postcard may create confusion for that reason. Cities countered that while other industries, such as wireless communications, do not have an analog to the ERCOT postcard, there are hardware compatibility issues that keep slamming from being such a problem; a cell phone that works on one network will require modification to work on a different network.

Reliant said that the rule as proposed offered ample customer protection, including fully informing customers of relevant information during the authorization process and a verification process to validate switches.

In reply comments, Cities disagreed with Reliant's conclusion that customer notification is no longer needed because the market has matured, resulting in decreased slamming. Cities said Reliant had failed to acknowledge that the current notification process may be one of the main causes of the decline in slamming. Cities said that elimination of the rescission period is moving in the wrong direction by overtly encouraging unethical REPs to engage in slamming, and might encourage high pressure telephone sales tactics. Cities said the concept of a "cooling off" period is sound, and that it allows customers additional time to consider service offerings, especially some of the more complex plans.

ARM contended that, while they were receptive to other ideas, the elimination of the postcard in its current form is essential to meaningful reduction in switching times. They said that the postcard required by §25.474(l) must be eliminated for switching timelines to be shortened sufficiently to meet the new provisions of the disclosure rule. It was ARM's position that no new customer protection rules are required to address slamming; a REP who switches a customer without authorization violates the commission's slamming rule (§25.495), which provides sufficient remedies to protect the slammed customer. The offending REP must bear all costs to return the customer to its chosen REP. Further, a REP who slams customers risks administrative penalties under §22.246 and suspension or revocation of its certificate pursuant to §25.107(j)(3). In addition, section 7 of the ERCOT Retail Market Guide addresses inadvertent gains, providing a process to cancel a pending switch or move-in transaction.

TXU Energy cited a Staff memo, stating that approximately 21,000 customers cancelled a pending switch using the 800 number on the current postcard, and said that while they were not aware of any other industry that provides this kind of notification, they believed that the postcard was responsible for preventing many inadvertent or illegitimate gains, saving customers significant frustration. TXU Energy believed that eliminating the postcard might shorten switching times, but it would also eliminate an important communications function that would be difficult to replace.

TXU Energy suggested retaining the postcard, but changing its message by directing the customer to their current REP if the customer had any issues with the pending switch. The rescission period would be eliminated, thus shortening switch times. TXU Energy acknowledged that this arrangement might lead to an increase in inadvertent gains, but the notification postcard would still allow the customer to contact the REP more expeditiously than would be the case in its absence.

Cities were unaware of any provision that might eliminate the need for the ERCOT postcard. They said email might be considered, but that all customers do not have email access, and fraudulent email addresses might thwart notification. ERCOT concurred, and noted that an email address is not a required field of information for any ERCOT transaction. Cities proposed to make the REP responsible to ERCOT for valid email addresses, and absent a response from the customer ERCOT would suspend the switch. Alternatively, Cities would require REPs to obtain third-party verification of the customer switch request, as is the practice for long distance telephone switches and as required by the Federal Trade Commission and some state agencies to reduce fraud.

Commission Response

The commission acknowledges the issues raised in these comments and retains the postcard switch notification, with modifications suggested by TXU Energy to include contact information for the current REP as well as changes requiring contact information for the new REP. The commission agrees with REP Coalition concerning Texas ROSE/TLSC's recommendations regarding special features on REPs' telephone systems for use by customers wishing to cancel switches. The commission does not find slamming to be so widespread as to warrant such warnings, and it is not aware of any other industry in which so many warnings are given to customers wishing to change service providers.

Regarding timely notification of cancelled switches by the new REP, §25.495 makes the new REP responsible for making the customer whole for any additional costs resulting from a cancelled switch; the commission finds this to be a sufficient stimulus for action on the part of the new REP to rectify the switch as soon as possible.

Cities and Texas ROSE/TLSC believed that the ERCOT postcard is an important consumer protection and urged the commission to reconsider its elimination. TEAM said they understood this concern, and suggested (along with OPC) the use of a "non-actionable" postcard that would not include information about rescinding the switch but would simply reiterate the customer's choice and provide contact information for both the new and former REPs. TEAM stated that the postcard provides a means of customer education, and could include information such as a description of the expedited switch timeline, a warning about early termination fees for customers with term contracts, or information about www.powertochoose.org.

In their reply comments, Joint TDUs said that in light of the comments of Texas ROSE/TLSC and TEAM, given the small percentage (12%) of customers who switch REPs each year, it would be better to remove the rescission period from the postcard and use the two existing meter reading processes (on- or off-cycle), with customers who request out-of-cycle reads paying for the cost of these. Joint TDUs said that while this would not meet the 14-day switching requirements of the disclosure rule, it would shorten the longest switch time from 45 to 35 days, with an average switching time of 16 days. They noted that either the REP disclosure rule's requirement for a 14-day timeline could be changed, or it could be recognized that some customers would have to pay for an out-of-cycle meter read to meet the 14-day requirement.

They recommended that the current process be left in place for non-POLR customers while advanced metering service is being implemented.

Cities replied that the alternative postcard with no automatic cancellation function places a greater burden on customers to work

with their current REP when unauthorized switches occur, and this arrangement would rely on prompt and coordinated action between the current and gaining REP to reverse a switch before an invoice is sent by the gaining REP.

ERCOT said that if the existing postcard information needs to be modified because of the adoption of this rule, ERCOT will need 2-3 months to effect this change with its third-party service provider. ERCOT requested that the commission clarify whether the postcard will be sent to residential, small non-residential, and large non-residential customers that do not waive customer protection pursuant to §25.471(a)(3).

Commission Response

The commission concurs with TEAM, Cities, and Texas ROSE/TLSC that the postcard should be retained as a customer switch notification. The commission also concurs with TEAM and OPC on the use of a "non-actionable" notification, and adopts rule language that retains the customer switch notification and provides telephone numbers for both the previous and new REPs. The commission recognizes, as Cities point out, that the elimination of the automated cancellation feature will make it more difficult for customers to cancel a switch, but it concludes that there are significant advantages to customers in expediting customer switches. Customers' terms and conditions may change when a term contract expires, and to permit them to quickly switch to a plan of their choosing will significantly improve customers' experience regarding choice in retail electricity. For the same reason, the commission is not adopting the recommendation of the Joint TDUs, which could leave a customer on a plan that is not the customer's choice for up to 35 days.

TIEC noted that most of its members use interval data recording (IDR) meters and understand the benefits of advanced meters. They stated that advanced metering will alleviate many of the issues discussed herein. They were concerned that Discretionary Charges for meter reads under §25.214 are not class specific and that large customers may be impacted by the proposed rule changes. In their reply comments, they note that §25.475 (the REP disclosure rule) does not apply to large customers. Since the impetus for this rulemaking is the recent revisions to the REP disclosure rule, which does not apply to large customers, they urge that this rulemaking should not apply to large customers either. They suggested that the rule should explicitly target the mass market. TIEC initially understood the proposal for expedited switches at no cost to the customer would be applicable only to customers moving from POLR providers to other REPs. They found this arrangement appropriate, and questioned whether expedited reads should be available to all customers at no cost. TIEC requested that the commission retain on-cycle switching for customers with IDR meters, which would avoid many of the issues REPs have with implementation of a new switching process for all customer switches. This would be a temporary process for TDUs rolling out advanced metering systems (AMS), but would be a long-term change for those with no plans for AMS.

ERCOT requested that the commission clarify whether the expedited switch would take the place of on-cycle switches, or if the expedited switch would constitute a third option. If the latter is the case, ERCOT said that it would have to undertake significant system modifications requiring $4-5 million and 12-14 months to complete, thus undermining the commission's goal of quick implementation of the proposed rule.

TIEC replied that since expedited and out-of-cycle meter reads are both off-cycle and share similarities, it is worth considering whether the concept of expedited switching could be accomplished through on-cycle switching with certain process modifications.

TEAM and ARM commented that if the on-cycle switch process was retained, some switches could be performed in even shorter timeframes than are contemplated by the proposed amendments. In light of ERCOT's comments on the cost and time needed for system modifications to support a third type of switch, both TEAM and TXU Energy supported an approach with only two switch types. For clarity, TEAM and ARM suggested that the proposed expedited switch be referred to as a "standard" switch, and the out-of-cycle switch be referred to as a "self-selected" switch.

OPC and the REP Coalition agreed with TEAM and ARM's suggested use of in-cycle reads for expedited switches whenever they fall within the time specified for expedited switches. This would result in lower TDU costs to implement the rule, and would obviate the need for a sub-period bill for a minimal period of service.

Commission Response

The commission adopts the terms "standard switch" and "self-selected switch" to replace "expedited switch" and "off-cycle switch," respectively, as suggested by TEAM and ARM.

The commission finds that, in light of the time and costs for ERCOT to develop systems and procedures to support a third type of switch, there should only be two switching processes (standard and self-selected) and declines to retain the current on-cycle switch option suggested by TIEC, TEAM, and ARM. The commission believes that the TDUs will perform some of the switches on-cycle (under current timelines). Approximately 33% of expedited reads will fall within the three business days prior to the TDU's receipt of notification by ERCOT of first available switch date or within the four business days that begin with that notification. It is the commission's expectation that on-cycle meter reads will be used to effect standard switches whenever they fall within this period. The commission expects that TDUs will use the most cost-effective process available to effectuate standard switches under the expedited timeline that is adopted in this rule.

Texas ROSE/TLSC said that providing customers who want or need a standard switch is more important than making sure that all switches are faster. They preferred that the commission retain the out-of-cycle meter read to shorten switch timelines when customers need quick switches. Customers opting for out-of-cycle meter reads would pay for their cost. Customers who did not require a fast switch could still use the on-cycle meter read at no charge. Texas ROSE/TLSC said that the gaining REP should be required to explain and offer either option.

They said this approach should be tried prior to undertaking expensive and time-consuming system changes at ERCOT.

Texas ROSE/TLSC indicated further that if the commission chooses to displace on-cycle meter reads with expedited reads, they would prefer that the gaining REPs absorb the cost of meter readings for their customers. They said that all customers should not have to pay the costs for customers who switch.

TEAM expressed support for expedited switching, saying the process would ensure that REPs react to customer needs. They agreed that a 45-day switching interval was excessive, and said

that allowing the market to be more nimble in fulfilling customer choice would bring greater pressure on REPs to offer services and programs that meet customer needs, and that the ability to switch REPs quickly would lead to improved customer satisfaction.

OPC suggested that one way to shorten switch times while constraining costs would be to keep the status quo for meter read options, and have customers who want to switch on a specific date request an out-of-cycle read. While this would not result in a reduction of all switch timelines, it will provide customers a choice.

Commission Response

The commission recently completed a project to enhance disclosures to customers and customer awareness. During that project, the commission found that REPs need to price their service plans with short lead times. The wholesale market can be volatile, so the retail price they quote to customers and the power purchases they make to support the retail offer may not be viable from one week to the next. To avoid pricing their products with large risk premiums, they often need to establish prices in one week that are no longer consistent with market conditions a week or two later. The expedited switching timelines in this rule should make it easier for REPs to make offers that are consistent with market conditions and for customers to obtain prices, make a decision, and switch from one REP or plan to another. Other customers may be on plans that permit a REP to change some of the terms and conditions during the term of the plan, with an option for the customer to cancel the service if they are not in agreement with the change. The commission does not believe that it should take 30-45 days to switch providers. The new switching timeline will permit these customers to move quickly to a plan that they prefer. The switching timeline is also consistent with the notice provisions of §25.475(d)(4)(F) which will require the REP to inform the customer of a change in the terms of the contract and that it can take up to seven business days to switch providers. Notifications of terms of service that would be available to a customer at the expiration of a contract are also predicated on a seven day switching timeline. The commission acknowledges the comments of Texas ROSE/TLSC and OPC, but concurs with TEAM that the market will be more responsive to customers' ability to switch REPs quickly if all standard switching timelines are shortened; and for this reason, it is also appropriate for all customers to help pay for the cost to shorten the timelines.

TEAM drew attention to the importance of customer education in this regard, and expressed support for legislative efforts to appropriately fund the customer educations efforts of the commission and OPC.

Commission Response

The commission concurs with TEAM that customer education in these matters is essential and encourages REPs to use every customer contact as an opportunity for customer education.

ERCOT suggested and the REP Coalition agreed that rather than eliminating the rescission period, if the customer rescission period were shortened to two days, a switch cancellation could still take place within the four business day expedited switch process. Texas ROSE/TLSC agreed with ERCOT's suggestion, and proposed to add a notice to the postcard that after the two-day rescission period, customers should contact the REP to cancel the switch, consistent with Texas ROSE/TLSC's initial comments.

Commission Response

The commission is requiring that contact information for the gaining and losing REPs appear on the postcard, but declines to adopt a requirement that the postcard include information about cancelling a switch. The commission believes that most of the switches that occur in the market are legitimate, and cancellation information would not be relevant for the vast majority of customers.

The commission declines to adopt language supporting a two-day customer rescission period on the postcard, but retains the three-day rescission period provided in subsection (j).

Joint TDUs noted that in any given year, 88% of customers do not switch REPs, but under the proposed rule the cost of expedited switches will be borne by all customers. They urged the commission to take time and care in the resolution of this issue. They pointed out that there is no perfect answer for implementing expedited switching processes prior to the advent of AMS. They said that switching is one of the most important processes in the market, requiring careful coordination between the losing REP, the gaining REP, the TDU, and ERCOT while protecting the customer and minimizing cost. Joint TDUs commented that the existing model, in which 90% of switches are completed using on-cycle meter reads, is the most efficient and cost effective approach given currently available technology. Further, they contended that once the proposed rule is adopted, it will take a minimum of six months to create, test, and implement the TDU system changes that the proposed rule will necessitate, and that a similar period may be required by other market participants. However, the Joint TDUs pointed out that these changes are needed only pending AMS deployment. Given this, Joint TDUs said the best compromise between speed, least cost, and effectiveness may be a less streamlined process.

REP Coalition stated in reply comments that, given the requirements of recently adopted §25.475(d)(4)(F), the compliance deadline for this amendment cannot extend past August 16, 2009.

Oncor expressed concern regarding the timing and cost to make the operational changes that expedited switching will require, and requested that the commission delay the effective date of this rulemaking until September or October 2009. Oncor noted that a delayed effective date was included in the recent amendments to the REP disclosure rule. Oncor appreciated the close interaction between the two rules but urged the commission to evaluate the requirements and consequences of the proposed rule on a stand-alone basis and consider amending or deferring the effective date of the REP disclosure rule if the commission determines that both rules must be implemented at the same time. Oncor said that while REPs had suggested that they could be ready to meet the currently proposed deadline, Oncor could not. Oncor noted that market participants had been given only five months to implement the REP disclosure rule and that the commission did not appear to directly take comments regarding timing and implementation.

In light of the August 16, 2009 compliance date of the REP disclosure rule and their understanding of the lead times needed by ERCOT to implement the two meter-read options, ARM requested that the compliance date for this amendment be the same. ERCOT requested that the rule be adopted during April 2009 to provide ample time for its implementation. ERCOT requested that the rule be adopted as soon as possible in light of the August 16 compliance date in the REP disclosure rule.

Commission Response

The commission agrees with ARM that to be consistent with the requirements of the REP disclosure rule the compliance date for this amendment should be August 16, 2009. The commission recognizes that the TDUs will need additional time to comply with this rule and has adopted language allowing TDUs until December 1, 2009, to comply with the requirements for actual rather than estimated meter reads.

Joint TDUs were concerned that the proposed rule would require them to provide a new service with no assurance of cost recovery. They stated that if the rule is changed to spread costs for expedited switches across all customers, TDUs should be allowed to choose the most cost-effective meter reading alternative, including estimates. Failing this, Joint TDUs predicted that switching costs would increase eight to ten times. They argued that the REPs' concerns about estimated meter reads were a good argument for leaving the current process in place. Oncor echoed these concerns, saying that it could not reasonably obtain actual meter reads for all switches within the time contemplated for implementation of the proposed rule, and that even if there were sufficient time, the direct costs to market participants for Oncor alone would be approximately $6 million.

Oncor urged the commission to permit estimates as necessary to meet the timelines set forth in the proposed rule. Oncor noted that the proposed discretionary service charge provides for estimation of a meter read to complete an expedited switch, thus reflecting the Commission's desire to minimize the financial impact to the market. Without estimation, Oncor pointed out, the additional cost to the market will substantially increase in order to hire additional staff in the short term and then ultimately reduce staff as each TDU deploys AMS throughout its service area. Oncor stated that, given the current implementation schedule for advanced meters within its service area, only 60% of meters would be candidates for estimation at the time the rule is implemented. A year later this figure would fall to 40%. Additional costs to perform actual meter reads for expedited switches for these non-AMS meters will be approximately $5.1 million. Oncor noted that it had significant institutional knowledge of estimated meter reads and were sympathetic to the variety of concerns raised by the REPs in this regard. They said that these concerns were also recognized in the 2006 revision of TDU terms and conditions.

TEAM, REP Coalition, and TXU Energy strongly opposed the routine use of estimated meter reads for switches. TXU Energy said that estimated meter reads were one of the largest drivers of customer complaints, and that even when exhaustive efforts are made to investigate and revise estimates as appropriate, the process still produced poor customer experiences. TEAM said that the change to six-day switches was positive, but the proposed allowance of estimated meter reads at the discretion of the TDU was problematic. TEAM said that estimated meter reads were unfair to customers and both REPs involved in a switch because the lack of accuracy can lead to misplaced customer dissatisfaction with the new REP, creates the likelihood of imprecise and costly hedging decisions for both REPs, and can lead to REPs adding risk premiums to their retail prices.

Joint TDUs replied that these concerns were unfounded and should not be used as a basis to prohibit estimated meter reads. They said that the allegation that customers will be dissatisfied with estimates is unproven, and that the REPs should set expectations with the customer in the process of switching. They argued that estimates used in expedited switches would be for relatively short periods, compared to estimates of regular monthly bills in which an entire month of usage is estimated. Joint TDUs said that estimated meter reads are reasonably accurate in the vast majority of cases, and that given the shorter usage periods being estimated for expedited switches, the accuracy should be even better. They said that even if an estimated read were off by an entire day, the cost of the error would come to only $1.00 for a customer using 1,000 kWh per month switching in the middle of the month with a retail cost differential of $.03 per kWh. They pointed out that even actual reads have an element of error, as ERCOT settlement occurs at midnight every day, while the meter readings were taken throughout the day, thus an estimated read is very unlikely to produce a significantly less accurate result than an actual read. In terms of harm to the REP resulting from estimated reads, Joint TDUs said that it would take a very large percentage of a REP's customers switching in a given month for any impact to be detectable.

Oncor's reply paralleled those of Joint TDUs. Oncor said that its current system of profile-based estimation yields results within 5% of actual reads. Oncor noted that the volume of switch-related meter reads varies widely from month to month and day to day. They urged customer education by the commission, REPs, and TDUs regarding the value of expedited switches and the fact that it comes at no cost to the customer with the possibility of an estimated read. They suggested that the possibility of an estimated meter read be included in the necessary disclosures by the REP rather than have customers be surprised after the fact. As an alternative, they suggested that estimated meter reads for the purpose of a switch could be deemed "final" for both wholesale and retail settlement. While admittedly unorthodox, Oncor said that this arrangement would eliminate uncertainty and irritation that both REPs and customers experience in a cancel-rebill true-up.

REP Coalition said in replies that no level of accuracy in estimation could overcome customer misgivings about estimated meter reads.

TEAM argued that the cost to TDUs for expedited switches could be recouped under the surcharge proposed in §25.214(o). They also quoted Commissioner Nelson's December 18, 2008 memo filed in Project No. 35768 that suggested that TDUs could recover switching expenses as regulatory assets in rate cases. TEAM concluded that there could be no basis for a TDU arguing that actual meter reads rather than estimates would be cost-prohibitive. Oncor replied that they cannot reasonably obtain meter reads for all expedited switches, given the cost and time to do so.

Commission Response

The commission concurs with REPs' concerns regarding estimated meter reads, but recognizes that there should be some provision allowing estimates to occur on an ongoing, but limited, basis. The demand for meter reads for purposes of a switch often varies significantly from month-to-month and day-to-day; therefore a TDU needs some leeway to use estimated reads in such circumstances.

The commission also recognizes that the TDUs may be initially unable to meet the requirements of the amended rule, which restrict the number of estimated meter reads for purposes of expedited switches. In light of this, the commission adopts language which allows TDUs to use unlimited estimated reads for expedited switches until December 1, 2009, at which time they will be required to perform actual reads for 80% of non-AMS meter

reads for the purpose of a switch in any given month, and for any calendar year 95% must be actual reads. TDUs will be required to file quarterly reports indicating whether they are in compliance with this standard.

The commission understands that, customers may still have concerns regarding use of estimated reads for switches. The commission concurs with Oncor's recommendation and urges REPs to inform and educate customers of the possibility of estimated meter reads during the sales process. Additionally, the commission adopts language allowing for a cancel/re-bill for estimated meter reads in which the customer notifies the REP that the data appears to be erroneous.

ARM argued that once a TDU has given a "scheduled date" for a standard switch, it is imperative that the meter read occur on that same date so that REP energy purchases to cover the load of the new customer will coincide with the switch date. Joint TDUs said this would remove the flexibility of four business days to schedule the meter read in the proposed rule. They said this would further exacerbate the challenge of staffing for meter reads for the purpose of switches.

Commission Response

The commission concurs with ARM and adopts language requiring the TDU to honor the scheduled date it has given for a switch.

In reply comments, Cities expressed concern for unintended consequences resulting from this project, its commendable intention notwithstanding. They said that when the potential for increased slamming, increases in TDU costs, requests for additional tariffs or regulatory assets, and disruptions caused by more estimated bills were taken into consideration, the costs appear to outweigh the benefits of expedited switching until advanced metering systems are in place. They suggested that we might be better served to consider expedited switching only for mass transitions at this time. Cities requested that the commission re-examine the full consequences of the approach it has taken, and determine whether it continues to believe the benefits of the desired objective outweigh the costs. These concerns were echoed by Oncor, which suggested that elimination or modification of the ERCOT postcard to provide only a notice of switching, coupled with speeding up some of the switching processes, might achieve the desired result. Cities also suggested a side-by-side comparison of the proposed rule and the REP disclosure rule timelines to determine whether a small revision in each might result in a better customer experience.

Commission Response

The commission notes the concerns expressed by Cities and Oncor, but believes that the benefits of shortening the switching timeline outweigh their costs by making the market more responsive to customer needs, and facilitating the other benefits from the amendments to §25.475. It should be noted that customers still have a three-day rescission period under §25.474(j).

2. What changes to PUC rules or ERCOT protocols need to be made to address "slamming" and a speedy switch back to the original REP at no additional cost to the retail customer?

Cities contended that correction of all unauthorized switches should take precedence over other switches, and that a slamming REP should be required to pay 150% of charges resulting from an unauthorized switch, with the valid REP retaining two-thirds and the remaining one-third going to the customer, even if the customer did not remit payment for the first month bill from the slamming REP.

Commission Response

The commission disagrees with Cities' contention that punitive fees are appropriate to combat slamming, and finds that current rules in which the new REP must fully compensate the customer for any costs associated with an unauthorized switch are sufficient to guard against slamming.

OPC noted that while §25.495 requires REPs to report unauthorized switches to ERCOT, the rule does not specify a timeline to remedy slams. OPC observed that the ERCOT Market Guide places some parameters around returning the customer to its chosen REP, but these parameters are tied to the date the inadvertent gain is logged on MarkeTrak rather than the date of the unauthorized switch, thus extending the time to rectify the unauthorized switch. OPC proposed that §25.495 be amended to provide a maximum of 15 days from the time a customer informs a REP of an unauthorized switch until the customer is returned to its prior REP. OPC offered language for §25.474, directing a REP to initiate switch back processes in accordance with §25.495.

Reliant stated that the current §25.495 adequately addresses resolution of unauthorized switches. Oncor noted that slamming is addressed in §25.495, the ERCOT Market Guide, and MarkeTrak processes, but requested continuing confirmation from the commission that the REP responsible for an inadvertent gain pay all costs associated with returning the customer to its original status, and that these costs are not to be passed through to the customer. Oncor was unsure whether the expedited switching process contemplated in the proposed rule might result in increases in inadvertent gains.

Commission Response

The commission agrees with Reliant and declines to amend §25.474. As stated earlier, gaining REPs must bear all costs to restore customers who are switched without authorization to their original REP. This provides sufficient incentive for the gaining REP to take action quickly to undo unauthorized switches.

TXU Energy stated that the processes currently in place to rectify inadvertent gains will be viable after this rulemaking to expedite customer switching goes into effect. But TXU Energy also noted that, under the current switching timelines, few customers have had their switches completed prior to expiration of the rescission period. This may well not be the case should the switching timeline be shortened, resulting in an increase in inadvertent gains.

Commission Response

The commission notes TXU Energy's concern and notes that careful monitoring should be done to ensure that the processes in place are meeting the needs of the market participants and customers.

TXU Energy suggested that all TDU fees for returning customers to their original REPs, especially when the customer has exercised the right to timely rescission, should be waived and instead become regulatory assets.

Oncor stated that inadvertent gains are resolved between two REPs, and that the TDU participates only once such a resolution is reached. Oncor said that TXU Energy's suggestion would result in an uplift of these costs to the market as a whole, and that this socialization of costs does not follow the general rate principles of cost causation. Oncor suggested that any review of the inadvertent gain process should be done in the context of amending §25.495.

Commission Response

The commission disagrees with Oncor, and finds that the costs to implement these amendments will serve to improve the functionality of the market for all customers, not just those who choose to switch providers in a given year. For this reason, socialization of the costs is appropriate.

3. What is the most appropriate means for TDUs to seek to recover significant increases in meter-related costs associated with meter reads for standard switches?

Texas ROSE/TLSC stated that in cases of mass transitions or where customers have advanced meters, it is not appropriate for TDUs to charge fees for switching. In cases in which a TDU employee must physically read the meter, Texas ROSE/TLSC and TIEC favored having the charges paid by the customer requesting a switch. Joint TDUs concurred in reply comments. Texas ROSE/TLSC said the fact that many REPs refuse to offer meter reads other than those normally scheduled is a serious problem.

Joint TDUs said that, absent billing the switching customers for meter reads, and in light of pending AMS implementations, they favored treatment of the cost as a regulatory asset. Recognizing the fact that a given TDU rate case may be years away, they noted that carrying charges would be appropriate for these expenses, and the fact that these costs would diminish as AMS becomes more prevalent made the regulatory asset approach even more appropriate. They warned against parties supporting a regulatory asset now, only to oppose rate relief for the cost in a rate case, and urged the commission to make the rule clear with regard to the recoverability of these costs upon determination of their reasonableness.

REP Coalition stated that they also favored use of a regulatory asset to recover TDU costs of actual meter reads for expedited switches. This would give the commission the ability to examine costs in a rate case, thus preventing over-recovery. Furthermore, the proposed surcharge amounts to piecemeal ratemaking, and a regulatory asset is a more reasonable approach in light of the expectation that the frequency of physical expedited reads will diminish with the advent of AMS.

Cities said it was unclear whether TDUs would incur additional costs or whether such costs would be significant under the proposed rule and opined that a rate case was the best vehicle for evaluation of overall TDU costs and revenues. To the extent costs are incurred to rectify unauthorized switches, Cities suggested that the gaining REP should be responsible for those costs.

Citing the AMS surcharge already in place for customers in Oncor and CenterPoint service areas, OPC could not endorse a process that would result in another charge to all customers to reduce switching timelines. OPC and TXU Energy further stated that, absent an amendment to PURA, the commission has no authority to enable a surcharge. OPC cited PURA §36.201, which states that, "the commission may not establish a rate or tariff that authorizes an electric utility to automatically adjust and pass through to the utility's customers a change in the utility's fuel or other costs." But OPC was not fundamentally opposed to recovery of incremental costs by TDUs for meter reads for standard switches, subject to commission review and verification of the necessity and reasonableness of the charges. OPC said that any such charges should have a specified end date and should diminish as advanced meters are rolled out, with no charges for switching of customers with advanced meters. Reliant concurred, saying that a surcharge should only cover costs over and above those covered in the TDU's last rate case (adjusted for load growth), should not result in over-recovery of costs, and should be adjusted annually to reflect any over- or under-collection of meter reading expenses from previous years. Their proposed language also eliminated the current rule's proscription of reconciliation and retroactive recovery of costs, and limited cost recovery to those in FERC Account 902. OPC said that if the commission does not adopt OPC's suggestion for use of on-cycle and out-of-cycle meter reads exclusively, and if the commission chooses a reimbursement mechanism, OPC endorsed Reliant's suggested language to ensure that the surcharge can be reconciled.

Joint TDUs replied that to assume that costs for meter reads for standard switches would be charged to FERC Account 902 is incorrect and irrelevant to the determination of whether the costs were incurred to provide service as required by the rule.

In addition to raising costs, which AMS might eliminate in the long run but would have no impact in the near term, Oncor argued that the proposed rule would prevent TDUs from collecting fees that have been approved by the commission, and requested that the commission recognize the TDU's loss of revenue resulting from commission action. They stated that while expedited switching costs might not rival those of a new transmission line, they are still real costs. They favored having expedited meter reads be treated as regulatory assets, a recommendation with which TXU Energy concurred.

Cities replied that they were not aware of any legal authority for the commission to allow the commission to create new tariff surcharges outside of a general rate case. They opposed creation of a regulatory asset for this purpose, as it would shift costs to future rate cases, along with decisions on how and from whom to recover the costs. Additionally, they said that TDUs have made no showing that the costs in this instance exceed the normal level of regulatory lag. Cities argued that these issues would not arise if expedited switching costs were paid by the REP requesting service. They said the only expedited switching costs that should be socialized were those associated with mass transitions, due to the accompanying negative impacts on the market.

They said that the proposed amendments serve to eliminate one entity's rate and shift the costs to the general body of ratepayers through a surcharge was unprecedented and unwarranted.

TIEC commented that costs for expedited switches should be borne by the customers who request them. Failing this, they stated that any cost-free meter read policy should apply only to customers with non-IDR meters. In TIEC's view, the current system works well for large customers, many of whom have contracts that contemplate the current meter read system. In reply comments, TIEC said that loss of revenue should not be addressed through either a surcharge or a regulatory asset or by raising fees for out-of-cycle meter reads.

Joint TDUs and Oncor stated that cost recovery for TDUs should not be limited to "significant increases," as all costs for expedited switches will represent increases in cost. Joint TDUs noted that the new service will result in potentially thousands more meter reads per week over current levels, and that none of the costs for these additional reads will be recovered absent specific provisions by the commission. Joint TDUs and Oncor further said that PURA §36.051 allows for recovery of "reasonable and necessary operating expenses" rather than "significant" costs. Joint TDUs opined that the rule should provide for timely recovery of TDU costs through either a surcharge or regulatory asset, at the TDU's option. They said that if recovery was through a sur-

charge, the surcharge should be put in place at the time the new service is made available, should be based on a forecast of the projected number of reads and/or estimated reads, and should include costs for reprogramming and creating systems and purchase of any hardware required. They stated that, pursuant to PURA Chapter 36, Subchapter C, the TDU should file for approval of a rider for the surcharge prior to initiation of expedited switching service. Joint TDUs stated that the surcharge should continue until obviated by implementation of AMS or until completion of a general rate case that includes consideration of these costs.

Oncor contended that the authorization for a regulatory asset is the appropriate cost recovery mechanism. It argued that when future costs are unexpected or unpredictable the use of a regulatory asset is warranted, whereas a surcharge is appropriate for expected levels of similar future costs. Further Oncor suggested that case law overturning the commission's approval of a regulatory asset in *Office of Public Utility Counsel v. Pub. Util. Comm'n,* 888 S.W.2d 804 (Tex. 1994) is not applicable. Oncor argued that the Supreme Court's decision pertains only to cases where a regulatory asset is used to alleviate regulatory lag, and in contrast, use of a regulatory asset in this instance is not meant to alleviate regulatory lag.

Oncor noted that the proposed tariff modifications will result in an explicit loss of revenue due to the fact that an Expedited Meter Read for the Purpose of a Switch has previously been accomplished by and billed as an Out-of-Cycle Meter Read for the Purpose of a Switch. In Oncor's case, the charge is $7.25 for each out-of-cycle meter read. Texas ROSE/TLSC opposed uplifting the costs of expedited meter reads and allowing the TDUs to recover costs through a surcharge.

Commission Response

Allowing TDUs special cost recovery for the increased costs that result from performing meter reads for the purpose of standard switches is appropriate because these rule amendments will necessitate that TDUs alter their meter reading practices in a manner that will increase their costs. While noting comments by Texas ROSE/TLSC and TIEC, the commission finds that it is appropriate to allow costs incurred in shortening switching timelines to be borne by all customers because this benefit will be available to all customers and will increase market responsiveness for all customers.

The commission adopts rule language that allows TDUs at their discretion, to seek cost recovery either through a regulatory asset or under the advanced metering system (AMS) surcharge allowed under §25.130(k). Because circumstances vary among TDUs, the commission is allowing each TDU to determine which cost recovery mechanism best suits their situation. The commission recognizes that these costs will be incurred in order to provide a critical benefit of advanced metering functionality for customers: the ability to quickly read a customer's meter without cost to that customer. This will allow the TDU to flow through the cost of reading a conventional, non-advanced meter in order to expedite the switching process for customers before AMS is deployed to all customers in the service territory. The commission finds that this is an essential modification to the competitive retail market, and therefore, is applying a mechanism in §25.474(p) which allows the TDU to exercise this option.

Alternatively, a TDU may choose to create a regulatory asset for recovery of costs. This additional option is appropriate, as not all TDUs are currently deploying advanced meters, and thus have no AMS surcharge in place for this purpose.

In initial and reply comments, respectively, Reliant and REP Coalition proposed a modification of Section 4.3.4 of the TDU tariff to clarify that, unless a specific date is requested in the transaction, the TDU shall perform an expedited meter read in accordance with timelines provided in Chapter 6 of the tariff, relating to company specific rates and schedules. Reliant also proposed new Section 4.8.1.X, which would state that if no specific date is requested for a switch, the TDU will perform an expedited meter read in accordance with the timelines of Chapter 6, and provide the meter read to both the losing and gaining REP on the next business day. The date of the meter read determines the last billing date for the losing REP and first billing date for the gaining REP. In reply comments, TIEC noted that this section was noticed "no-change," and argued that the suggested revisions would constitute a violation of notice requirements in Government Code §2001.024.

In reply, Oncor took issue with Reliant's proposed new section, specifically the requirement that the meter reading data be delivered the next business day. Oncor stated that the current TDU tariff allows three business days for this, and that shortening the time would result in diminished data accuracy in that it would preclude parameter testing that currently detects and eliminates "outlier" meter reads.

Commission Response

The commission disagrees that further tariff revision is needed for clarity, as the tariff language clearly states that the meter read for the purpose of a standard switch shall be used unless the self-selected switch alternative is specified by the REP. The commission, therefore, does not adopt the language proposed by REP Coalition and Reliant.

General Comments

TXU Energy argued that expedited switching will create a potential for customers to "game" the system in cases of disconnection for non-payment; a REP is required to give at least ten days' notice prior to disconnection for non-payment, while the proposal would allow a customer to switch REPs upon receipt of a disconnect notice and have service switched to the new REP before the original REP was disconnected, leaving the original REP with a bad debt. TXU Energy said that increased bad debt for REPs would be reflected in higher prices for all customers. TXU Energy said that this unintended consequence may require careful monitoring by the commission. In their reply comments, Retail Electric Companies acknowledged TXU Energy's comments in this regard and concurred.

Commission Response

The commission maintains that the benefit of shortened switching times for customers outweighs any impact of gaming by non-paying customers. REPs have safeguards against non-payment in the form of customer deposits and may have other recourse through credit reporting agencies and collections processes.

Joint TDUs proposed changes to clarify that if an estimate is performed it should not count for the purposes of the limitations on the number of consecutive estimates that the TDU is allowed to perform. In reply comments, the REP Coalition countered that there is no legitimate reason why an estimated meter read for the purpose of a switch should not be included in the count as a policy matter.

Commission Response

The commission concurs with Joint TDUs. The basis for limiting TDUs estimated reads was to ensure that customers provided access to their meters and that TDUs would rely primarily on actual reads rather than estimates for regular, on-cycle meter reads. Since the commission is requiring a TDU to read a meter apart from an on-cycle meter reading, it should not count against the TDU for its consecutive estimation allowance.

Section 25.214

ARM suggested that meter reads for standard switches be performed within four business days rather than six calendar days to be consistent with the basis for the ERCOT protocols.

Commission Response

The commission concurs and adopts language consistent with ARM's suggestion.

Section 25.474

Oncor proposed that the commission make clear that a REP shall not charge a fee to an applicant to switch to, select, or enroll with the REP unless the applicant requests an out-of-cycle meter read for the purpose of a switch.

Commission Response

The commission agrees with Oncor. REPs shall not charge a switching fee absent an applicant request for an out-of-cycle (self-selected) switch and amends the rule accordingly.

Subsection (j)

Reliant stated that the right of rescission in subsection (j) is no longer workable as it is virtually impossible to do so without assuming the full risk of any power used by a customer that cancels, which is precisely why the right of rescission is not applicable to a move-in. Door-to-door sales are allowed a rescission period because the contracts are handed to the customer upon enrollment.

Commission Response

The commission declines to modify subsection (j), as the three-day right of rescission provides an important opportunity for the customer to review the terms and conditions of the service agreement. The commission notes that while Reliant is correct in saying that federal law requires the three-day rescission period only for door-to-door sales, the commission finds that the rescission period should apply to customers who are switching regardless of the sales channels.

Subsection (k)

ARM proposed to modify subsection (k), so that TDUs would perform the expedited read on the regularly scheduled date if it falls within the timeframe the TDU has to read the meter, rather than reading it earlier.

Commission Response

The commission concurs and adopts language in subsection (o) stipulating that the on-cycle read should be used if it falls within the three business days prior to the first available switch date, or within the four business days that begin on that date.

Texas ROSE/TLSC were concerned that the proposed rules might not be sufficient to enforce the rescission protection.

TIEC argued that it was necessary to maintain the options that IDR customers have previously had available for an on-cycle or an off-cycle meter read. TIEC stated that contract provisions may tie a customer's ability to switch providers to the on-cycle meter read date and eliminating this option could impair the ability of larger customers to negotiate optimal contract terms. The REP Coalition replied that ERCOT had warned of expense and delay if three (on-cycle, off-cycle, and expedited) switching processes were required, and that ERCOT cannot develop a switching process for one class of customer that differs from those used by other customers. The REP Coalition concluded that only two switching processes should be allowed, in the interest of moving the project forward. The REP Coalition suggested that IDR customer requirements could be met with out-of-cycle meter reads.

Commission Response

The commission concludes that IDR customers' requirements can be met with the option of a standard switch or a self-selected switch.

Joint TDUs recommended new titles for the proposed services in the rule: "switch on a date certain" and "switch not on a date certain." AEP, CenterPoint, and TNMP recommended that the rule specify the number of days that the customer has to request cancellation of the switch, rather than that the customer will be returned to its chosen REP on the basis of a timely request. Joint TDUs proposed that, should the customer fail to respond within the specified time, the customer should either request a new switch to return to its chosen REP or accept service from the other REP.

Commission Response

The commission declines to adopt new language as proposed. As is noted in the discussion of the terminology in the comments on the tariff, "expedited" switching has been changed to "standard" switching, and "out-of-cycle" has become "self-selected" switching. The commission finds these terms to be as descriptive, and less cumbersome than those proposed by the Joint TDUs.

The commission disagrees with AEP, CenterPoint, and TNMP's recommendation that the rule specify the maximum number of days for a customer to cancel a switch, rather than merely requiring that the cancellation be "timely." The amended language in §25.474(k) requires conformity with subsection (j), which allows customers three federal business days after receipt of terms of service to rescind the switch.

The commission declines to adopt language supporting Joint TDUs' proposal that, should customers fail to exercise their right of rescission within the time allotted, they must either issue a new switch request to be returned to the original REP or their service will remain with the new REP. Joint TDUs failed to cite problems or issues that may have arisen from the pre-existing right of rescission language in subsection (j), and subsection (j) was listed as "No Change" in the Proposal for Publication.

Subsection (l)(2)

ARM and Reliant proposed that the term "affiliated REP" be deleted from subsection (l)(2). OPC proposed changes consistent with its postcard proposal. Joint TDUs recommended that the term "POLR" be made consistent with the term chosen in the amendments to the POLR rule in Project No. 35769.

Commission Response

The commission agrees that it is appropriate to delete the word "affiliated" in this subsection, but it is continuing to use the term

POLR here, as the use of the term has been continued in the POLR rulemaking project.

The commission agrees with OPC, and adopts a modified postcard which notifies the customer of a switch and provides contact information for the old and new REPs in the event the customer does not authorize the switch.

Texas ROSE/TLSC reinforced the need to retain and develop protocols at ERCOT that assure that all switches in process are to be honored during a mass transition.

Commission Response

The commission has addressed this issue in the POLR rulemaking and therefore declines to address it here.

Subsection (l)(3)

OPC recommended adding a paragraph in subsection (l)(3), requiring the REP to initiate the rectification process by the close of the business day upon notification of an unauthorized switch. REP Coalition replied that this requirement would have no benefit for the customer, as the existing inadvertent gain process restores the customer to its original REP with no interruption in service and at no harm to the customer.

Commission Response

The commission concurs with REP Coalition and takes no action in this regard.

Subsection (n)

Joint TDUs proposed language to make clear that the TDU could still charge the customer a fee for denial of access.

Commission Response

The changes to the tariff and §25.474 do not affect the provisions in the tariff relating to denial of access, which remain in effect. The commission, therefore, declines to adopt Joint TDUs' proposed language.

CenterPoint and the Retail Electric Companies proposed that the TDUs be required to include certain costs in their cost recovery and that TDUs be prohibited from charging a fee related to the estimate adjustments in subsection (q).

Commission Response

The commission adopts language precluding the TDU from charging fees for adjustments to estimated meter reads or for switch cancellations and requiring that costs for switch cancellations during the three-day customer rescission period be included in cost recovery.

Subsection (q)

The Retail Electric Companies filed language on May 28 amending subsection (q) to address these concerns. In this proposal, amendments to the estimate will occur in two situations. First, if the next actual reading after an estimated switch is less than the estimate, this is clear evidence that the estimate was incorrect. Therefore, the estimate for the losing REP should be adjusted on a non-discriminatory basis. Under the proposed amendments filed by the REPs, subsection (q)(2)(A) would require an adjustment in this situation.

The REP stakeholders also developed language whereby, in response to a complaint from the customer, if it is determined that usage per day for the estimated period is at least 25% greater than or 25% less than the average actual kWh usage per day, based on the next actual read, then the TDU would adjust the estimate and the customer would be rebilled. This creates a clear standard that the REPs and TDUs would follow to adjust a customer's bill. Subsection (q)(2)(B) addresses the review and adjustment in this situation.

AEP Texas proposed a specific methodology for the estimate adjustment process. CenterPoint expressed general agreement with the concept of adjusting the estimate and supported AEP Texas's proposed modifications.

Commission Response

The commission appreciates AEP's proposed modification of the adjustment process, but is reluctant to impose a single process on all the TDUs. Subsection (q)(2)(C), as proposed by the REP stakeholders, allows the TDUs to use a reasonable methodology for the adjustment of an estimate. The commission believes that AEP Texas's proposal to adjust the estimate using the average daily kWh usage based on the actual read is a reasonable methodology and would be allowed under the proposed REP language. However, the commission does not want to preclude the other TDUs from using another adjustment methodology that is also reasonable.

The commission believes that the adjustment to a customer's bill should be contingent on the REP actually receiving a customer complaint. The first sentence of subsection (q)(2)(B) is modified to read: "Only upon the receipt of a customer dispute of the estimated usage to either the gaining or losing REP, either REP may request the TDU review the estimate."

The commission adopts the language proposed by the Retail Electric Companies, as modified.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

TDUs shall apply to amend their tariffs to comply with the amendments adopted herein within ten days of the effective date of the amendments.

SUBCHAPTER I. TRANSMISSION AND DISTRIBUTION

DIVISION 2. TRANSMISSION AND DISTRIBUTION APPLICABLE TO ALL ELECTRIC UTILITIES

16 TAC §25.214

(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 16 TAC §25.214 is not included in the print version of the Texas Register. The figure is available in the on-line version of the June 26, 2009, issue of the Texas Register.)

This section is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 & Supplement 2008) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. The commission also adopts these rules pursuant to PURA §36.001, which grants the commission authority to establish and regulate rates of an electric utility; §36.003, which requires that the commission ensure that each rate of an electric utility is just and reasonable;

§39.101, which grants the commission authority to establish various, specific protections for retail customers; §39.102, which provides for retail customer choice; §39.203, which grants the commission authority to establish reasonable and comparable terms and conditions for open access on distribution facilities for all retail electric utilities offering customer choice, and comparable rates for open access for all retail electric utilities offering customer choice, and PURA Chapter 17, Subchapters A and C, which deal, respectively, with general provisions relating to customer protection policy and the retail customer's right to choice.

Cross Reference to Statutes: PURA §§14.002, 36.001, 36.003, 39.101, 39.102, 39.203 and Chapter 17, Subchapters A and C.

§25.214. Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities.

(a) Purpose. The purpose of this section is to implement Public Utility Regulatory Act (PURA) §39.203 as it relates to the establishment of non-discriminatory terms and conditions of retail delivery service, including delivery service to a Retail Customer at transmission voltage, provided by a transmission and distribution utility (TDU), and to standardize the terms of service among TDUs. A TDU shall provide retail delivery service in accordance with the terms and conditions set forth in this section to those Retail Customers participating in the pilot project pursuant to PURA §39.104 on and after June 1, 2001, and to all Retail Customers on and after January 1, 2002. By clearly stating these terms and conditions, this section seeks to facilitate competition in the sale of electricity to Retail Customers and to ensure reliability of the delivery systems, customer safeguards, and services.

(b) Application. This section, which includes the pro-forma tariff set forth in subsection (d) of this section, governs the terms and conditions of retail delivery service by all TDUs in Texas. The terms and conditions contained herein do not apply to the provision of transmission service by non-ERCOT utilities to retail customers.

(c) Tariff. Each TDU in Texas shall file with the commission a tariff to govern its retail delivery service using the pro-forma tariff in subsection (d) of this section. The provisions of this tariff are requirements that shall be complied with and offered to all REPs and Retail Customers unless otherwise specified. TDUs may add to or modify only Chapters 2 and 6 of the tariff, reflecting individual utility characteristics and rates, in accordance with commission rules and procedures to change a tariff; however the only modifications the TDU may make to 6.1.2.1 are to insert the commission-approved rates. Additionally, in Company specific discretionary service filings, Company shall propose timelines for discretionary services to the extent applicable and practical. Chapters 1, 3, 4, and 5 of the pro-forma tariff shall be used exactly as written. These chapters can be changed only through the rulemaking process. If any provision in Chapter 2 or 6 conflicts with another provision of Chapters 1, 3, 4, and 5, the provision found in Chapters 1, 3, 4, and 5 shall apply, unless otherwise specified in Chapters 1, 3, 4, and 5.

(d) Pro-forma Retail Delivery Tariff.

(1) Tariff for Retail Delivery Service.

Figure: 16 TAC §25.214(d)(1)

(2) Compliance tariff. Compliance tariffs pursuant to this section must be filed by February 15, 2008.

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

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

TRD-200902421

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
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Proposal publication date: February 13, 2009
For further information, please call: (512) 936-7223

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SUBCHAPTER R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE

16 TAC §25.474

This section is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 & Supplement 2008) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. The commission also adopts these rules pursuant to PURA §36.001, which grants the commission authority to establish and regulate rates of an electric utility; §36.003, which requires that the commission ensure that each rate of an electric utility is just and reasonable; §39.101, which grants the commission authority to establish various, specific protections for retail customers; §39.102, which provides for retail customer choice; §39.203, which grants the commission authority to establish reasonable and comparable terms and conditions for open access on distribution facilities for all retail electric utilities offering customer choice, and comparable rates for open access for all retail electric utilities offering customer choice, and PURA Chapter 17, Subchapters A and C, which deal, respectively, with general provisions relating to customer protection policy and the retail customer's right to choice.

Cross Reference to Statutes: PURA §§14.002, 36.001, 36.003, 39.101, 39.102, 39.203 and Chapter 17, Subchapters A and C.

§25.474. Selection of Retail Electric Provider.

(a) Applicability. This section applies to retail electric providers (REPs) and aggregators seeking to enroll applicants or customers for retail electric service. In addition, where specifically stated, this section applies to transmission and distribution utilities (TDUs) and the registration agent.

(b) Purpose. The provisions of this section establish procedures for enrollment of applicants or customers by a REP and ensure that all applicants and customers in this state are protected from an unauthorized switch from the applicant's or customer's REP of choice or an unauthorized move-in. A contested switch in providers shall be presumed to be unauthorized unless the REP provides proof, in accordance with the requirements of this section, of the applicant's or customer's authorization and verification.

(c) Initial REP selection process.

(1) In conjunction with the commission's customer education campaign, the commission may issue to customers for whom customer choice will be available an explanation of the REP selection process. The customer education information issued by the commission may include, but is not limited to:

(A) an explanation of retail electric competition;

(B) a list of all REPs certified to provide electric service to the customer;

(C) a form that allows the customer to contact or select one or more of the listed REPs from which the customer desires to receive information or to be contacted; and

(D) information on how a customer may designate whether the customer would like to be placed on the statewide Do Not Call List and indicate the fee for such placement.

(2) Any affiliated REP assigned to serve a customer that is entitled to receive the price-to-beat rate, pursuant to the Public Utility Regulatory Act (PURA) §39.202(a), shall issue to a customer, either as a bill insert or through a separate mailing, no later than 30 days after the commencement of customer choice:

(A) A terms of service document that includes an explanation of the price-to-beat rate;

(B) Your Rights as a Customer disclosure; and

(C) An Electricity Facts Label for the price to beat, which may, at the discretion of the REP, be in a separate document or contained in the terms of service document.

(3) An electric utility whose successor affiliated REP will continue to serve customers not eligible for the price-to-beat rate, pursuant to PURA §39.102(b), shall issue to the customer a terms of service document on a date prescribed by the commission. Such a document shall contain an explanation of the price the customer will be charged by the affiliated REP.

(d) Enrollment via the Internet. For enrollments of applicants via the Internet, a REP or aggregator shall obtain authorization and verification of the move-in or switch request from the applicant in accordance with this subsection.

(1) The website (or websites) shall clearly and conspicuously identify the legal name of the aggregator and its registration number to provide aggregation services or REP and its certification number to sell retail electric service, its address, and telephone number;

(2) The website shall include a means of transfer of information, such as electronic enrollment, renewal, and cancellation information between the applicant or customer and the REP or aggregator that is an encrypted transaction using Secure Socket Layer or similar encryption standard to ensure the privacy of customer information;

(3) The website shall include an explanation that a move-in or a switch can only be made by the electric service applicant or the applicant's authorized agent;

(4) The entire enrollment process shall be in plain, easily understood language. The entire enrollment shall be the same language. Nothing in this section is meant to prohibit REPs or aggregators from utilizing multiple enrollment procedures or websites to conduct enrollments in multiple languages.

(5) Required authorization disclosures. Prior to requesting confirmation of the move-in or switch request, a REP or aggregator shall clearly and conspicuously disclose the following information:

(A) the name of the new REP;

(B) the name of the specific electric service package or plan for which the applicant's assent is attained;

(C) the ability of an applicant to select to receive information in English, Spanish, or the language used in the marketing of service to the applicant. The REP or aggregator shall provide a means of documenting a customer's language preference;

(D) the price of the product or plan, including the total price stated in cents per kilowatt-hour, for electric service;

(E) term or length of the term of service;

(F) the presence or absence of early termination fees or penalties, and applicable amounts;

(G) any requirement to pay a deposit and the estimated amount of that deposit, or the method in which the deposit will be calculated. An affiliated REP or provider of last resort (POLR) shall also notify the applicant of the right to post a letter of guarantee in lieu of a deposit in accordance with §25.478(i) of this title (relating to Credit Requirements and Deposits);

(H) any fees to the applicant for switching to the REP pursuant to subsection (n) of this section;

(I) in the case of a switch request, the applicant's right, pursuant to subsection (j) of this section, to review and rescind the terms of service within three federal business days, after receiving the terms of service, without penalty; and

(J) a statement that the applicant will receive a copy of the terms of service document via email or, upon request, via regular US mail, that will explain all the terms of the agreement and how to exercise the right of rescission, if applicable.

(6) The applicant shall be required to check a box affirming that the applicant has read and understands the disclosures and terms of service required by paragraph (5) of this subsection.

(7) The REP or aggregator shall provide access to the complete terms of service document that is being agreed to by the applicant on the website such that the applicant may review the terms of service prior to enrollment. A prompt shall also be provided for the applicant to print or save the terms of service document to which the applicant assents, and shall inform the application of the option to request that a written copy of the terms of service document be sent by regular U.S. mail by contacting the REP.

(8) The REP or aggregator shall also provide a toll-free telephone number, Internet website address, and e-mail address for contacting the REP or aggregator throughout the duration of the applicant's or customer's agreement. The REP or aggregator shall also provide the appropriate toll-free telephone number that the customer can use to report service outages.

(9) Applicant authorizations shall adhere to any state and federal guidelines governing the use of electronic signatures.

(10) Verification of authorization for Internet enrollment. Prior to final verification by the applicant of enrollment with the REP or aggregator, the REP or aggregator shall:

(A) obtain or confirm the applicant's email address, billing name, billing address, service address, and name of any authorized representative;

(B) obtain or confirm the applicant's electric service identifier (ESI-ID), if available;

(C) affirmatively inquire whether the applicant has decided to establish new service or change from the current REP to the new REP;

(D) affirmatively inquire whether the applicant designates the new REP to perform the necessary tasks to complete a switch or move in for the applicant's service with the new REP; and

(E) obtain or confirm one of the following account access verification data: last four digits of the social security number, mother's maiden name, city or town of birth, month and day of birth, driver's license or government issued identification number. For non-residential applicants, the REP may obtain the applicant's federal tax identification number.

(11) After enrollment, the REP or aggregator shall send a confirmation, by email, of the applicant's request to select the REP. The confirmation email shall include:

(A) in the case of a switch, a clear and conspicuous notice of the applicant's right, pursuant to subsection (j) of this section, to review and rescind the terms of service within three federal business days, after receiving the terms of service without penalty and offer the applicant the option of exercising this right by toll-free number, email, Internet website, facsimile transmission or regular mail. This notice shall be accessible to the applicant without need to open an attachment or link to any other document; and

(B) the terms of service and Your Rights as a Customer documents. These may be documents attached to the confirmation email, or the REP or aggregator may include a link to an Internet webpage containing the documents.

(e) Written enrollment. For enrollments of customers via a written letter of authorization (LOA), a REP or aggregator shall obtain authorization and verification of the switch or move-in request from the applicant in accordance with this subsection.

(1) All LOAs for move-in or switch orders shall be in plain, easily understood language. The entire enrollment shall be in the same language.

(2) The LOA shall be a separate or easily separable document containing the requirements prescribed by this subsection for the sole purpose of authorizing the REP to initiate a switch request. The LOA is not valid unless it is signed and dated by the customer requesting the move-in or switch.

(3) The LOA may contain a description of inducements associated with enrolling with the REP; however, the actual inducement itself shall not be either included on or as part of the LOA, or constitute the LOA by itself;

(4) The LOA shall be legible and shall contain clear and unambiguous language;

(5) Required authorization disclosures. The LOA shall disclose the following information:

(A) the name of the new REP;

(B) the name of the specific electric service package or plan for which the applicant's assent is attained;

(C) the ability of an applicant to select to receive information in English, Spanish, or the language used in the marketing of service to the applicant. The REP shall provide a means of documenting an applicant's language preference;

(D) the price of the product or plan, including the total price stated in cents per kilowatt-hour, for electric service;

(E) term or length of the term of service;

(F) the presence or absence of early termination fees or penalties, and applicable amounts;

(G) any requirement to pay a deposit and the estimated amount of that deposit, or the method in which the deposit will be calculated. An affiliated REP or POLR shall also notify the applicant of the right to post a letter of guarantee in lieu of a deposit in accordance with §25.478(i) of this title;

(H) any fees to the applicant for switching to the REP pursuant to subsection (n) of this section;

(I) in the case of a switch, the applicant's right, pursuant to subsection (j) of this section, to review and rescind the terms of service within three federal business days, after receiving the terms of service, without penalty; and

(J) a statement that the applicant will receive a written copy of the terms of service document that will explain all the terms of the agreement and how to exercise the right of rescission, if applicable.

(6) Verification of authorization of written enrollment. A REP or aggregator shall, as part of the LOA:

(A) obtain or confirm the applicant's billing name, billing address, and service address;

(B) obtain or confirm the applicant's ESI-ID, if available;

(C) affirmatively inquire whether the applicant has decided to establish new service or change from their current REP to the new REP;

(D) affirmatively inquire whether the applicant designates the new REP to perform the necessary tasks to complete a switch or move in for the applicant's service with the new REP; and

(E) obtain one of the following account access verification data: last four digits of the social security number, mother's maiden name, city or town of birth, month and day of birth, driver's license or government issued identification number. For non-residential applicants, the REP may obtain the applicant's federal tax identification number.

(7) The following LOA form meets the requirements of this subsection if modified as appropriate for the requirements of paragraph (5)(G) of this subsection. Other versions may be used, but shall contain all the information and disclosures required by this subsection.
Figure: 16 TAC §25.474(e)(7) (No change.)

(8) Before obtaining a signature from a customer, a REP shall:

(A) provide to the applicant a reasonable opportunity to read the terms of service, Electricity Facts Label, and any written materials accompanying the terms of service document; and

(B) answer any questions posed by any applicant about information contained in the documents.

(9) Upon obtaining the applicant's signature, a REP or aggregator shall immediately provide the applicant a legible copy of the signed LOA, and shall distribute or mail the terms of service document, Electricity Facts Label, and Your Rights as a Customer disclosure. If a written solicitation by a REP contains the terms of service document, any tear-off portion that is submitted by the applicant to the REP to obtain electric service shall allow the applicant to retain the terms of service document.

(10) The applicant's signature on the LOA shall constitute an authorization of the move-in or switch request if the LOA complies with the provisions of this section and the terms of service comply with the requirements of §25.475(d) of this title (relating to Information Disclosures to Residential and Small Commercial Customers).

(f) Enrollment via door-to-door sales. A REP or aggregator that engages in door-to-door marketing at a customer's residence shall comply with the following requirements:

(1) Solicitation requirements. A REP or aggregator that engages in door-to-door marketing at an applicant's residence shall comply with the following requirements:

(A) The REP or aggregator shall provide the disclosures required by this section and the three-day right of rescission required

by the Federal Trade Commission's Trade Regulation Rule Concerning a Cooling Off Period for Door-to-Door Sales (16 C.F.R. §429).

(B) The individual who represents the REP or aggregator shall wear a clear and conspicuous identification of the REP or aggregator on the front of the individual's outer clothing or on an identification badge worn by the individual. In addition, the individual shall wear an identification badge that includes the individual's name and photograph, the REP or aggregator's certification or registration number, and a toll-free telephone number maintained by the REP or aggregator that the applicant may call to verify the door-to-door representative's identity during specified business hours. The company name displayed shall conform to the name on the REP's certification or aggregator's registration obtained from the commission and the name that appears on all of the REP's or aggregator's contracts and terms of service documents in possession of the individual.

(C) The REP or aggregator shall affirmatively state that it is not a representative of the applicant's transmission and distribution utility or any other REP or aggregator. The REP's or aggregator's clothing and sales presentation shall be designed to avoid the impression by a reasonable person that the individual represents the applicant's transmission and distribution utility or any other REP or aggregator.

(D) The REP or aggregator shall not represent that an applicant or customer is required to switch service in order to continue to receive power.

(E) Door-to-door representatives shall adhere to all local city/subdivision guidelines concerning door-to-door solicitation.

(2) Required authorization disclosures. Prior to requesting verification of the applicant's authorization to enroll, a REP or aggregator shall comply with all of the authorization disclosure requirements in either subsections (e)(5) or (h)(1) through (h)(4) of this section.

(3) Verification of authorization for door-to-door enrollment. A REP, or an independent third party retained by the REP, shall telephonically obtain and record all required verification information from the applicant to verify the applicant's decision to enroll with the REP in accordance with this paragraph.

(A) Electronically record on audiotape, a wave sound file, or other recording device the entirety of an applicant's verification. The verification call shall comply with the requirements in subsection (h)(5) of this subsection.

(B) Inform the applicant that the verification of authorization call is being recorded.

(C) Verification shall be conducted in the same language as that used in the sales transaction and authorization.

(D) Automated systems shall provide the applicant with the option of exiting the system and nullifying the enrollment at any time during the call.

(E) A REP or its sales representative initiating a three-way call or a call through an automated verification system shall not participate in the verification process.

(F) The REP shall not submit a move-in or switch request until it has obtained a recorded telephonic verification of the enrollment.

(G) If a REP has solicited service for prepaid service, an actual pre-payment by a customer may be substituted for a telephonic verification, provided that the pre-payment is not taken at the time of the solicitation by the sales representative that has obtained the authorization from the customer, and the REP has obtained a written LOA from the customer and can produce documentation of the pre-payment. The REP shall not submit a move-in or switch request until it has received the prepayment from the customer.

(g) Personal solicitations other than door-to-door marketing. A REP or aggregator that engages in personal solicitation at a location other than a customer's residence (such as malls, fairs, or places of business) shall comply with all requirements for written enrollments and LOA requirements detailed in subsection (e) of this section. In addition, the REP or aggregator shall comply with the following additional requirements:

(1) For solicitations of residential customers, the individual who represents the REP or aggregator shall wear a clear and conspicuous identification of the REP or aggregator on the front of the individual's outer clothing or on an identification badge worn by the individual. The company name displayed shall conform to the name on the REP's certification or aggregator's registration obtained from the commission and the name that appears on all of the REP's or aggregator's contracts and terms of service documents in possession of the individual.

(2) The individual who represents the REP or aggregator shall not state or imply that it is a representative of the customer's transmission and distribution utility or any other REP or aggregator. The REP's or aggregator's clothing and sales presentation shall be designed to avoid the impression by a reasonable person that the individual represents the applicant's transmission and distribution utility or any other REP or aggregator.

(3) The REP or aggregator shall not represent that an applicant is required to switch service in order to continue to receive power.

(h) Telephonic enrollment. For enrollments of applicants via telephone solicitation, a REP or aggregator shall obtain authorization and verification of the move-in or switch request from the applicant in accordance with this subsection.

(1) A REP or aggregator shall electronically record on audio tape, a wave sound file, or other recording device the entirety of an applicant's authorization and verification. Automated systems shall provide the customers with either the option of speaking to a live person at any time during the call, or the option to exit the call and cancel the enrollment.

(2) The REP or aggregator shall inform the customer that the authorization and verification portions of the call are being recorded.

(3) Authorizations and verifications shall be conducted in the same language as that used in the sales transaction.

(4) Required authorization disclosures. Prior to requesting verification of the move-in or switch request, a REP or aggregator shall clearly and conspicuously disclose the following information:

(A) the name of the new REP;

(B) the name of the specific electric service package or plan for which the applicant's assent is attained;

(C) the price of the product or plan, including the total price stated in cents per kilowatt-hour, for electric service;

(D) term or length of the term of service;

(E) the presence or absence of early termination fees or penalties, and applicable amounts;

(F) any requirement to pay a deposit and the estimated amount of that deposit, or the method in which the deposit will be calculated or the method in which the deposit will be calculated. An affil-

iated REP or POLR shall also notify the applicant of the right to post a letter of guarantee in lieu of a deposit in accordance with §25.478(i) of this title;

(G) any fees to the applicant for switching to the REP pursuant to subsection (n) of this section;

(H) in the case of a switch, the applicant's right, pursuant to subsection (j) of this section, to review and rescind the terms of service within three federal business days, after receiving the terms of service, without penalty; and

(I) a statement that the applicant will receive a written copy of the terms of service document that will explain all the terms of the agreement and how to exercise the right of rescission, if applicable.

(5) Verification of authorization of telephonic enrollment.

(A) A REP or aggregator shall electronically record on audio tape, a wave sound file, or other recording device the entirety of an applicant's verification of the authorization. The REP or aggregator shall inform the applicant that the verification call is being recorded.

(B) Prior to final confirmation by the applicant that they wish to enroll with the REP, the REP shall, at a minimum:

(i) obtain or confirm the applicant's billing name, billing address, and service address;

(ii) obtain or confirm the applicant's ESI-ID, if available;

(iii) for a move-in request, ask the applicant, "do you agree to become a customer with (REP) and allow (REP) to complete the tasks required to start your electric service?" and the applicant must answer affirmatively; or

(iv) for a switch request, ask the applicant, "do you agree to become a (REP) customer and allow us to complete the tasks required to switch your electric service from your current REP to (REP)?" and the applicant must answer affirmatively; and

(v) ask the applicant, "do you want to receive information in English, Spanish (or the language used in the marketing of service to the applicant)?" The REP shall provide a means of documenting the applicant's language preference; and

(vi) obtain or confirm one of the following account access verification data: last four digits of the social security number, mother's maiden name, city or town of birth, or month and day of birth, driver's license or government issued identification number. For non-residential applicants, a REP may obtain the applicant's federal tax identification number.

(C) In the event the applicant does not consent to or does not provide any of the information listed in subparagraph (B) of this paragraph, the enrollment shall be deemed invalid and the REP shall not submit a switch or move-in request for the applicant's service.

(D) If a REP has solicited service for prepaid service, an actual pre-payment by a customer may be substituted for a telephonic verification, provided that the pre-payment is not taken at the time of the solicitation by the sales representative that has obtained the authorization from the customer, and the REP has obtained a written LOA from the customer and can produce documentation of the pre-payment. The REP shall not submit a move-in or switch request until it has received the prepayment from the customer.

(i) Record retention.

(1) A REP or aggregator shall maintain non-public records of each applicant's authorization and verification of enrollment for 24 months from the date of the REP's initial enrollment of the applicant and shall provide such records to the applicant, customer, or commission staff, upon request.

(2) A REP or an aggregator shall submit copies of its sales script, terms of service document, and any other materials used to obtain a customer's authorization or verification to the commission staff upon request. In the event commission staff request documents under this subsection, the requested records must be delivered to the commission staff within 15 days of the written request, unless otherwise agreed to by commission staff.

(3) In the event an applicant or customer disputes an enrollment or switch, the REP shall provide to the applicant or customer proof of the applicant's or customer's authorization within five business days of the request.

(j) Right of rescission. A REP shall promptly provide the applicant with the terms of service document after the applicant has authorized the REP to provide service to the applicant and the authorization has been verified. For switch requests, the REP shall offer the applicant a right to rescind the terms of service without penalty or fee of any kind for a period of three federal business days after the applicant's receipt of the terms of service document. The provider may assume that any delivery of the terms of service document deposited first class with the United States Postal Service will be received by the applicant within three federal business days. Any REP receiving an untimely notice of rescission from the applicant shall inform the applicant that the applicant has a right to select another REP and may do so by contacting that REP. The REP shall also inform the applicant that the applicant will be responsible for charges from the REP for service provided until the applicant switches to another REP. The right of rescission is not applicable to an applicant requesting a move-in.

(k) Submission of an applicant's switch or move-in request to the registration agent. A REP shall submit a move-in or switch request to the registration agent so that the move-in or switch will be processed on the approximate scheduled date agreed to by the applicant and as allowed by the tariff of the TDU, municipally owned utility, or electric cooperative. A REP shall submit an applicant's switch request to the registration agent as a standard switch. In the alternative, the REP shall submit an applicant's switch request as a self-selected switch if the applicant requests a specific date for a switch, consistent with the applicable transmission and distribution tariff. A REP may submit an applicant's switch request to the registration agent prior to the expiration of the rescission period prescribed by subsection (j) of this section, provided that if the customer makes a timely request to cancel service the REP shall take action to ensure that the switch is canceled or the customer is promptly returned to its chosen REP without inconvenience or additional cost to the customer. The applicant shall be informed of the approximate scheduled date that the applicant will begin receiving electric service from the REP, and of any delays in meeting that date, if known by the REP.

(l) Duty of the registration agent.

(1) When the registration agent receives a move-in or switch request from a REP, the registration agent shall process that request in accordance with this section and its protocols, to the extent that the protocols are consistent with this section. The registration agent shall send a switch notification notice to the applicant that shall:

(A) be worded in English and Spanish consistent with §25.473(d) of this title (relating to Non-English Language Requirements);

(B) identify the REP that initiated the switch request; and,

(C) provide the names and telephone numbers for the gaining and losing REP.

(2) The registration agent shall direct the TDU to implement any switch, move-in, or transfer to the REP or the POLR in accordance with this section and its protocols.

(m) Exemptions for certain transfers. The provisions of this section relating to authorization and right of rescission are not applicable when the applicant's or customer's electric service is:

(1) transferred to the POLR pursuant to §25.43 of this title (relating to Provider of Last Resort (POLR)) when the customer's REP of record defaults or otherwise ceases to provide service. Nothing in this subsection implies that the customer is accepting a contract with the POLR for a specific term;

(2) transferred to the competitive affiliate of the POLR pursuant to §25.43(o) of this title;

(3) transferred to another REP in accordance with section §25.493 of this title (relating to Acquisition and Transfer of Customers from One Retail Electric Provider to Another); or

(4) transferred from one premise to another premise without a change in REP and without a material change in the terms of service.

(n) Fees. A REP, other than a municipally owned utility or an electric cooperative, shall not charge a fee to an applicant to switch to, select, or enroll with the REP unless the applicant requests an out-of-cycle meter read for the purpose of a self-selected switch. The registration agent shall not charge a fee to the end-use customer for the switch or enrollment process performed by the registration agent. The TDU shall not charge a fee for a review or adjustment described in subsection (q)(2) of this section. To the extent that the TDU assesses a REP a properly tariffed charge for connection of service, out-of-cycle meter read for self-selected switch requests, service order cancellations, or changes associated with the switching of service or the establishment of new service, any such fee may be passed on to the applicant or customer by the REP. A TDU shall not assess to a REP or an applicant any costs associated with a switch cancellation, including inadvertent gain fees, that results from the applicant's exercise of the three-day right of rescission. The TDU shall include such costs in the cost recovery mechanism described in subsection (p) of this section.

(o) Use of actual meter read for the purpose of a switch.

(1) If an actual meter read occurs during the four business days beginning with the first available switch date determined by the registration agent, the TDU shall use that actual meter read for the purpose of completing a standard switch.

(2) If an actual meter read occurred during the three business days prior to the first available switch date determined by the registration agent, the TDU shall use that actual meter read for the purpose of completing a standard switch.

(p) TDU cost recovery. The TDU may recover the reasonable costs associated with performing meter reads for purposes of a standard switch through one of the following two options at the TDU's discretion:

(1) TDU costs associated with performing standard meter reads for the purpose of switches, to the extent not reflected in base rates, shall be considered costs incurred in deploying advanced metering functionality and are to be considered in setting a surcharge established under PURA §39.107(h) and §25.130 of this title (relating to Advanced Metering). The costs shall be included in the annual reports filed pursuant to §25.130(k)(5) of this title as actual costs spent to date in the deployment of Advanced Metering Systems (AMS) and shall be considered in setting, reconciling and or updating the AMS surcharge pursuant to §25.130(k) of this title; or,

(2) a TDU shall create a regulatory asset for the expenses associated with performing standard meter reads for the purpose of switches pursuant to this subsection. Upon review of reasonableness and necessity, a reasonable level of amortization of such a regulatory asset, including carrying charges, 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.

(q) Meter reads for the purpose of a standard switch.

(1) Beginning December 1, 2009, a TDU shall perform actual, as opposed to estimated, meter reads for at least 80% of meter reads for the purpose of a standard switch in any given month, and at least 95% of meter reads for the purpose of a standard switch in any calendar year, exclusive of remote meter reads using advanced meters. Until December 1, 2009, a TDU may perform estimated meter reads for standard switch requests only for residential customers, exclusive of customers with meters that have remote read capability. A TDU shall use best efforts to perform as many actual reads as possible for standard switches.

(2) Notwithstanding §25.214 of this title (relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities), an estimated meter read for the purpose of a standard switch is not subject to adjustment, except as provided in subparagraph (A) or (B) of this paragraph. A customer is obligated to pay a bill based upon an estimated meter read for the purpose of a switch, including any adjustment made pursuant to subparagraph (A) or (B) of this paragraph.

(A) The TDU shall adjust the estimated meter read if the losing REP's billed usage is greater than the total kilowatt-hours used by the customer in the TDU monthly meter read cycle during which the estimate was made.

(B) Only upon the receipt of a customer dispute of the estimated usage to either the gaining or losing REP, either REP may request the TDU to review the estimate. In reviewing the estimate, the TDU shall promptly calculate the average actual kWh usage per day for the time period from the actual meter reading occurring prior to the estimated reading to the actual meter reading occurring after the estimated reading. The TDU shall determine whether the usage per day for the estimated period prior to the switch is at least 25% greater than, or 25% less than, the average actual kWh usage per day. If so, the TDU shall promptly adjust the estimated meter read. The TDU may adjust an estimate that does not meet this 25% threshold, on a non-discriminatory basis.

(C) The TDU shall apply a reasonable methodology in making adjustments pursuant to subparagraphs (A) and (B) of this paragraph and shall make the methodology available to REPs. Consistent with any meter read adjustments, the TDU shall adjust its invoices to the affected REP or REPs.

(3) A TDU shall file performance reports with the commission as part of the information filed under §25.88 of this title (relating to Retail Market Performance Measure Reporting). These reports shall show by month the number and percentages of actual and estimated meter reads for the purpose of switches, and whether that month's performance was in compliance with paragraph (1) of this subsection.

(r) Scheduled switch date. Once a TDU notifies the REPs of a scheduled switch date, the TDU shall perform an actual or estimated read of the customer's meter for that date.

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 June 15, 2009.

TRD-200902422
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
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Proposal publication date: February 13, 2009
For further information, please call: (512) 936-7223

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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 55. RULES FOR ADMINISTRATIVE SERVICES

The Texas Commission of Licensing and Regulation ("Commission") adopts new rules at 16 Texas Administrative Code ("TAC") Chapter 55, §§55.1, 55.10, 55.20, 55.30, 55.40, 55.50 - 55.61, and 55.70 - 55.82, regarding administrative services rules related to the Texas Department of Licensing and Regulation ("Department"). The new rules are adopted without changes to the proposed text as published in the March 6, 2009, issue of the *Texas Register* (34 TexReg 1518) and will not be republished. The new rules take effect July 1, 2009.

The former rules at 16 TAC Chapter 60 implemented the statutory requirements under Texas Occupations Code, Chapter 51, the enabling statute for the Commission and the Department. As the result of a rule review conducted in accordance with Texas Government Code §2001.039 (see the October 10, 2008, issue of the *Texas Register* (33 TexReg 8562)), the Department proposed that the former rules be repealed and replaced with two new rule chapters, Chapters 55 and 60.

The Department has determined that these changes are necessary to ensure that the rules: (1) include and accurately reflect all of the requirements of Texas Occupations Code, Chapter 51 and other statutes affecting state agencies; (2) reflect the Commission's and the Department's current policies, procedures and practices; and (3) do not contain provisions that are more appropriately located elsewhere, such as an employee handbook. In addition, the Department has determined that the new rule structure and format will be more user-friendly since similar activities and responsibilities have been grouped together.

New Chapter 55 is adopted in conjunction with the repeal of the former rules at 16 TAC Chapter 60 and the adoption of new rules in Chapter 60, which are published in the Adopted Rules section of this issue of the *Texas Register.*

New Chapter 55 has five subchapters and addresses administrative services issues involving the Department including procurements, contracts, and contract disputes with vendors. The new rules include many of the provisions found in the former Chapter 60 rules.

Subchapter A states the statutory authority for adopting rules and provides definitions used in the chapter. Subchapter B sets out the Department's processes for procuring goods and services. Subchapter C sets out the procedures for potential vendors to protest the procurement processes and/or awards. Subchapters D and E set out the Department's rules for handling contract disputes with current vendors and resolving those disputes through negotiation and mediation, respectively. Subchapters D and E reflect the model rules developed by the Texas Attorney General and the State Office of Administrative Hearings for use by state agencies.

The proposed rules were published in the *Texas Register* on March 6, 2009, for a 30-day public comment period. The Department did not receive any public comments on the proposed rules.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §55.1, §55.10

The new rules are adopted as a result of the rule review conducted in accordance with Texas Government Code §2001.039. The new rules are adopted under Texas Occupations Code, §51.201(b) and §51.203, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement Chapter 51 and any other law establishing a program regulated by the Department. In addition, the new rules are adopted under Texas Government Code, Chapter 2156, which requires state agencies making purchases to adopt the Texas Comptroller of Public Accounts' rules related to bid opening and tabulation; Texas Government Code, Chapter 2161, which requires a state agency to adopt the Texas Comptroller of Public Accounts' rules as the agency's own rules for construction projects and purchases of goods and services; and Texas Government Code, Chapter 2260, which requires each state agency to develop rules to address contract disputes with vendors and to resolve those disputes through negotiation and/or mediation. Finally, the new rules are adopted in accordance with Texas Government Code, Chapters 552 and 2009; and Texas Civil Practice and Remedies Code, Chapters 107 and 154.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51, the Commission's and Department's enabling statute. In addition, the following statutes establishing specific programs regulated by the Department are affected: Texas Agriculture Code, Chapters 301 and 302 (Weather Modification and Control); Texas Business and Commerce Code, Chapter 92 (Rental Purchase Agreements-Loss Damage Waivers); Texas Government Code, Chapters 57 (Licensed Court Interpreters) and 469 (Architectural Barriers); Texas Health and Safety Code, Chapters 76 (Discount Health Care Programs), 754 (Elevators and Escalators), and 755 (Boilers); Texas Labor Code, Chapters 91 (Staff Leasing Services) and 92 (Temporary Common Worker Employers); and Texas Occupations Code, Chapters 953 (For Profit Legal Service Contract Companies), 1152 (Property Tax Consultants), 1202 (Industrialized Housing and Buildings), 1302 (Air Conditioning and Refrigeration Contractors and Technicians), 1304 (Service Contract Providers and Administrators), 1305 (Electricians), 1601 (Barbers), 1602 (Cosmetology), 1802 (Auctioneers), 1901 (Water Well Drillers), 1902 (Water Well Pump Installers), 2052 (Combative Sports), 2105 (Talent Agencies), 2303 (Vehicle Storage Facilities), 2306 (Vehicle Protection Product Warrantors), 2308 (Tow Trucks and Operators), and 2501 (Personnel Employment Services). No other statutes, articles, or codes are affected by the adoption.

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

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William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-7348

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SUBCHAPTER B. PROCUREMENTS

16 TAC §55.20, §55.30

The new rules are adopted as a result of the rule review conducted in accordance with Texas Government Code §2001.039. The new rules are adopted under Texas Occupations Code, §51.201(b) and §51.203, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement Chapter 51 and any other law establishing a program regulated by the Department. In addition, the new rules are adopted under Texas Government Code, Chapter 2156, which requires state agencies making purchases to adopt the Texas Comptroller of Public Accounts' rules related to bid opening and tabulation; Texas Government Code, Chapter 2161, which requires a state agency to adopt the Texas Comptroller of Public Accounts' rules as the agency's own rules for construction projects and purchases of goods and services; and Texas Government Code, Chapter 2260, which requires each state agency to develop rules to address contract disputes with vendors and to resolve those disputes through negotiation and/or mediation. Finally, the new rules are adopted in accordance with Texas Government Code, Chapters 552 and 2009; and Texas Civil Practice and Remedies Code, Chapters 107 and 154.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51, the Commission's and Department's enabling statute. In addition, the following statutes establishing specific programs regulated by the Department are affected: Texas Agriculture Code, Chapters 301 and 302 (Weather Modification and Control); Texas Business and Commerce Code, Chapter 92 (Rental Purchase Agreements-Loss Damage Waivers); Texas Government Code, Chapters 57 (Licensed Court Interpreters) and 469 (Architectural Barriers); Texas Health and Safety Code, Chapters 76 (Discount Health Care Programs), 754 (Elevators and Escalators), and 755 (Boilers); Texas Labor Code, Chapters 91 (Staff Leasing Services) and 92 (Temporary Common Worker Employers); and Texas Occupations Code, Chapters 953 (For Profit Legal Service Contract Companies), 1152 (Property Tax Consultants), 1202 (Industrialized Housing and Buildings), 1302 (Air Conditioning and Refrigeration Contractors and Technicians), 1304 (Service Contract Providers and Administrators), 1305 (Electricians), 1601 (Barbers), 1602 (Cosmetology), 1802 (Auctioneers), 1901 (Water Well Drillers), 1902 (Water Well Pump Installers), 2052 (Combative Sports), 2105 (Talent Agencies), 2303 (Vehicle Storage Facilities), 2306 (Vehicle Protection Product Warrantors), 2308 (Tow Trucks and Operators), and 2501 (Personnel Employment Services). No other statutes, articles, or codes are affected by the adoption.

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

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SUBCHAPTER C. VENDOR PROTESTS

16 TAC §55.40

The new rules are adopted as a result of the rule review conducted in accordance with Texas Government Code §2001.039. The new rules are adopted under Texas Occupations Code, §51.201(b) and §51.203, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement Chapter 51 and any other law establishing a program regulated by the Department. In addition, the new rules are adopted under Texas Government Code, Chapter 2156, which requires state agencies making purchases to adopt the Texas Comptroller of Public Accounts' rules related to bid opening and tabulation; Texas Government Code, Chapter 2161, which requires a state agency to adopt the Texas Comptroller of Public Accounts' rules as the agency's own rules for construction projects and purchases of goods and services; and Texas Government Code, Chapter 2260, which requires each state agency to develop rules to address contract disputes with vendors and to resolve those disputes through negotiation and/or mediation. Finally, the new rules are adopted in accordance with Texas Government Code, Chapters 552 and 2009; and Texas Civil Practice and Remedies Code, Chapters 107 and 154.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51, the Commission's and Department's enabling statute. In addition, the following statutes establishing specific programs regulated by the Department are affected: Texas Agriculture Code, Chapters 301 and 302 (Weather Modification and Control); Texas Business and Commerce Code, Chapter 92 (Rental Purchase Agreements-Loss Damage Waivers); Texas Government Code, Chapters 57 (Licensed Court Interpreters) and 469 (Architectural Barriers); Texas Health and Safety Code, Chapters 76 (Discount Health Care Programs), 754 (Elevators and Escalators), and 755 (Boilers); Texas Labor Code, Chapters 91 (Staff Leasing Services) and 92 (Temporary Common Worker Employers); and Texas Occupations Code, Chapters 953 (For Profit Legal Service Contract Companies), 1152 (Property Tax Consultants), 1202 (Industrialized Housing and Buildings), 1302 (Air Conditioning and Refrigeration Contractors and Technicians), 1304 (Service Contract Providers and Administrators), 1305 (Electricians), 1601 (Barbers), 1602 (Cosmetology), 1802 (Auctioneers), 1901 (Water Well Drillers), 1902 (Water Well Pump Installers), 2052 (Combative Sports), 2105 (Talent Agencies), 2303 (Vehicle Storage Facilities), 2306 (Vehicle Protection Product Warrantors), 2308 (Tow Trucks and Operators), and 2501 (Personnel Employment Services). No other statutes, articles, or codes are affected by the adoption.

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

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SUBCHAPTER D. NEGOTIATION OF CERTAIN CONTRACT DISPUTES

16 TAC §§55.50 - 55.61

The new rules are adopted as a result of the rule review conducted in accordance with Texas Government Code §2001.039. The new rules are adopted under Texas Occupations Code, §51.201(b) and §51.203, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement Chapter 51 and any other law establishing a program regulated by the Department. In addition, the new rules are adopted under Texas Government Code, Chapter 2156, which requires state agencies making purchases to adopt the Texas Comptroller of Public Accounts' rules related to bid opening and tabulation; Texas Government Code, Chapter 2161, which requires a state agency to adopt the Texas Comptroller of Public Accounts' rules as the agency's own rules for construction projects and purchases of goods and services; and Texas Government Code, Chapter 2260, which requires each state agency to develop rules to address contract disputes with vendors and to resolve those disputes through negotiation and/or mediation. Finally, the new rules are adopted in accordance with Texas Government Code, Chapters 552 and 2009; and Texas Civil Practice and Remedies Code, Chapters 107 and 154.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51, the Commission's and Department's enabling statute. In addition, the following statutes establishing specific programs regulated by the Department are affected: Texas Agriculture Code, Chapters 301 and 302 (Weather Modification and Control); Texas Business and Commerce Code, Chapter 92 (Rental Purchase Agreements-Loss Damage Waivers); Texas Government Code, Chapters 57 (Licensed Court Interpreters) and 469 (Architectural Barriers); Texas Health and Safety Code, Chapters 76 (Discount Health Care Programs), 754 (Elevators and Escalators), and 755 (Boilers); Texas Labor Code, Chapters 91 (Staff Leasing Services) and 92 (Temporary Common Worker Employers); and Texas Occupations Code, Chapters 953 (For Profit Legal Service Contract Companies), 1152 (Property Tax Consultants), 1202 (Industrialized Housing and Buildings), 1302 (Air Conditioning and Refrigeration Contractors and Technicians), 1304 (Service Contract Providers and Administrators), 1305 (Electricians), 1601 (Barbers), 1602 (Cosmetology), 1802 (Auctioneers), 1901 (Water Well Drillers), 1902 (Water Well Pump Installers), 2052 (Combative Sports), 2105 (Talent Agencies), 2303 (Vehicle Storage Facilities), 2306 (Vehicle Protection Product Warrantors), 2308 (Tow Trucks and Operators), and 2501 (Personnel Employment Services). No other statutes, articles, or codes are affected by the adoption.

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

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SUBCHAPTER E. MEDIATION OF CERTAIN CONTRACT DISPUTES

16 TAC §§55.70 - 55.82

The new rules are adopted as a result of the rule review conducted in accordance with Texas Government Code §2001.039. The new rules are adopted under Texas Occupations Code, §51.201(b) and §51.203, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement Chapter 51 and any other law establishing a program regulated by the Department. In addition, the new rules are adopted under Texas Government Code, Chapter 2156, which requires state agencies making purchases to adopt the Texas Comptroller of Public Accounts' rules related to bid opening and tabulation; Texas Government Code, Chapter 2161, which requires a state agency to adopt the Texas Comptroller of Public Accounts' rules as the agency's own rules for construction projects and purchases of goods and services; and Texas Government Code, Chapter 2260, which requires each state agency to develop rules to address contract disputes with vendors and to resolve those disputes through negotiation and/or mediation. Finally, the new rules are adopted in accordance with Texas Government Code, Chapters 552 and 2009; and Texas Civil Practice and Remedies Code, Chapters 107 and 154.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51, the Commission's and Department's enabling statute. In addition, the following statutes establishing specific programs regulated by the Department are affected: Texas Agriculture Code, Chapters 301 and 302 (Weather Modification and Control); Texas Business and Commerce Code, Chapter 92 (Rental Purchase Agreements-Loss Damage Waivers); Texas Government Code, Chapters 57 (Licensed Court Interpreters) and 469 (Architectural Barriers); Texas Health and Safety Code, Chapters 76 (Discount Health Care Programs), 754 (Elevators and Escalators), and 755 (Boilers); Texas Labor Code, Chapters 91 (Staff Leasing Services) and 92 (Temporary Common Worker Employers); and Texas Occupations Code, Chapters 953 (For Profit Legal Service Contract Companies), 1152 (Property Tax Consultants), 1202 (Industrialized Housing and Buildings), 1302 (Air Conditioning and Refrigeration Contractors and Technicians), 1304 (Service Contract Providers and Administrators), 1305 (Electricians), 1601 (Barbers), 1602 (Cosmetology), 1802 (Auctioneers), 1901 (Water Well Drillers), 1902 (Water Well Pump Installers), 2052 (Combative Sports), 2105 (Talent Agencies), 2303 (Vehicle Storage

Facilities), 2306 (Vehicle Protection Product Warrantors), 2308 (Tow Trucks and Operators), and 2501 (Personnel Employment Services). No other statutes, articles, or codes are affected by the adoption.

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

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

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CHAPTER 58. RENTAL PURCHASE AGREEMENTS

16 TAC §§58.1, 58.10, 58.21, 58.70, 58.80, 58.90

The Texas Commission of Licensing and Regulation ("Commission") adopts the repeal of 16 Texas Administrative Code ("TAC") Chapter 58, §§58.1, 58.10, 58.21, 58.70, 58.80, and 58.90 regarding rental-purchase agreements to implement the restructuring of the agency's administrative rule chapters. The proposed repeal is adopted without changes to the proposal as published in the March 27, 2009, issue of the *Texas Register* (34 TexReg 2069) and will not be republished. The repeal takes effect July 1, 2009.

The former rules at 16 TAC Chapter 58 implemented the current statutory requirements under Texas Business and Commerce Code, Chapter 35, Subchapter F. As the result of a rule review conducted in accordance with Texas Government Code §2001.039 (see the October 19, 2007, issue of the *Texas Register* (32 TexReg 7511)) and House Bill 2278, passed by the 80th Legislature, which recodified the Texas Business and Commerce Code, Chapter 35, Subchapter F, to Texas Business and Commerce Code, Chapter 92, effective April 1, 2009, the Department proposed that the former rules be repealed and replaced with new 16 TAC Chapter 81. The repeal of Chapter 58 is adopted in conjunction with the adoption of new rules in Chapter 81, which are published in the Adopted Rules section of this issue of the *Texas Register.*

The proposed repeal was published in the *Texas Register* on March 27, 2009, for a 30-day public comment period. The Department received one comment letter in support of the repeal from the Texas Association of Rental Agencies, Inc. (TARA), a non-profit trade association of rent-to-own dealers.

The repeal is adopted as the result of a rule review conducted in accordance with Texas Government Code §2001.039. The repeal is adopted under Texas Occupations Code, §51.201(b) and §51.203, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement Chapter 51 and any other law establishing a program regulated by the Department and Texas Business and Commerce Code, Chapter 35, Subchapter F.

The statutory provisions affected by the adopted repeal are those set forth in Texas Occupations Code, Chapter 51, the Commission's and Department's enabling statute and pursuant to House Bill 2278, passed by the 80th Legislature, which recodified the Texas Business and Commerce Code, Chapter 35, Subchapter F, to Texas Business and Commerce Code, Chapter 92, effective April 1, 2009. No other statutes, articles, or codes are affected by the adoption.

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

Filed with the Office of the Secretary of State on June 11, 2009.

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William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: July 1, 2009
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For further information, please call: (512) 463-7348

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CHAPTER 60. TEXAS COMMISSION OF LICENSING AND REGULATION

The Texas Commission of Licensing and Regulation ("Commission") adopts the repeal of 16 Texas Administrative Code ("TAC") Chapter 60, §§60.1, 60.10, 60.60 - 60.66, 60.80 - 60.84, 60.100, 60.101, 60.150 - 60.160, 60.170 - 60.173, 60.200, 60.210, 60.220, 60.230, 60.240 and 60.241; and new rules §§60.1, 60.10, 60.20 - 60.24, 60.30, 60.31, 60.40, 60.50 - 60.54, 60.80 - 60.83, 60.100 - 60.102, 60.200, 60.300 - 60.311, and 60.400 - 60.409, regarding procedural rules for the Commission and the Texas Department of Licensing and Regulation ("Department"). The repeal and new rules are adopted without changes to the proposed text as published in the March 6, 2009, issue of the *Texas Register* (34 TexReg 1526) and will not be republished. The repeal and new rules take effect July 1, 2009.

The former rules at 16 TAC Chapter 60 implemented the statutory requirements under Texas Occupations Code, Chapter 51, the enabling statute for the Commission and the Department. As the result of a rule review conducted in accordance with Texas Government Code §2001.039 (see the October 10, 2008, issue of the *Texas Register* (33 TexReg 8562)), the Department proposed that the former rules be repealed and replaced with two new rule chapters, Chapters 55 and 60.

The Department has determined that these changes are necessary to ensure that the rules: (1) include and accurately reflect all of the requirements of Texas Occupations Code, Chapter 51 and other statutes affecting state agencies; (2) reflect the Commission's and the Department's current policies, procedures and practices; and (3) do not contain provisions that are more appropriately located elsewhere, such as an employee handbook. In addition, the Department has determined that the new rule structure and format will be more user-friendly since similar activities and responsibilities have been grouped together.

The repeal of the former rules at 16 TAC Chapter 60 and the adoption of the new rules in Chapter 60 are in conjunction with the adoption of the new Chapter 55, which is published in the Adopted Rules section of this issue of the *Texas Register.*

The former rules at 16 TAC Chapter 60 are repealed. New Chapter 60 has 10 subchapters and addresses the roles and respon-

sibilities of the Commission and the Department and various issues involving licensees, license applicants, and other interested parties. The new rules include many of the provisions found in the former Chapter 60 rules.

Subchapter A states the statutory authority for adopting rules and provides definitions used in the chapter. Subchapter B provides details regarding the powers and responsibilities of the Commission and the Department and provides information regarding public meetings and advisory boards. Subchapter C provides details regarding the statutory authority of the Department to issue and renew licenses.

Subchapter D documents the Commission's and Department's authority under Texas Occupations Code, Chapter 53 to deny an initial or renewal license application, to suspend or revoke a current license, or to deny a person the opportunity to take an examination if the person has a criminal conviction. Subchapter E provides information regarding examinations including rescheduling, security, and results. Subchapter F sets out the fees that are applicable for all programs.

Subchapter G addresses the rulemaking authority of the Commission and the Department. Subchapter H provides information regarding the Department's complaint handling processes. Subchapter I set out the processes and procedures for contested cases. Subchapter J reflects the agency's use of mediation to resolve disputes in contested cases.

The proposed repeal and new rules were published in the *Texas Register* on March 6, 2009, for a 30-day public comment period. The Department did not receive any public comments on the proposed repeal and new rules.

SUBCHAPTER A. AUTHORITY AND RESPONSIBILITIES

16 TAC §60.1, §60.10

The repeal is adopted as the result of a rule review conducted in accordance with Texas Government Code §2001.039. The repeal is adopted under Texas Occupations Code, §51.201(b) and §51.203, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement Chapter 51 and any other law establishing a program regulated by the Department.

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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William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-7348

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SUBCHAPTER B. ORGANIZATION

16 TAC §§60.60 - 60.66

The repeal is adopted as the result of a rule review conducted in accordance with Texas Government Code §2001.039. The repeal is adopted under Texas Occupations Code, §51.201(b) and §51.203, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement Chapter 51 and any other law establishing a program regulated by the Department.

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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William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-7348

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SUBCHAPTER C. FEES

16 TAC §§60.80 - 60.84

The repeal is adopted as the result of a rule review conducted in accordance with Texas Government Code §2001.039. The repeal is adopted under Texas Occupations Code, §51.201(b) and §51.203, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement Chapter 51 and any other law establishing a program regulated by the Department.

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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Executive Director
Texas Department of Licensing and Regulation
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SUBCHAPTER D. PRACTICE AND PROCEDURE

16 TAC §§60.100, 60.101, 60.150 - 60.160, 60.170 - 60.173

The repeal is adopted as the result of a rule review conducted in accordance with Texas Government Code §2001.039. The repeal is adopted under Texas Occupations Code, §51.201(b) and §51.203, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement Chapter 51 and any other law establishing a program regulated by the Department.

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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William H. Kuntz, Jr.
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For further information, please call: (512) 463-7348

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SUBCHAPTER E. ADMINISTRATION
DIVISION 1. VEHICLES

16 TAC §60.200

The repeal is adopted as the result of a rule review conducted in accordance with Texas Government Code §2001.039. The repeal is adopted under Texas Occupations Code, §51.201(b) and §51.203, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement Chapter 51 and any other law establishing a program regulated by the Department.

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

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Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-7348

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DIVISION 2. TRAINING

16 TAC §60.210

The repeal is adopted as the result of a rule review conducted in accordance with Texas Government Code §2001.039. The repeal is adopted under Texas Occupations Code, §51.201(b) and §51.203, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement Chapter 51 and any other law establishing a program regulated by the Department.

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

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Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-7348

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DIVISION 3. HISTORICALLY UNDERUTILIZED BUSINESSES

16 TAC §60.220

The repeal is adopted as the result of a rule review conducted in accordance with Texas Government Code §2001.039. The repeal is adopted under Texas Occupations Code, §51.201(b) and §51.203, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement Chapter 51 and any other law establishing a program regulated by the Department.

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

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Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-7348

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DIVISION 4. BID OPENING AND TABULATION

16 TAC §60.230

The repeal is adopted as the result of a rule review conducted in accordance with Texas Government Code §2001.039. The repeal is adopted under Texas Occupations Code, §51.201(b) and §51.203, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement Chapter 51 and any other law establishing a program regulated by the Department.

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

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Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-7348

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DIVISION 5. VENDOR PROTESTS

16 TAC §60.240, §60.241

The repeal is adopted as the result of a rule review conducted in accordance with Texas Government Code §2001.039. The repeal is adopted under Texas Occupations Code, §51.201(b) and §51.203, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement

Chapter 51 and any other law establishing a program regulated by the Department.

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) 463-7348

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CHAPTER 60. PROCEDURAL RULES OF THE COMMISSION AND THE DEPARTMENT

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §60.1, §60.10

The new rules are adopted as the result of a rule review conducted in accordance with Texas Government Code §2001.039. The new rules are adopted under Texas Occupations Code, §51.201(b) and §51.203, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement Chapter 51 and any other law establishing a program regulated by the Department. In addition, the new rules are adopted in accordance with Texas Occupations Code, Chapters 53 and 55; Texas Government Code, Chapters 551, 552, 2001, 2008, 2009, and 2110; and Texas Civil Practice and Remedies Code, Chapter 154.

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

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SUBCHAPTER B. POWERS AND RESPONSIBILITIES

16 TAC §§60.20 - 60.24

The new rules are adopted as the result of a rule review conducted in accordance with Texas Government Code §2001.039. The new rules are adopted under Texas Occupations Code, §51.201(b) and §51.203, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement Chapter 51 and any other law establishing a program regulated by the Department. In addition, the new rules are adopted in accordance with Texas Occupations Code, Chapters 53 and 55; Texas Government Code, Chapters 551, 552, 2001, 2008, 2009, and 2110; and Texas Civil Practice and Remedies Code, Chapter 154.

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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William H. Kuntz, Jr.
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Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-7348

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SUBCHAPTER C. LICENSE APPLICATIONS

16 TAC §60.30, §60.31

The new rules are adopted as the result of a rule review conducted in accordance with Texas Government Code §2001.039. The new rules are adopted under Texas Occupations Code, §51.201(b) and §51.203, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement Chapter 51 and any other law establishing a program regulated by the Department. In addition, the new rules are adopted in accordance with Texas Occupations Code, Chapters 53 and 55; Texas Government Code, Chapters 551, 552, 2001, 2008, 2009, and 2110; and Texas Civil Practice and Remedies Code, Chapter 154.

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

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SUBCHAPTER D. CRIMINAL CONVICTIONS

16 TAC §60.40

The new rules are adopted as the result of a rule review conducted in accordance with Texas Government Code §2001.039. The new rules are adopted under Texas Occupations Code, §51.201(b) and §51.203, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement Chapter 51 and any other law establishing a program regulated by the Department. In addition, the new rules are adopted in accordance with Texas Occupations Code, Chapters 53 and 55; Texas Government Code, Chapters 551, 552, 2001, 2008, 2009, and 2110; and Texas Civil Practice and Remedies Code, Chapter 154.

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

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SUBCHAPTER E. EXAMINATIONS

16 TAC §§60.50 - 60.54

The new rules are adopted as the result of a rule review conducted in accordance with Texas Government Code §2001.039. The new rules are adopted under Texas Occupations Code, §51.201(b) and §51.203, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement Chapter 51 and any other law establishing a program regulated by the Department. In addition, the new rules are adopted in accordance with Texas Occupations Code, Chapters 53 and 55; Texas Government Code, Chapters 551, 552, 2001, 2008, 2009, and 2110; and Texas Civil Practice and Remedies Code, Chapter 154.

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

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SUBCHAPTER F. FEES

16 TAC §§60.80 - 60.83

The new rules are adopted as the result of a rule review conducted in accordance with Texas Government Code §2001.039. The new rules are adopted under Texas Occupations Code, §51.201(b) and §51.203, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement Chapter 51 and any other law establishing a program regulated by the Department. In addition, the new rules are adopted in accordance with Texas Occupations Code, Chapters 53 and 55; Texas Government Code, Chapters 551, 552, 2001, 2008, 2009, and 2110; and Texas Civil Practice and Remedies Code, Chapter 154.

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) 463-7348

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SUBCHAPTER G. RULEMAKING

16 TAC §§60.100 - 60.102

The new rules are adopted as the result of a rule review conducted in accordance with Texas Government Code §2001.039. The new rules are adopted under Texas Occupations Code, §51.201(b) and §51.203, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement Chapter 51 and any other law establishing a program regulated by the Department. In addition, the new rules are adopted in accordance with Texas Occupations Code, Chapters 53 and 55; Texas Government Code, Chapters 551, 552, 2001, 2008, 2009, and 2110; and Texas Civil Practice and Remedies Code, Chapter 154.

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

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Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-7348

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SUBCHAPTER H. COMPLAINT HANDLING

16 TAC §60.200

The new rules are adopted as the result of a rule review conducted in accordance with Texas Government Code §2001.039. The new rules are adopted under Texas Occupations Code, §51.201(b) and §51.203, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement Chapter 51 and any other law establishing a program regulated by the Department. In addition, the new rules are adopted in accordance with Texas Occupations Code, Chapters 53 and 55; Texas Government Code, Chapters 551, 552, 2001, 2008, 2009, and 2110; and Texas Civil Practice and Remedies Code, Chapter 154.

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

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SUBCHAPTER I. CONTESTED CASES

16 TAC §§60.300 - 60.311

The new rules are adopted as the result of a rule review conducted in accordance with Texas Government Code §2001.039. The new rules are adopted under Texas Occupations Code, §51.201(b) and §51.203, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement Chapter 51 and any other law establishing a program regulated by the Department. In addition, the new rules are adopted in accordance with Texas Occupations Code, Chapters 53 and 55; Texas Government Code, Chapters 551, 552, 2001, 2008, 2009, and 2110; and Texas Civil Practice and Remedies Code, Chapter 154.

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

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Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-7348

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SUBCHAPTER J. MEDIATION FOR CONTESTED CASES

16 TAC §§60.400 - 60.409

The new rules are adopted as the result of a rule review conducted in accordance with Texas Government Code §2001.039. The new rules are adopted under Texas Occupations Code, §51.201(b) and §51.203, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement Chapter 51 and any other law establishing a program regulated by the Department. In addition, the new rules are adopted in accordance with Texas Occupations Code, Chapters 53 and 55; Texas Government Code, Chapters 551, 552, 2001, 2008, 2009, and 2110; and Texas Civil Practice and Remedies Code, Chapter 154.

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

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Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-7348

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CHAPTER 81. RENTAL PURCHASE AGREEMENTS

16 TAC §§81.1, 81.10, 81.21, 81.70, 81.80, 81.90

The Texas Commission of Licensing and Regulation ("Commission") adopts new rules at 16 Texas Administrative Code, ("TAC") Chapter 81, §§81.1, 81.10, 81.21, 81.70, 81.80, and 81.90 regarding rental-purchase agreements, without changes to the proposed text as published in the March 27, 2009, issue of the *Texas Register* (34 TexReg 2070) and will not be republished. The adoption takes effect July 1, 2009.

The former rules at 16 TAC Chapter 58 implemented the current statutory requirements under Texas Business and Commerce Code, Chapter 35, Subchapter F. As the result of a rule review conducted in accordance with Texas Government Code §2001.039 (see the October 19, 2007, issue of the *Texas Register* (32 TexReg 7511)) and House Bill 2278, passed by the 80th Legislature, which recodified the Texas Business and Commerce Code, Chapter 35, Subchapter F, to Texas Business and Commerce Code, Chapter 92, effective April 1, 2009, the Department proposed that the former rules be repealed and replaced with new 16 TAC Chapter 81. New Chapter 81 is adopted in conjunction with the repeal of former rules at 16 TAC Chapter 58, which are published in the Adopted Rules section of this issue of the *Texas Register.*

The Department determined that the new rules are necessary to update statutory citations, clarify statutory and administrative rule requirements, and reflect current Department procedures. There are no substantive changes to the rules.

The proposed new rules were published in the *Texas Register* on March 27, 2009, for a 30-day public comment period. The Department received one comment letter in support of the new rules from the Texas Association of Rental Agencies, Inc. (TARA), a non-profit trade association of rent-to-own dealers.

The new rules are adopted as the result of a rule review conducted in accordance with Texas Government Code §2001.039. The new rules are adopted under Texas Occupations Code, §51.201(b) and §51.203, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement Chapter 51 and any other law establishing a program regulated by the Department. In addition, the new rules are adopted in accordance with Texas Business and Commerce Code, Chapter 35, Subchapter F.

The statutory provisions affected by the new rules are those set forth in Texas Occupations Code, Chapter 51, the Commission's and Department's enabling statute and pursuant to House Bill 2278, passed by the 80th Legislature, which recodified the Texas Business and Commerce Code, Chapter 35, Subchapter F, to Texas Business and Commerce Code, Chapter 92, effective April 1, 2009. No other statutes, articles, or codes are affected by the adoption.

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

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TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 75. RULES OF PRACTICE

22 TAC §75.17

The Texas Board of Chiropractic Examiners adopted the following rule amendment without changes at its regularly scheduled board meeting held on May 14, 2009. The proposed amendment was published in the January 2, 2009, issue of the *Texas Register* (34 TexReg 21).

The Texas Board of Chiropractic Examiners (Board) adopts without changes an amendment to §75.17 of this title, relating to scope of practice, to establish that manipulation under anesthesia (MUA) is within the scope of practice of chiropractic in Texas. When the Board first adopted this section, the Board specifically reserved its decision on MUA in order to resolve questions regarding its status under the Chiropractic Act, Texas Occupations Code Ch. 201. See the June 2, 2006, issue of the *Texas Register* (31 TexReg 4613).

MUA is a noninvasive procedure that involves the manipulation of the musculoskeletal system while a patient is under a general anesthesia. MUA is usually performed in either a hospital or a surgical center and is conducted as a cooperative procedure in which a licensee works with an anesthesiologist and additional medical staff. MUA has been part of the practice of chiropractic in Texas for more than 25 years, and the Board has not received any complaints regarding the practice of MUA.

The Chiropractic Act provides that a person practices chiropractic if they "perform nonsurgical, nonincisive procedures, including adjustment and manipulation, to improve the subluxation complex or the biomechanics of the musculoskeletal system." Tex. Occ. Code §201.002(b)(2). The Act also provides that the Board may not require additional training or certify chiropractors to perform MUA. §201.154; *see* §201.1525(3).

The status of whether MUA remains within the scope of practice of chiropractic in Texas, however, has been in dispute. Under the Chiropractic Act, "surgical procedure" is defined as including "a procedure described in the surgery section of the common procedure coding system as adopted by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services." §201.002(a)(4). As discussed in the preamble for the original adoption of this section, the Centers for Medicare and Medicaid Services (CMS) have not adopted a coding system of their own but instead have incorporated by reference the American Medical Association's (AMA's) Current Procedural Terminology (CPT) Codebook. See the June 2, 2006, issue of the *Texas Register* (31 TexReg 4613). The Board has clarified this by setting forth a definition for "CPT Codebook" that references use of the CPT Codebook by CMS. MUA is listed in the surgery section of the 2004 CPT Codebook in reference to manipulation of the spine (code 22505), shoulder joint (23700), hip joint (27275), knee joint (27570), and ankle (27860). AMA, CPT Terminology 78, 85, 100, 103, and 106 (2004).

Thus, there is an apparent conflict between the Chiropractic Act's authorization for licensees to perform manipulations and the limitation of the Board's ability to certify MUA practitioners with the AMA's identification of MUA as a surgical procedure. However, the Legislature has also provided that an entire statute is intended to be effective. Code Construction Act, Texas Government Code §311.021(2). Where there is a conflict between a general provision and a special or local provision, "the provisions shall be construed, if possible, so that effect is given to both," but "[i]f the conflict between the general provision and the special or local provision is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later enactment and the manifest intent is that the general provision prevail." Tex. Gov't Code §311.026. The limitation on the certification of MUA practitioners under §201.154 of the Chiropractic Act is a special provision. The definition of "surgical procedure" under §201.002(a)(3) is a general provision. In order to give effect to the entire Chiropractic Act, the special provision for MUA in §201.154 must be read as an exception to the Act's definition of "surgical procedure." Consequently, MUA is not a surgical procedure prohibited under the Act, and MUA is within the scope of practice of chiropractic in Texas.

The Board received two comments in opposition to the rule from the Texas Medical Association and Texas Mutual Insurance Company. The Board received a comment in support of the rule from Parker College of Chiropractic.

One commenter said that the Board's reasoning was "contorted and forced" and that "a clear reading of the statute prohibits a chiropractor from performing surgical procedures, especially those listed in the CPT code." The other commenter similarly noted that the proposed rule is contrary to the clear legislative intent and that the "Board's phrasing of the issues creates a nonexistent conflict." The Board disagrees. The Board is required to construe the Chiropractic Act in a manner that gives effect to all of its terms. The specific mention of MUA in §201.154 is in conflict with the implied exclusion of MUA as a surgical procedure and creates an ambiguity in the Act. The Board has resolved this ambiguity by finding that MUA remains within the scope of practice of chiropractic in Texas. The Board has found no legislative intent on whether MUA is within the scope of practice. In fact, the Legislature declined to consider a bill during the 80th legislative session in 2007 that would have specified that MUA was part of the practice of medicine and thus not part of the practice of chiropractic. No change was made in response to these comments.

One commenter disagreed with the Board's interpretation of §201.154 and argued that §201.154 does not expressly state that chiropractors may perform MUAs and that the Legislature would not have restricted the Board from establishing standards for the practice of MUA, noting that the Board is authorized to provide standards of care under §201.1525(3). Certainly, §201.154 does not expressly provide that chiropractors may

perform MUAs. If it did, we would not be having this argument. The Board stands by its interpretation that §201.154 is a limitation of its general authority under §201.1525(3) to "require a license holder to obtain additional training or certification to perform certain procedures or use certain equipment." No change was made in response to this comment.

One commenter argued that the legislative intent of §201.154 was to prevent chiropractors from performing MUAs. The Board's research into the legislative history of this provision has not revealed any such intent. No change was made in response to this comment.

One commenter argued that because the definition of surgical procedure in §201.002(a)(4) is a more recent enactment than §201.154 that the ambiguity should be resolved in favor of determining that MUA is not part of the scope of practice of chiropractic in Texas. Section 311.026(a) of the Code Construction Act provides that "[i]f a general provision conflicts with a special or local provision, the provisions shall be construed, if possible, so that effect is given to both." That is what the Board has done. The rule cited by the commenter is in §311.026(b) which provides that "[i]f the conflict between the general provision and the special or local provision is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later enactment and the manifest intent is that the general provision prevail." The Board does not see that the general provision defining surgical procedures in §201.002(a)(4) is irreconcilable with the specific provision for MUA in §201.154. The Board has merely resolved the ambiguity between the provisions by interpreting that the specific provision controls over the general incorporation by reference. No change was made in response to this comment.

The amendment is adopted under the Texas Occupations Code, §201.152, relating to rules, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic; and §201.1525, relating to rules clarifying scope of practice of chiropractic.

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

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 June 10, 2009.

TRD-200902326
Glenn Parker
Executive Director
Texas Board of Chiropractic Examiners
Effective date: June 30, 2009
Proposal publication date: January 2, 2009
For further information, please call: (512) 305-6901

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22 TAC §75.21

The Texas Board of Chiropractic Examiners (Board) adopts new §75.21, relating to acupuncture, to set forth the minimal acceptable qualifications and procedures for the practice of acupuncture by licensed doctors of chiropractic. Section 75.21 is adopted with changes to the proposed text published in the January 2, 2009, issue of the *Texas Register* (34 TexReg 22). In drafting this rule, the Board consulted the rules of the chiropractic licensing boards of Colorado, Florida, Missouri, New Jersey, Ohio, Tennessee, and Virginia, in addition to other sources.

Acupuncture has been part of the practice of chiropractic in Texas since before this Board was founded in 1949. The practice of acupuncture by chiropractors has been expressly authorized since the Legislature amended the Acupuncture Act in 1997 to allow chiropractors and other health care practitioners to practice acupuncture when they are acting within the scope of their licenses (See Texas Occupations Code §205.003). Post-graduate training in acupuncture is offered by the chiropractic colleges, and the National Board of Chiropractic Examiners (NBCE) offers a national standardized certification examination in acupuncture in addition to the 4,500 didactic and clinical hours required for licensure (See *http://www.nbce.org/written/desc-acu.html.)* However, these training requirements are needed in order to bring the licensing standards in Texas into line with the licensing standards of other states.

The Board has previously determined that acupuncture is within the scope of practice of chiropractic in Texas (See 22 TAC §75.17, relating to scope of practice). The practice of acupuncture by a chiropractor is both authorized and limited by the Chiropractic Act (See Texas Occupations Code §201.002(b)). The Board's existing rule regarding proper diligence and efficient practice of chiropractic, §75.2 of this title, requires that a chiropractor not perform or attempt to perform procedures in which the chiropractor is untrained by education or experience.

WORKING GROUP

In light of the numerous comments received regarding the number of hours of training that would be sufficient for a licensed doctor of chiropractic to practice acupuncture, the Board has determined that further rulemaking is needed on this issue. To that end, the Board has formed an interdisciplinary working group to study this issue and has invited the Texas Association of Acupuncture and Oriental Medicine and other interested groups to participate in this study. Other persons interested in participating in this working group are encouraged to contact the Board's Executive Director, Mr. Glenn Parker, at (512) 305-6706 or glenn.parker@tbce.state.tx.us or via facsimile at (512) 305-6705. However, due the importance of establishing some standards for the education and training required for the practice of acupuncture by a licensed doctor of chiropractic and in order to provide prospective applicants for licensure with notice of the required standards, the Board has decided to adopt the rule as proposed with changes in response to comments. As a result of the working group's study, the Board anticipates amending this rule in a later rulemaking to increase the number of hours of training required to practice acupuncture.

OVERVIEW

Subsection (a) of this proposed rule would provide a definition for acupuncture and the related practices of acupressure and meridian therapy. Subsection (b) would establish that a licensee must have the equivalent of one-hundred (100) hours of training in acupuncture by one of three means. Subsection (c) would provide for the grandfathering of existing licensees, that are in good standing with the Board and other jurisdictions where they are licensed, by allowing licensees to receive a credit of ten hours of training in acupuncture for each year of practice. Thus, a licensee that has been practicing for at least ten years would be able to meet the requirement for 100 hours of training. Subsection (d) would require that, beginning on January 1, 2010,

applicants for licensure must successfully complete either the national standardized certification examination in acupuncture offered by the National Board of Chiropractic Examiners or the examination offered by the National Certification Commission for Acupuncture and Oriental Medicine.

RESPONSE TO COMMENTS

The Board received fourteen comments in opposition to the proposed rule from the Academy of Oriental Medicine at Austin, Accreditation Commission for Acupuncture and Oriental Medicine, American College of Acupuncture and Oriental Medicine, National Certification Commission for Acupuncture and Oriental Medicine, Patients First Coalition, Texas Association of Acupuncture and Oriental Medicine, Texas Association of Acupuncturists, Texas College of Traditional Chinese Medicine, Texas Medical Association, Texas Neurological Society, Texas Pain Society, Texas Pediatric Society, Texas Society of Pathologists, Texas State Board of Acupuncture Examiners, and Texas Urological Society. The Board received three comments in support of the rule from Parker College of Chiropractic, the Texas Chiropractic Association, and from a licensed doctor of chiropractic.

In response to a request from the public, the Board's Rules Committee held a public hearing on the proposed rule in Austin on April 28, 2009. At the hearing, the committee heard from the Academy of Oriental Medicine at Austin, Texas Association of Acupuncture and Oriental Medicine, Texas Association of Acupuncturists, Texas Chiropractic Association, and Texas College of Traditional Chinese Medicine and received additional written comments. All of the comments received are addressed below.

Six comments said that the proposed rule would improperly expand the practice of chiropractic to include needle electromyography (EMG). One comment said that the proposed language would allow chiropractors to perform procedures they are not legally allowed to perform. These comments are not germane to this rulemaking. This rule merely sets forth educational standards for the practice of acupuncture by doctors of chiropractic and does not address the practice of chiropractic. The Board has previously determined that acupuncture and needle EMG are part of the practice of chiropractic in Texas (See scope of practice rule at 22 TAC §75.17). The Board's comments regarding acupuncture and needle EMG on adoption of the scope of practice rule are incorporated herein by reference as published in the June 2, 2006, issue of the *Texas Register* (31 TexReg 4613). No change was made in response to these comments.

One comment stated that the Acupuncture Act, Texas Occupations Code §205.001(2), limits the scope of acupuncture to a treatment modality and not a diagnostic procedure. Additional comments said that the use of acupuncture should be performed according to the definition set out in the Acupuncture Act. These comments are not germane to this rulemaking. Section 205.003 of the Acupuncture Act provides that the Acupuncture Act "does not apply to a health care professional licensed under another statute of this state and acting within the scope of the license." The Board discussed the practice of acupuncture by licensed doctors of chiropractic as part of the scope of practice rulemaking, and those comments are incorporated herein by reference (31 TexReg 4613). In addition, the definition of acupuncture used in this rule applies only to the education and training requirements in this rule. Furthermore, chiropractors are authorized to "use objective and subjective means to analyze, examine, or evaluate the biomechanical condition of the spine and musculoskeletal system of the human body" (Tex. Occ. Code §201.002(b)(1)). No change was made in response to these comments.

Two comments stated that the definition of acupuncture in the Acupuncture Act is binding upon the Board and that, if the definition of acupuncture requires interpretation, the Board should defer to the Texas State Board of Acupuncture Examiners to make that interpretation. The Board respectfully disagrees. Section 205.003 of the Acupuncture Act provides that the Acupuncture Act "does not apply to a health care professional licensed under another statute of this state and acting within the scope of the license." The Board has authority to adopt rules regarding the practice of chiropractic, including the practice of acupuncture by doctors of chiropractic (Tex. Occ. Code §201.152 and §201.1525). Furthermore, the discussion of acupuncture in this rule applies only to the training in acupuncture that is expected by a doctor of chiropractic that includes acupuncture as part of their practice. The Board discussed the practice of acupuncture by licensed doctors of chiropractic as part of the scope of practice rulemaking, and those comments are incorporated herein by reference (31 TexReg 4613). No change was made in response to this comment.

One comment stated that the proposed definition of acupuncture in subsection (a) exceeded the Board's rulemaking authority. The Board disagrees. Section 205.003 of the Acupuncture Act provides that the Acupuncture Act "does not apply to a health care professional licensed under another statute of this state and acting within the scope of the license." The Board has authority to adopt rules regarding the practice of chiropractic, including the practice of acupuncture by doctors of chiropractic (Tex. Occ. Code §201.152 and §201.1525). Furthermore, the discussion of acupuncture in this rule applies only to the training in acupuncture that is expected by a doctor of chiropractic that includes acupuncture as part of their practice. No change was made in response to this comment.

One comment stated that the proposed rule would disrupt existing referral patterns between chiropractors and acupuncturists and that acupuncturists would be less likely to refer patients to chiropractors. The Board disagrees. The Board anticipates that chiropractors will continue to work cooperatively with acupuncturists and other health care providers in promoting the best practices for patient care. No change was made in response to this comment.

Eight comments stated that the requirement of only 100 hours in undergraduate or post-graduate classes in the use and administration of acupuncture, examination in acupuncture by the National Board of Chiropractic Examiners, or 100 hours of training in the use and administration of acupuncture is inadequate and that, in order to demonstrate minimal competence, the number of hours should be increased to approximate the number of hours required to graduate from an accredited acupuncture school. As noted above, the Board agrees in part and notes that the specific training in acupuncture under this rule is in addition to the normal requirements of a chiropractic education. For comparison, one Texas acupuncture school, the Academy of Oriental Medicine at Austin, requires as part of a three-year program 528 hours in acupuncture and techniques, 636 hours in Chinese herbal studies, 492 hours in integral studies, 546 hours in biomedical sciences, and 1,008 hours in clinical training. Whereas, one Texas chiropractic school, Parker College of Chiropractic, requires as part of its nine trimester program 1,290 hours in the basic sciences, 915 hours in the chiropractic sci-

ences, 1,320 hours in clinical sciences, and 1,005 hours in a chiropractic wellness clinic. As discussed above, the Board is contemplating further rulemaking to possibly increase the number of required hours and is forming an interdisciplinary working group to study this issue. No change was made in response to this comment at this time.

Four comments stated that the amount of training required under the rule presented a risk to public safety. The Board agrees with their concerns regarding the risk of adverse events with acupuncture. However, the proposed rule will provide at least an initial standard for training. Whereas, the only standard that currently applies is under §75.2(a)(1)(B) which provides only that a licensee may not perform or attempt to perform procedures in which they are untrained by education or experience. As noted above, the Board has formed a working group to study this issue further. No change was made in response to this comment at this time.

Two comments stated that there are no accreditation programs that provide only 100 hours of acupuncture training. The Board disagrees. The NBCE exam and some states require 100 hours. As noted above, the Board has formed a working group to study this issue further. No change was made in response to this comment at this time.

One comment stated that it would be inadequate to allow a person to practice acupuncture based solely on successfully completing the NBCE acupuncture exam. The Board agrees. However, acupuncture may only be practiced by a licensed chiropractor who had fulfilled both the requirements of this rule and the other requirements for licensure, including successfully completing a chiropractic education and the other mandatory NBCE exams. No change was made in response to this comment.

Two comments stated that inadequate training would also contribute to poor clinical outcomes. One comment stated that poor clinical outcomes would discourage patients from seeking the care of acupuncturists and chiropractors. The Board agrees with these concerns but notes that the training required in order to practice acupuncture under this rule would be in addition to the general education and training requirements for a license to practice chiropractic. Chiropractors also have an existing and ongoing obligation to assess and evaluate a patient's status under §75.2(a)(1)(A) of this title, relating to proper diligence and efficient practice of chiropractic. As noted above, the Board has formed a working group to study this issue further. No change was made in response to this comment at this time.

Two comments stated that the chiropractic schools do not offer sufficient training in acupuncture in either academic or clinical training. The Board agrees. This is why this rule sets forth training requirements for the practice of acupuncture that are in addition to the training provided as part of a chiropractic degree program. No change was made in response to this comment.

One comment stated that the proposed rule is contrary to the trend in healthcare of raising standards for licensure. The Board disagrees. Currently, the Board has no express requirements setting forth minimum standards for the practice of acupuncture by chiropractors. This rule will establish minimum standards, and through the work of the working group discussed above, the Board will look at increasing these standards. Thus, this rule is consistent with the trend of raising standards for licensure and practice. No change was made in response to this comment.

One comment suggested that anyone who practices acupuncture should be required to pass the examination offered by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM). The Board agrees in part. As set forth in this rule, the NBCE acupuncture exam in combination with the other required exams, Parts I - IV, is sufficient to demonstrate competency and to protect the public health, safety, and welfare (See www.nbce.org). The Board acknowledges, however, the value of recognizing the NCCAOM exam and in allowing applicants the choice of which exam to take. Subsections (b)(2) and (d) have been revised to allow for applicants to take the NCCAOM exam.

One comment recommended that the Board also require successful completion of the Council of Colleges of Acupuncture and Oriental Medicine's Clean Needle Technique course and practical examination. The Board disagrees. Applicants for licensure are required to participate in substantial clinical training for their chiropractic degree and required to successfully complete the NBCE's Part IV clinical exam, both of which cover subjects similar to those covered by the suggested clean needle technique course and exam. No change was made in response to this comment.

Two comments disagreed with the provision for grandfathering existing licensees under subsection (c) that have been practicing acupuncture without any training. The Board disputes the basis of this comment. While the Board has not had an express training requirement for a specific number of hours, licensees have been required to have training under §75.2(a)(1)(B). However, the Board agrees that this provision could be revised to clarify that doctors of chiropractic are expected to be trained in acupuncture. In addition, the Board finds that the amount of hours credited for each year of practice should be reduced to ten hours per year to ensure that existing practitioners have the requisite experience consistent with the standards adopted in this rule to continue practicing.

One comment suggested that subsection (d) of the proposed rule be revised for clarity to replace the last occurrence of "licensure" in the first sentence with "acupuncture." The Board agrees with this comment and has made the suggested change.

One comment suggested that subsection (d) be revised to add language to clarify that the provisions of subsection (b) will apply only to new applicants. The Board disagrees. The rule is structured so that the general requirements for licensees are in subsection (b), the grandfathering provision for existing licensees is in subsection (c), and the requirement that after January 1, 2010, new licensees must complete the NBCE acupuncture exam is in subsection (d). No change was made in response to this comment.

One comment requested that if the Board is to proceed with this rulemaking that an advisory committee be formed as provided for under the Administrative Procedure Act, §2001.031. The Board agrees in part. As noted above, the Board has formed a working group to further study the appropriate number of hours that should be required and that working group meets the general requirements of §2001.031. However, as also noted above, the Board sees that it is important to adopt a rule now in order to establish initial standards for training in acupuncture and to provide prospective applicants with notice of the requirements for licensure. No change was made in response to this comment.

AUTHORITY

The new rule is adopted under Texas Occupations Code §201.152, relating to rules, and §201.1525, relating to rules clarifying scope of chiropractic. Section 201.152 authorizes

the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.1525 authorizes the Board to adopt rules requiring a license holder to obtain additional training or certification to perform certain procedures or use certain equipment.

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

§75.21. Acupuncture.

(a) Acupuncture, and the related practices of acupressure and meridian therapy, includes methods for diagnosing and treating a patient by stimulating specific points on or within the musculoskeletal system by various means, including, but not limited to, manipulation, heat, cold, pressure, vibration, ultrasound, light electrocurrent, and short-needle insertion for the purpose of obtaining a biopositive reflex response by nerve stimulation.

(b) In order to practice acupuncture, a licensee shall either:

(1) successfully complete at least one-hundred (100) hours training in undergraduate or post-graduate classes in the use and administration of acupuncture provided by a bona fide reputable chiropractic school or by an acupuncture school approved by the Texas State Board of Acupuncture Examiners;

(2) successfully complete either:

(A) the national standardized certification examination in acupuncture offered by the National Board of Chiropractic Examiners; or

(B) the examination offered by the National Certification Commission for Acupuncture and Oriental Medicine; or

(3) successfully complete at least one-hundred (100) hours training in the use and administration of acupuncture in a course of study approved by the board.

(c) Existing licensees that have been trained in acupuncture, that have been practicing acupuncture, and that are in good standing with the Texas Board of Chiropractic Examiners and other jurisdictions where they are licensed, may meet the requirements of subsection (b) of this section by counting each year of practice as ten hours of training in the use and administration of acupuncture.

(d) Beginning on January 1, 2010, an applicant for licensure must successfully complete either the national standardized certification examination in acupuncture offered by the National Board of Chiropractic Examiners or the examination offered by the National Certification Commission for Acupuncture and Oriental Medicine in order to practice acupuncture. This requirement will supersede the provisions of subsection (b) of this section.

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

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

TRD-200902378
Glenn Parker
Executive Director
Texas Board of Chiropractic Examiners
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Proposal publication date: January 2, 2009
For further information, please call: (512) 305-6901

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 453. OFFENDER EDUCATION PROGRAMS

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 §453.101 - 453.122, and new §§453.101 - 453.124, concerning Offender Education Programs established for alcohol and drug-related offenses, without changes to the proposed text as published in the March 27, 2009, issue of the *Texas Register* (34 TexReg 2078) and, therefore, the sections will not be republished. The repeal and new rules will be effective on September 1, 2009.

BACKGROUND AND PURPOSE

Through the enactment of House Bill 2292, 78th Legislature, 2003, the Texas Commission on Alcohol and Drug Abuse was abolished and its powers, duties, functions, programs, and activities were transferred to the department. The rules were transferred from 40 Texas Administrative Code (TAC), Part 3, Chapter 153, to 25 TAC, Part 1, Chapter 453, on September 1, 2004.

The new rules for Offender Education Programs set forth curricula, training, certification, operational, and enforcement standards for the four types of department-approved Offender Education Programs, which are the DWI Education Program, DWI Intervention Program, Drug Offender Education Program, and Alcohol Education Program for Minors. The DWI Education and Intervention Programs are designed, respectively, for first-time and repeat offenders convicted of one of a number of offenses related to driving or operating a motorized vehicle while intoxicated.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 453.101 - 453.122 have been reviewed and the department has determined that, except as amended and renumbered under the new rules, reasons for adopting the sections continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

The repeal of §§453.101 - 453.122 and new §§453.101 - 453.124 are necessary to allow for reorganization and enhancement of the rules governing Offender Education Programs to, in addition to making changes and additions specifically outlined, ensure appropriate section, subsection, and paragraph organization and captioning; improve clarity and draftsmanship; contribute to agency-wide consistency between programs, as appropriate; ensure that the rules reflect current legal, policy, and operational considerations; and update legal citations and agency references. Provisions specifically addressing criminal history standards, setting forth more specific enforcement procedures, and creating a certification period and continuing education requirement for Alcohol Education Program for Minors and DWI Intervention instructors, consistent with the other Offender Education Programs, were also added to the chapter.

New §453.101 contains definitions for the chapter, including added definitions for class, course, course records, course roster, department, in-service, instructor applicant, instructor

certification period, and program certification period, and additions and modifications to other terms needed to update or clarify the meaning of terms used within the chapter.

New §453.102 sets forth the certification requirement for Offender Education Programs and Instructors and the scope of the chapter's rules.

New §453.103 specifies certification-related fees, and separately identifies a $5 fee for branch sites, including headquarter relocation fees, which are charged under existing rules as certificate duplication fees. This additional itemization of fees does not alter the fees charged or collected under existing rules.

New §453.104 specifies the qualifications and prerequisites for applicants to become certified instructors for Offender Education Programs, including standards of conduct and criminal history standards relevant to the department's certification decision. Administrators and instructors will be required to report any known felony or misdemeanor convictions to the department within ten days of learning of the conviction.

New §453.105 outlines the requirements for renewal of an Instructor certification. It establishes a certification period and continuing education requirement for Instructors of the Alcohol Education Program for Minors and DWI Intervention instructors, which will provide for greater consistency among the Offender Education Programs and contribute to the ongoing quality of instruction in all programs. Greater detail is also provided concerning options for fulfilling continuing education.

New §453.106 specifies the requirements for applicants seeking certification as approved Offender Education Programs and outlines procedures for establishing branch sites and program headquarters.

New §453.107 specifies the requirements for program renewals and the requirement to re-apply for certification after a program certification expires without timely renewal.

New §453.108 specifies the curricula requirements for approved Offender Education Programs and corrects the address where the public may view the curricula.

New §453.109 contains provisions relating to uniform certificates of course completion for the Offender Education Programs, and adds clarifying language concerning requirements for providing notification of course completion to the Department of Public Safety (DPS) and the appropriate community supervision and corrections department. It also adds a requirement that unused certificates of course completion be returned to the department after a Program's certification is expired or otherwise terminated.

New §453.110 sets forth the requirements for classroom facilities and equipment to be utilized in the Offender Education Programs.

New §453.111 sets forth the requirements relating to the administration of Offender Education Programs, provides for inactivation of a Program certificate when a program lacks a currently certified program administrator, and clarifies requirements concerning referrals of prospective participants to an Offender Education Program.

New §453.112 sets forth the recordkeeping and reporting requirements for each type of Offender Education Program, and provides for inactivation of a Program certificate when a program fails to provide a timely annual report.

New §453.113 sets forth the general program operation requirements of the Offender Education Programs.

New §453.114 sets forth minimum teaching requirements for Drug Offender Education Programs, with specific requirements for each course taught.

New §453.115 sets forth minimum teaching requirements for each Alcohol Education Program for Minors, with specific requirements for each course taught.

New §453.116 sets forth minimum teaching requirements for DWI Education Programs, with specific requirements for each course taught, and adds clarifying language concerning requirements for providing notification of course completion to the DPS and the appropriate community supervision and corrections department.

New §453.117 sets forth minimum teaching requirements for DWI Intervention Programs, with specific requirements for each course taught, and adds clarifying language concerning the maximum number of DWI intervention make-up classes permitted and concerning requirements for providing notification of course completion to the DPS and the appropriate community supervision and corrections department.

New §453.118 requires Offender Education Programs to abide by applicable Federal and State laws regarding confidentiality of patient/client records.

New §453.119 prohibits Offender Education Programs from discriminating on the basis of gender, race, religion, age, national or ethnic origin, or disability of the participant.

New §453.120 requires Offender Education Programs to establish procedures to resolve participant complaints, to display the department's contact information, and to respond promptly to any request for information about the program's complaint procedures.

New §453.121 sets forth guidelines and minimum standards for Offender Education Programs to apply for exceptions to rule provisions because of alleged difficulty or hardship due to extenuating circumstances. The section adds to the existing rule for exceptions that no exceptions will be granted for Instructor teaching, in-service, or continuing education requirements.

New §453.122 sets forth more specific standards and procedures for the department to take action against an Offender Education Program or an Instructor for an Offender Education Program, and redefines actions available to the department, for conduct or behaviors described in this rule. The section also provides for an opportunity in certain cases for an applicant or holder of a certification to avoid adverse action through corrective action.

New §453.123 sets forth new rule provisions relating to criminal history standards and procedures, consistent with Occupations Code, Chapter 53, for Offender Education Program and Instructor applicants and certification holders. Instructor and Offender Education Program applicants and certifications are subject to denial, suspension or revocation based upon a conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of an Offender Education Program or Instructor.

New §453.124 establishes more detailed procedures by which the department may take action against an Offender Education Program or Instructor applicant or certification holder.

COMMENTS

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.

25 TAC §§453.101 - 453.122

STATUTORY AUTHORITY

The repeals are authorized by the Transportation Code, §§521.374 - 521.376; Code of Criminal Procedure, Chapter 42, Article 42.12, §13(h) and (j); and Alcoholic Beverage Code, §106.115, and Health and Safety Code, §461.012(a)(18), which authorize fees and rulemaking in relation to Drug Offender Education, DWI Education, DWI Intervention, and Alcohol Awareness Programs and providers; Occupations Code, Chapter 53, which authorizes the establishment of guidelines governing practices under that chapter's criminal history provisions; 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 Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

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

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

TRD-200902434
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: September 1, 2009
Proposal publication date: March 27, 2009
For further information, please call: (512) 458-7111 x6972

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CHAPTER 453. OFFENDER EDUCATION PROGRAMS (FOR ALCOHOL AND DRUG-RELATED OFFENSES)

25 TAC §§453.101 - 453.124

STATUTORY AUTHORITY

The new rules are authorized by the Transportation Code, §§521.374 - 521.376; Code of Criminal Procedure, Chapter 42, Article 42.12, §13(h) and (j); and Alcoholic Beverage Code, §106.115, and Health and Safety Code, §461.012(a)(18), which authorize fees and rulemaking in relation to Drug Offender Education, DWI Education, DWI Intervention, and Alcohol Awareness Programs and providers; Occupations Code, Chapter 53, which authorizes the establishment of guidelines governing practices under that chapter's criminal history provisions; 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 Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

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

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

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Lisa Hernandez
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Department of State Health Services
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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER C. PERMITS FOR TRAPPING, TRANSPORTING, AND TRANSPLANTING GAME ANIMALS AND GAME BIRDS

31 TAC §65.103

The Texas Parks and Wildlife Commission adopts an amendment to §65.103, concerning Permits for Trapping, Transporting, and Transplanting Game Animals and Game Birds (popularly known as "Triple T" permits), with changes to the proposed text as published in the December 19, 2008, issue of the *Texas Register* (33 TexReg 10295).

The rule as proposed would have established a deadline of January 1 for the submission of Triple T permit applications. The change eliminates the "date certain" of January 1 and instead requires applications to be submitted by the first business day following January 1. The change is necessary because January 1 is a holiday and sometimes falls during the weekend, which makes the January 1 deadline problematic.

Triple T permits may be issued only after a department biologist and/or technician has approved an applicant's wildlife management plan and approved the prospective trap and release sites following on-site habitat inspections. The current rule does not specify a deadline for permit applications, which has created a problematic situation with respect to workforce logistics and scheduling. Out of 77 Triple T permit applications received during the 2007-08 permit year, 51 (which involved over 120 separate release sites) were received after January 1. This has created conflict with existing job duties of department field personnel during the winter months, when such personnel are typically involved in site inspections for Managed Lands Deer Permits issuance, technical guidance requests, locker plant checks, research, and other activities. Therefore, the department finds it

necessary to create a firm deadline for the submission of provisionally complete Triple T permit applications.

The current rules guarantee that applications for Triple T permits received by the department between September 1 and November 15 will be approved or denied within 45 days and would create a final deadline of the first business day after January 1 for applications seeking permit approval in the current permit year. The amendment also requires applicants to submit provisionally complete applications by the deadlines, i.e., application containing only that information necessary to allow field staff to begin planning and assessing each application, such as trap site information, release sit information, and the number of deer to be trapped and/or released. Other application materials, such as Chronic Wasting Disease test results, could still be submitted at a later date.

The rule will function by establishing a deadline for the submission of provisionally complete Triple T permit applications.

The department received 13 comments opposing adoption of the rule as proposed. Of the 13 comments, nine articulated a specific reason or reasons for opposing adoption of the proposed amendment. The comments and the agency response to each are as follows.

One commenter opposed adoption and stated that wildlife is owned by the people and should not be trapped, transported, or fenced in by high fences for the purpose of selling hunts. The department agrees that under Parks and Wildlife Code, §1.011, all wild animals, fur-bearing animals, wild birds, and wild fowl inside the borders of this state are the property of the people of this state. The rulemaking does not and cannot alter this provision. Under Parks and Wildlife Code, §43.061, the department may allow "trapping, transporting, and transplanting game animals or game birds from the wild to allow adjustments in game populations for better wildlife management." The department is committed to working with landowners and land managers to provide the best possible management options for game animals and game birds and therefore issues permits for this purpose; however, permits are issued only after a biological determination (including, but not limited to) of the following: that the removal of game animals or game birds from the trap site is not detrimental to existing populations or systems; that the removal of game animals or game birds is not detrimental to the population status on neighboring properties; that the release of game animals or game birds is not detrimental to existing populations or systems; and that the release site is not outside of the suitable range of the game animal or game bird. The department also notes that under Parks and Wildlife Code, §1.013, the owner or occupant of land cannot be prohibited or restricted from constructing or maintaining a fence of any height on the land owned or occupied, and the existence of a fence does not affect the status of wild animals as property of the people of this state. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department is micromanaging applicants whose only desire is to improve the quality of their deer herd. The commenter also stated that the department should prove the need for the rule instead of "ramming it down ranchers' throats." The department disagrees with the comment and responds that wildlife does not belong to individual landowners, but to the people of the state, and that the department is the state agency responsible for managing and protecting wildlife. Although the department strives to promulgate rules that are user-friendly and earnestly attempts to prevent unnecessary administrative burdens, the primary objective of the rules is to ensure that the department is able to manage its workload in a manner that enables it to provide necessary services to its constituents. The department also notes that it does not believe that the current rules are coercive. The decision to engage in Triple T activities is voluntary; however, if a person seeks to trap, transport, and transplant game animals and game birds, that person must do so according to the rules, which, as noted earlier, are intended to allow such activities to take place with the minimum administrative complexity possible while protecting a public resource. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the deadline is "completely unnecessary and unworkable." The commenter stated that it is impossible for anyone to know how many animals will be trapped and how many will survive transport and transplantation, and stated that the department should ask for estimates and require the permit to be obtained before actual trapping begins. The department disagrees with the comment and responds that the deadline as adopted is necessary in order to more efficiently allocate finite manpower resources to the variety of duties and obligations incurred by the department. The department also disagrees that it is impossible to know the number of animals to be trapped, since that number must be specified prior to permit issuance and must be consistent with management plans at both the trap site and the release site. Current rules clearly state that mortalities count against the total number of animals or birds to be trapped and released, which makes it incumbent upon the permittee to conduct activities in such a fashion as to reduce the potential for inadvertent mortalities. The department also responds that applicants are required to specify a number of birds or animals to be trapped because estimates would be inadequate by their very nature. By authorizing a specific number of animals or birds to be trapped, the department intends to impress upon the permittee the need to be as accurate and efficient as possible in management activities involving a public resource. No changes were made as a result of the comment.

One commenter opposed adoption and stated that deer trapping should not be allowed. Under Parks and Wildlife Code, §43.061, the department may allow "trapping, transporting, and transplanting game animals or game birds from the wild to allow adjustments in game populations for better wildlife management." The department issues permits for this purpose; however, permits are issued only after a biological determination that includes, but is not limited to the following: that the removal of game animals or game birds from the trap site is not detrimental to existing populations or systems; that the removal of game animals or game birds is not detrimental to the population status on neighboring properties; that the release of game animals or game birds is not detrimental to existing populations or systems; and that the release site is not outside of the suitable range of the game animal or game bird. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the January 1 deadline won't work because most ranches do not conduct census activities until late January. The department disagrees with the comment and responds that mid-winter surveys are not crucial to the data requirements for the issuance of Triple T permits. The department considers that a habitat inspection, along with reasonable data, such as harvest and population data from current and previous years, is sufficient to determine whether or not a Triple T permit should be issued. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the current system is working just fine and that there are ranches that get denied because staff can't get to the release sites for inspections. The department disagrees with the comment and responds that the current rule is problematic because it is open-ended. Although the current rule guarantees permit issuance or denial within 45 days for applications that are submitted between September 1 and November 15, it does not specify a deadline for submissions, which causes logistical problems with respect to other duties for field staff. The rule as adopted provides that permits will not be issued for applications received later than the first business day after January 1. This means that a person who desires Triple T permits has four months (September, October, November, and December) to submit an application if that person would like to receive Triple T permits in the current permit year. The department believes that this is a sufficient time period. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the January 1 deadline will limit landowners' ability to apply for permits, since the hunting season is still open and they will not have had time to develop plans for the upcoming year. The department disagrees with the comment and responds that a habitat inspection, along with harvest and population data from current and previous years, is sufficient to determine whether or not a Triple T permit should be issued. No changes were made as a result of the comment.

One commenter opposed adoption and stated that refusal to issue permits will impact local economies, contrary to the department's statement in the proposal preamble, because local people are employed to help in trapping activities and money generated at all levels goes into the local economy and directly or indirectly benefits all license holders. The commenter also stated that Triple T permits are important to many ranch managers and that the rules should encourage and facilitate more participation rather than to inhibit it. The commenter stated that the proposed rule makes department employees' jobs easier by limiting the amount of service they need to give. The department disagrees with the comment and responds that the overall employment impact of Triple T permit activities on local economies is probably extremely small, either as an absolute value or in comparison to other economic activities in any given county. Under Government Code, §2001.022, a state agency is required to determine whether a rule may affect a local economy. The department considered that Triple T activities are seasonal and therefore very few if any people are employed full-time in the discharge of Triple T permit activities, that Triple T activities are not labor intensive, and that the financial disclosure reporting required of permittees under §65.115(d) indicates the economic activity generated by Triple T activities, even on a microeconomic scale is not significant. Additionally, the imposition of the deadline does not prohibit, frustrate, or curtail Triple T permit activities; it serves only to require that applications be submitted by a date certain. The department also responds that the rule as adopted makes the department more efficient in the discharge of its duties, which benefits the resources and people the department serves. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the January 1 deadline would prevent people from using the Triple T program because most users are professional people from large metropolitan areas who go to their ranches in the winter and may not realize that by the time they decide how many deer need to be removed or released, the deadline for applying for a Triple T permit will have passed. The commenter stated that the deadline is unrealistic because it occurs during hunting season. The commenter recommended a February 1 deadline and a fee reduction for applicants who submit their applications earlier. The department disagrees with the commenter and responds that a habitat inspection, along with harvest and population data from the current and previous years, is sufficient to determine whether or not a Triple T permit should be issued. The department also comments that a February 1 deadline would defeat the purpose of the rule. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the deadline for submission of Triple T applications should be February 1. The commenter stated that most landowners don't start surveying deer herds until January and don't know what they have. The commenter also stated that there will be a perception that the department is making a bureaucratic decision that is very staff oriented and really not a user-oriented decision. The department disagrees with the commenter and responds that a habitat inspection, along with harvest and population data from current and previous years, is sufficient to determine whether or not a Triple T permit should be issued. The department also comments that a February 1 deadline would defeat the purpose of the rule. The department also responds that the rule is necessary in order to allow department personnel to better serve all constituents, which makes it by definition a user-oriented decision. No changes were made as a result of the comment.

The department received 12 comments in support of adoption of the proposed rule.

The Texas Deer Association and the Texas Wildlife Association commented against adoption of the proposed rule.

The amendment is adopted under Parks and Wildlife Code, §43.061, which requires the commission to adopt rules for the trapping, transporting, and transplanting of game animals and game birds.

§65.103. Trap, Transport, and Transplant Permit.

(a) Applications may be approved without an inspection, provided the property has been issued Level II or Level III MLD Permits during the year of the release, the landowner furnishes a minimum of three years of population data and two years of harvest data, and is in compliance with all requirements of the wildlife management plan for the property;

(1) the number of deer to be trapped (in addition to the number of deer harvested) does not exceed the population reduction specified in the wildlife management plan for the trap site; and

(2) the number of deer to be released does not cause the total population of deer on the release site to exceed the total population size specified in a management plan under the provisions of §65.25 of this title (relating to Wildlife Management Plan (WMP)).

(b) Applications received by the department between September 1 and November 15 in a calendar year shall be approved or denied within 45 days of receipt. Permits for the current trapping year will not be issued for applications received later than the first business day after January 1. To be processed, an application must contain, at a minimum, the following information as specified on department form PWD 1135A (Trap, Transport, and Transplant Permit Application):

(1) trap site information;

(2) release site information;

(3) the number of deer to be trapped at each trap site; and

(4) the number of deer to be released at each release site.

(c) The department may deny a permit application if the department determines that:

(1) the removal of game animals or game birds from the trap site may be detrimental to existing populations or systems;

(2) the removal of game animals or game birds may detrimentally affect the population status on neighboring properties;

(3) the release of game animals or game birds at the release site may be detrimental to existing populations or systems;

(4) the release site is outside of the suitable range of the game animal or game bird;

(5) the applicant has misrepresented information on the application or associated wildlife stocking plan;

(6) the activity identified in the permit application does not comply with the provisions of the department's stocking policy; or

(7) the trapping activity would involve deer held under a Deer Management Permit.

(d) A buck deer transported under the provisions of this subchapter shall have its antlers removed prior to transport.

(e) The department may establish trapping periods, based on biological criteria, when the trapping, transporting, and transplanting of game animals and game birds under this section by individuals will be permitted.

(f) The department may, at its discretion, require the applicant to supply additional information concerning the proposed trapping, transporting, and transplanting activity when deemed necessary to carry out the purposes of this subchapter.

(g) Game animals and game birds killed in the process of conducting permitted activities shall count as part of the total number of game animals or game birds authorized by the permit to be trapped.

(h) No permit shall be issued for any trapping activity on a property or portion of a property if deer held under a Deer Management Permit have been released on the property or portion of the property in the same permit year.

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 June 10, 2009.

TRD-200902323
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: June 30, 2009
Proposal publication date: December 19, 2008
For further information, please call: (512) 389-4775

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION

CHAPTER 215. TRAINING AND EDUCATIONAL PROVIDERS AND RELATED MATTERS

37 TAC §215.1

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to Title 37, §215.1, concerning Licensing of Training Providers, without changes to the proposed text as published in the March 27, 2009, issue of the *Texas Register* (34 TexReg 2097) and will not be republished.

The amendment adds language to 37 TAC §215.1, Licensing of Training Providers. Subsection (a) is amended to identify the types of training provider credentials. Subsection (b) is amended to identify the requirements for receiving training provider credentials. Subsection (c) is amended to identify the time limits for training provider credentials. Subsection (d) is amended to specify the reapplication time period. Subsection (e) is added to provide for a shorter credentialing period for at risk providers. Subsection (f) is added to specify the renewal requirements for training provider credentials. Subsection (g) is added to reflect the effective date of these changes.

No comments were received regarding adoption of this amendment.

The rule is adopted in compliance with Texas Occupations Code, Chapter 1701, §1701.251, Training Programs; Instructors, §1701.153, Reports from Agencies and Schools, and §1701.254, Risk Assessment and Inspections.

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 June 12, 2009.

TRD-200902400
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Standards and Education
Effective date: July 6, 2009
Proposal publication date: March 27, 2009
For further information, please call: (512) 936-7700

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CHAPTER 215. TRAINING AND EDUCATIONAL PROVIDERS AND RELATED MATTERS

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts the repeal and replacement of Title 37, §215.3, concerning Academy Licensing, without changes to the proposed text as published in the March 27, 2009, issue of the *Texas Register* (34 TexReg 2098) and will not be republished.

Adopted new §215.3, Academy Licensing, clarifies the academy licensing requirements. These changes establish consistency, continuity, and uniformity of regulations for training providers.

No comments were received regarding adoption of this repeal and new section.

37 TAC §215.3

The repeal is adopted in compliance with Texas Occupations Code §1701.151, which authorizes the commission to adopt rules for the administration of Chapter 1701.

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 June 15, 2009.

TRD-200902402
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: July 6, 2009
Proposal publication date: March 27, 2009
For further information, please call: (512) 936-7700

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37 TAC §215.3

The new section is adopted under Texas Occupations Code §1701.151, which authorizes the commission to adopt rules for the administration of Chapter 1701.

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

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TRD-200902403
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
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For further information, please call: (512) 936-7700

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CHAPTER 215. TRAINING AND EDUCATIONAL PROVIDERS AND RELATED MATTERS

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts the repeal of and new §215.5, concerning Contractual Training. New §215.5 is adopted with changes to the proposed text as published in the March 27, 2009, issue of the *Texas Register* (34 TexReg 2101). The repeal of §215.5 is adopted without changes to the proposal and will not be republished.

Adopted new §215.5, Contractual Training, would clarify the academy licensing requirements. These changes establish consistency, continuity, and uniformity of regulations for training providers.

One comment was received from the Pasadena Police Department regarding adoption of this proposal. The comment concerned the lack of budget and resolution requirements for Contractual Training Providers in subsection (b). The agency response is that the Commissioners voted to remove those constraints from Contractual Training Providers at the March 2009 quarterly meeting.

37 TAC §215.5

The repeal is adopted in compliance with Texas Occupations Code §1701.151, which authorizes the commission to adopt rules for the administration of Chapter 1701.

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

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TRD-200902404
Timothy A. Braaten
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For further information, please call: (512) 936-7700

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37 TAC §215.5

The new section is adopted under Texas Occupations Code §1701.151, which authorizes the commission to adopt rules for the administration of Chapter 1701.

§215.5. Contractual Training.

(a) A law enforcement agency, a law enforcement association, alternative delivery trainer, or proprietary training contractor may make application to conduct training for licensees.

(b) As part of the application process, the following documentation shall be submitted:

(1) documentation that an advisory board has been appointed as provided by §215.7 of this chapter and §1701.252 of the Texas Occupations Code, including a resume for each board member;

(2) advisory board minutes that show the advisory board has complied with the requirements of §215.7 of this chapter;

(3) the name, PID, and resume of the proposed training coordinator;

(4) documentation that the training coordinator is in compliance with the responsibilities required by contract, law, or rule, to include but not limited to §215.9 of this chapter;

(5) a schedule of tuition and fees that will be charged, if any;

(6) selection of a training facility and instructional materials that meets inspection requirements identified in §215.3(d) of this chapter, as determined by the commission;

(7) documentation that the training facility meets the federal and state accessibility requirements to which its entity is subject and which apply to the training function, including course materials, course presentation, and facilities; and

(8) at the request of the executive director, the applicant must forward for approval at least one copy of the learning objectives of each course covered by the contract.

(c) A training needs assessment must be completed and submitted for commission approval and shall include:

(1) the names and description of existing law enforcement training programs in the area;

(2) what specific training needs are to be addressed by the proposed contract; and

(3) the number and types of courses that will be offered during the first quarter of the executed contract.

(d) The chief administrator of the sponsoring organization and the proposed training coordinator must appear before the commissioners to respond to questions prior to action being taken on the application.

(e) Once a contract is issued, the chief administrator of the sponsoring organization, or training coordinator, must report in writing to the commission within 30 days:

(1) any change in chief administrator or training coordinator;

(2) any failure to meet commission rules and standards by the provider, training coordinator, instructors, or advisory board;

(3) any change in provider name, physical location, mailing address, electronic mail address, or telephone number; or

(4) when non-compliance with federal or state requirements is discovered.

(f) A contract is limited to those terms expressly included in the contract or incorporated by reference and is:

(1) in the currently prescribed commission format;

(2) signed by the executive director;

(3) signed by the chief administrator or head of the sponsoring organization; and

(4) signed by the training coordinator responsible for the administration of that training.

(g) A contract may approve the courses and the number of times they will be offered. These contracts are for a stated period of time but may be terminated within 10 days by written notice on the part of either party to the contract. A contract may incorporate by reference a law, rule, or any other document; however, any waiver, exception, or deletion must be expressed.

(h) The commission will award training credit for any course conducted by a contract training provider as provided by commission rules unless:

(1) the training was not conducted in compliance with the contract;

(2) the advisory board, training coordinator or instructor failed to discharge any responsibility required by commission rule; or

(3) the credit was claimed by deceitful means.

(i) A contract to provide distance education courses may be approved if the contractual training provider:

(1) submits a request, for which a recovery fee may be charged, in accordance with the commission's rules or established procedures before the course is offered;

(2) ensures that each course will have one or more sponsors assigned, who shall be responsible both for the conduct of the course and the proctoring of any examination during the course;

(3) ensures that the student, without the use of deceitful means, completes the required coursework, receives a passing grade on any examination or evaluation required by the lesson guide or learning objectives; and

(4) ensures that the student's assigned work is corrected, graded, and reviewed by qualified instructors, and returned to the student via an exchange that provides a personalized student-teacher relationship.

(j) The executive director may suspend a contract for any violation of its terms or of any commission rule or law.

(k) The executive director may terminate a contract if no training is conducted within a calendar year unless the chief administrator has petitioned the executive director for a waiver and the waiver has been granted. Any party may terminate, upon written notice to all other parties, received by the executive director, or the coordinator, or any other named person or office.

(l) The effective date of this section is July 6, 2009.

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

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TRD-200902405
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
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Proposal publication date: March 27, 2009
For further information, please call: (512) 936-7700

CHAPTER 215. TRAINING AND EDUCATIONAL PROVIDERS AND RELATED MATTERS

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts the repeal of and new §215.6 concerning Academic Alternative Licensing, with changes to the proposed new §215.6 as published in the March 27, 2009, issue of the *Texas Register* (34 TexReg 2102). The repeal is adopted without change and will not be republished.

Adopted new §215.6, Academic Alternative Licensing, would clarify the requirements for academic alternative licensing. These changes are to establish consistency, continuity, and uniformity of regulations for training providers.

No comments were received regarding adoption of this repeal and new section.

37 TAC §215.6

The repeal is adopted in compliance with Texas Occupations Code §1701.151 which authorizes the commission to adopt rules for the administration of Chapter 1701.

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

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TRD-200902406

Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
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For further information, please call: (512) 936-7700

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37 TAC §215.6

The new section is adopted under Texas Occupations Code §1701.151 which authorizes the commission to adopt rules for the administration of Chapter 1701.

§215.6. Academic Alternative Licensing.

(a) A Texas college or university that is accredited by the Southern Association of Colleges and Schools (SACS) and which has a criminal justice or law enforcement program approved by the Texas Higher Education Coordinating Board (THECB) may make application to conduct training for licensees.

(b) As part of the application process,

(1) documentation of approval from THECB for a criminal justice or law enforcement program;

(2) documentation that an advisory board has been appointed as provided by §215.7 of this chapter and §1701.252 of the Texas Occupations Code, including a resume for each board member;

(3) advisory board minutes that show the advisory board has complied with the requirements of §215.7 of this chapter;

(4) the name, PID, and resume of the proposed training coordinator;

(5) documentation that the training coordinator has met the responsibilities required by contract, law, or rule, to include but not limited to §215.9 of this chapter;

(6) an operational budget and a proposed course schedule to show that training will be conducted;

(7) selection of a training facility and instructional materials that meet the inspection requirements identified in §215.3(d) of this chapter, as determined by the commission;

(8) documentation that the program meets the federal and state accessibility requirements to which its entity is subject and which apply to the training function, including course materials, course presentation, and facilities;

(9) documentation of any contractual provision the applicant may have with a licensed academy to provide the sequence courses;

(10) provisions for the Registrar to issue all endorsements; and

(11) at the request of the executive director, the applicant must forward for approval at least one copy of the learning objectives of each alternative course provided.

(c) A comprehensive training needs assessment must be submitted to the commission for approval and must include:

(1) a description of whom the alternative academic provider will serve and the number of students they expect to train annually;

(2) the basis for these expectations; and

(3) proof of notification by e-mail to all licensed academies within the area of the applicant's intent to apply for an academic alternative provider license.

(d) The dean or chair of the academic program and the proposed training coordinator must appear before the commissioners to respond to questions prior to action being taken on the application.

(e) Once a license is issued, the chief administrator or training coordinator of the academic alternative provider must report in writing to the commission within 30 days:

(1) any change in the dean of the department;

(2) any change in training coordinator;

(3) any failure to meet commission rules and standards by the training coordinator, instructors, or advisory board;

(4) any change in status with SACS and/or THECB;

(5) when non-compliance with federal or state requirements is discovered; or

(6) any change in provider name, physical location, mailing address, electronic mail address, or telephone number.

(f) The commission will award training credit for the academic alternative program when provided by licensed academic alternative providers, unless the:

(1) courses were not conducted in compliance with commission rules;

(2) courses were not conducted in compliance with THECB guidelines;

(3) advisory board, training coordinator, or instructor failed to discharge any responsibility required by rule; or

(4) credit was obtained by deceitful means.

(g) The commission may cancel an academic alternative license if it was issued in error or based on false or incorrect information.

(h) The commission may suspend an academic alternative license, or the executive director or his designee may issue a written reprimand to the dean of the department, if:

(1) the academic alternative provider fails to comply with a commission rules or any law; or

(2) the academic alternative provider has been classified as at risk under §215.13 of this chapter.

(i) The commission may revoke an academic alternative license if:

(1) the academic alternative provider has been classified as at risk under §215.13 of this chapter for a 12-month period without complying with commission rules;

(2) the academic alternative provider has lost either SACS accreditation or THECB approval; or

(3) the training coordinator intentionally or knowingly submits a falsified document or a false written statement or representation to the commission.

(j) An academic alternative provider may surrender its license at any time for any reason. To surrender the license, the dean of the department must send written notice, accompanied by the license, to the executive director. The surrender is effective immediately upon receipt by the executive director.

(k) The effective date of this section is July 6, 2009.

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

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Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
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For further information, please call: (512) 936-7700

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37 TAC §215.7

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to Title 37, §215.7, concerning Training Provider Advisory Board, with changes to the proposed text as published in the March 27, 2009, issue of the *Texas Register* (34 TexReg 2104).

The amendment adds language to 37 TAC §215.7, Training Provider Advisory Board. Subsection (a) is amended to clarify the composition of the advisory board. Subsection (b) is amended to clarify the requirements of board members. Subsection (c) is amended to identify a board chair. Subsection (d) is amended to make reference to the board chair. Subsection (f) is amended to include academic alternative programs. Subsection (i) is amended to clarify the duties of the board. Subsection (l) is amended to reflect the effective date of these changes.

No comments were received regarding adoption of this amendment.

The rule is adopted in compliance with Texas Occupations Code, Chapter 1701, §1701.252, Program and School Requirements; Advisory Board and §1701.052, Eligibility of Public Members.

§215.7. Training Provider Advisory Boards.

(a) All training providers approved by the commission must establish and maintain an advisory board, as required by §1701.252 of the Texas Occupations Code. The board must have at least three members who are appointed by the sponsoring organization. Board membership must not fall below a quorum for more than 30 days. A quorum of the advisory board is defined as a minimum of 51% of the voting membership.

(b) The board may have members who are law enforcement personnel; however, one-third of the members must be public members, as defined in §1701.052 of the Texas Occupations Code, having the same qualification as any commissioner who is required by law to be a member of the general public. The chief administrator, or head of the sponsoring organization, and the designated training coordinator may only serve as ex-officio, non-voting members.

(c) The chief administrator, or head or the sponsoring organization, may appoint a board chair, or the board may elect a board member to serve as the board chair. The board may elect other officers and set its own rules of procedure. A quorum must be present in order to conduct business.

(d) A board must meet at least once each calendar year. More frequent meetings may be called by the board chair, the training coordinator, or the person who appoints the board.

(e) A board will keep written minutes of all meetings. These minutes must be retained for at least five years and a copy forwarded to the commission upon request.

(f) Board members will be appointed by the following authority:

(1) for an agency academy, by the chief administrator as defined in §211.1 of this chapter;

(2) for a college academy, by the dean or other person who appoints the training coordinator;

(3) for a regional academy, by the head of the council of governments or other sponsoring entity holding the academy license from names submitted by chief administrators from that area;

(4) for a contractual training provider, by the chief administrator; or

(5) for an academic alternative provider, by the dean or other person who appoints the training coordinator.

(g) A member may be removed by the appointing authority.

(h) A board is generally responsible for advising on the development of curricula and any other related duty that may be required by the commission.

(i) The board must, as specific duties:

(1) discharge its responsibilities and otherwise comply with commission rules;

(2) advise on the need to study, evaluate, and identify specific training needs;

(3) advise on the determination of the types, frequency, and location of courses to be offered;

(4) advise on the establishment of the standards for admission, prerequisites, minimum and maximum class size, attendance, and retention; and

(5) advise on the order of preference among employees or prospective appointees of the sponsoring organization and other persons, if any.

(j) No person may be admitted to a training course without meeting the admission standards. The admission standards for licensing courses must be available for review by the commission upon request.

(k) A board may, when discharging its responsibilities, request that a report be made or some other information be provided to them by a training or course coordinator.

(l) The effective date of this section is July 6, 2009.

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

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37 TAC §215.9

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to Title 37, §215.9, concerning Training Coordinator, without changes to the proposed text as published in the March 27, 2009 issue of the *Texas Register* (34 TexReg 2105) and will not be republished.

The amendment adds language to 37 TAC §215.9, Training Coordinator. Subsection (b) is amended to clarify the responsibilities of the training coordinator. Subsection (c) is amended to allow for petition for a waiver of the training coordinator requirements for a vacant coordinator position. Subsection (d) is amended to allow for petition for a waiver of the full-time paid employee requirement. Subsection (e) is amended to reflect the effective date of these changes.

No comments were received regarding adoption of this amendment.

The rule is adopted in compliance with Texas Occupations Code, Chapter 1701, §1701.251, Training Programs; Instructors, and §1701.153, Reports from Agencies and Schools.

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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Timothy A. Braaten

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37 TAC §215.11

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to Title 37, §215.11, concerning Training Provider Evaluations, with changes to the proposed text as published in the March 27, 2009, issue of the *Texas Register* (34 TexReg 2107) and will be republished.

The amendment adds language to 37 TAC §215.11, Training Provider Evaluations. Subsection (b) is amended to identify the items used to assess the performance of training providers. Subsection (c) is added to identify the distribution of the evaluation results. Subsection (d) is amended to reflect the effective date of these changes. Subsection (e) is deleted.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.254, Risk Assessment and Inspections, §1701.153, Reports from Agencies and Schools, and §1701.251, Training Programs; Instructors.

§215.11. Training Provider Evaluations.

(a) All training providers shall be evaluated periodically and randomly. Providers with deficiencies will be evaluated more frequently, as determined by the commission.

(b) The commission may use the following information in assessing the performance of training providers:

(1) licensing examination results;

(2) reports from past evaluation records;

(3) self-assessment reports;

(4) on-site evaluations;

(5) reports and evaluations from students, law enforcement agencies, and citizens;

(6) commission records;

(7) course records;

(8) observations by commission staff;

(9) information used as risk assessment factors; and

(10) any other relevant information about performance and practices.

(c) The results of the evaluation will be forwarded to the chief administrator, training coordinator, and advisory board chair.

(d) The effective date of this section is July 6, 2009.

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

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Texas Commission on Law Enforcement Officer Standards and Education

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37 TAC §215.13

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to Title 37, §215.13, concerning Risk Assessment, with changes to the proposed text as published in the March 27, 2009, issue of the *Texas Register* (34 TexReg 2107) and will be republished.

The amendment adds language to 37 TAC §215.13, Risk Assessment. Subsection (a) - (c) are amended for language cleanup. Subsection (d) is amended to identify actions training providers must take after being found at risk. Subsection (e) is amended to identify action taken against training providers found at risk. Subsection (f) is amended to provide notification of at risk status. Subsection (g) is added to reflect the effective date of these changes.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code Chapter 1701, §1701.254, Risk Assessment and Inspec-

tions, §1701.153, Reports from Agencies and Schools, and §1701.251, Training Programs; Instructors.

§215.13. Risk Assessment.

(a) A law enforcement academy may be found at risk if:

(1) after January 1, 2003, if the passing rate on a licensing examination for first attempts for any state fiscal year is less than 70 percent of the students attempting the licensing exam;

(2) after September 1, 2009, the passing rate on a licensing exam for first attempts for any three consecutive state fiscal years, beginning with state fiscal year 2007 (September 1, 2006 through August 31, 2007) is less than 80 percent of the students attempting the licensing exam;

(3) commission required learning objectives are not taught;

(4) lesson plans for classes conducted are not on file;

(5) examination and other evaluative scoring documentation is not on file;

(6) the academy submits false reports to the commission;

(7) the academy makes repeated errors in reporting;

(8) the academy does not respond to commission requests for information;

(9) the academy does not comply with commission rules or other applicable law;

(10) the academy does not achieve the goals identified in its application for a license;

(11) the academy does not meet the needs of the officers and law enforcement agencies served; or

(12) the commission has received sustained complaints or evaluations from students or the law enforcement community concerning the quality of training or failure to meet training needs for the service area.

(b) A contractual provider may be found at risk if:

(1) the contractor provides licensing courses and fails to comply with the passing rates in subsection (a)(1) of this section;

(2) lesson plans for classes conducted are not on file;

(3) examination and other evaluative scoring documentation is not on file;

(4) the provider submits false reports to the commission;

(5) the provider makes repeated errors in reporting;

(6) the provider does not respond to commission requests for information;

(7) the provider does not comply with commission rules or other applicable law;

(8) the provider does not achieve the goals identified in its application for a license or contract;

(9) the provider does not meet the needs of the officers and law enforcement agencies served; or

(10) the commission has received sustained complaints or evaluations from students or the law enforcement community concerning the quality of training or failure to meet training needs for the service area.

(c) An academic alternative provider may be found at risk if:

(1) after January 1, 2003, if the passing rate on a licensing examination for first attempts for any 3 state fiscal year period is less than 70 percent of the students attempting the licensing exam;

(2) after September 1, 2009, the passing rate on a licensing exam for first attempts for any three consecutive state fiscal years, beginning with state fiscal year 2007 (September 1, 2006 through August 31, 2007) is less than 80 percent of the students attempting the licensing exam;

(3) courses are not conducted in compliance with Higher Education Program Guidelines accepted by the commission;

(4) the commission required learning objectives are not taught;

(5) the program submits false reports to the commission;

(6) the program makes repeated errors in reporting;

(7) the program does not respond to commission requests for information;

(8) the program does not comply with commission rules or other applicable law;

(9) the program does not achieve the goals identified in its application for a license or contract;

(10) the program does not meet the needs of the students and law enforcement agencies served; or

(11) the commission has received sustained complaints or evaluations from students or the law enforcement community concerning the quality of education or failure to meet education needs for the service area.

(d) If at risk, the chief administrator of the sponsoring organization, or the training coordinator, must report to the commission in writing within 30 days what steps have been taken to correct deficiencies and on what date they expect to be in compliance.

(e) The commission may take action to revoke their license or contract. The commission may choose not to renew a license or contract with a program that has been found to be at risk or the commission may renew the contract for a shorter period than stated in §215.1 of this chapter.

(f) A training or educational program at risk must notify all students and potential students of their at risk status.

(g) The effective date of this section is July 6, 2009.

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

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Timothy A. Braaten
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CHAPTER 217. LICENSING REQUIREMENTS

37 TAC §217.1

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to Title 37, §217.1, concerning Minimum Standards for Initial Licensure, with changes to the proposed text as published in the March 27, 2009, issue of the *Texas Register* (34 TexReg 2109).

The amendment adds language to 37 TAC §217.1, Minimum Standards for Initial Licensure. Subsection (b) is amended to clarify out-of-state convictions. Subsection (c) is amended to clarify felony convictions. Subsection (d) is added to identify factors considered for mitigating circumstances. Subsection (e) is amended to clarify training requirements. Subsection (f) is amended to clarify licensing of elected officials. Subsection (g) is amended to clarify the licensing requirements for sheriffs. Subsection (h) is amended to clarify the licensing requirements for constables. Subsection (i) is amended to clarify the provisional licensing requirements. Subsection (j) is amended to clarify the temporary jailer licensing requirements. Subsection (k) is amended to clarify the cancellation of a license. Subsection (l) is amended to reflect the effective date. Subsections (m) (n) and (o) have been deleted.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.253, School Curriculum, §1701.256, Instruction In Weapons Proficiency Required, §1701.301, License Required, §1701.302, Certain Elected Law Enforcement Officers; License Required, §1701.306, Psychological and Physical Examination, §1701.307, Issuance of License, §1701.309, Age Requirement, §1701.310, Appointment of County Jailer; Training Required, and §1701.311, Provisional License for Workforce Shortage.

§217.1. Minimum Standards for Initial Licensure.

(a) The commission shall issue a peace officer, jailer, temporary jailer, or public security officer license to an applicant who meets the following standards:

(1) minimum educational requirements:

(A) has passed a general educational development (GED) test indicating high school graduation level;

(B) is a high school graduate; or

(C) has 12 semester hours credit from an accredited college or university.

(2) for peace officers and public security officers, is 21 years of age, or 18 years of age if the applicant has received an associate's degree or 60 semester hours of credit from an accredited college or university or has received an honorable discharge from the armed forces of the United States after at least two years of active service; for jailers is 18 years of age;

(3) is fingerprinted and is subjected to a search of local, state and U.S. national records and fingerprint files to disclose any criminal record;

(4) community supervision history:

(A) has not ever have been on court-ordered community supervision or probation for any criminal offense above the grade of Class B misdemeanor or a Class B misdemeanor within the last ten years from the date of the court order; but

(B) the commission may approve the application of a person who received probation or court-ordered community supervision for a Class B misdemeanor at least five (5) years prior to application if an agency administrator sufficiently demonstrates in writing with supporting documentation that mitigating circumstances exist with the case and with the individual applying for licensure, and that the public interest would be served by reducing the waiting period;

(5) is not currently charged with any criminal offense for which conviction would be a bar to licensure;

(6) conviction history:

(A) has not ever been convicted of an offense above the grade of a Class B misdemeanor or a Class B misdemeanor within the last ten years; but

(B) the commission may approve the application of a person who was convicted for a Class B misdemeanor at least five (5) years prior to application if an agency administrator sufficiently demonstrates in writing with supporting documentation that mitigating circumstances exist with the case and with the individual applying for licensure, and that the public interest would be served by reducing the waiting period;

(7) has never been convicted of any family violence offense;

(8) is not prohibited by state or federal law from operating a motor vehicle;

(9) is not prohibited by state or federal law from possessing firearms or ammunition;

(10) has been subjected to a background investigation and has been interviewed prior to appointment by representatives of the appointing authority;

(11) has been examined by a physician, selected by the appointing or employing agency, who is licensed by the Texas Medical Board. The physician must be familiar with the duties appropriate to the type of license sought and appointment to be made. The appointee must be declared in writing by that professional within 180 days before the date of appointment by the agency to be:

(A) physically sound and free from any defect which may adversely affect the performance of duty appropriate to the type of license sought;

(B) show no trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test; and

(C) for the purpose of meeting the requirements for initial licensure, an individual's satisfactory medical exam that is conducted as a requirement of a basic licensing course may remain valid for 180 days from the individual's date of graduation from that academy, if accepted by the appointing agency;

(12) has been examined by a psychologist, selected by the appointing or employing agency, who is licensed by the Texas State Board of Examiners of Psychologists. The psychologist must be familiar with the duties appropriate to the type of license sought and appointment to be made. This examination may also be conducted by a psychiatrist. The appointee must be declared in writing by that professional to be in satisfactory psychological and emotional health to serve as the type of officer for which the license is sought within 180 days before the date of appointment by the agency. The examination must be conducted pursuant to professionally recognized standards and methods:

(A) the commission may allow for exceptional circumstances where a licensed physician performs the evaluation of psychological and emotional health. This requires the appointing agency to

request in writing and receive approval from the commission, prior to the evaluation being completed;

(B) the examination may be conducted by qualified persons identified by §501.004, of the Texas Occupations Code. This requires the appointing agency to request in writing and receive approval from the commission, prior to the evaluation being completed; and

(C) for the purpose of meeting the requirements for initial licensure, an individual's satisfactory psychological exam that is conducted as a requirement of a basic licensing course may remain valid for 180 days from the individual's date of graduation from that academy, if accepted by the appointing agency;

(13) has not been discharged from any military service under less than honorable conditions including, specifically;

(A) under other than honorable conditions;

(B) bad conduct;

(C) dishonorable;

(D) any other characterization of service indicating bad character;

(14) has not had a commission license denied by final order or revoked;

(15) is not currently on suspension, or does not have a voluntary surrender of license currently in effect;

(16) meets the minimum training standards and passes the commission licensing examination for each license sought;

(17) has not violated any commission rule or provision of the Texas Occupations Code, Chapter 1701; and

(18) is a U.S. citizen.

(b) For the purposes of this section, the commission will construe any court-ordered community supervision, probation or conviction for a criminal offense to be its closest equivalent under the Texas Penal Code classification of offenses if the offense arose from:

(1) another penal provision of Texas law; or

(2) a penal provision of any other state, federal, military or foreign jurisdiction.

(c) A classification of an offense as a felony at the time of conviction will never be changed because Texas law has changed or because the offense would not be a felony under current Texas laws.

(d) In evaluating whether mitigating circumstances exist, the commission will consider the following factors:

(1) the applicant's history of compliance with the terms of community supervision;

(2) the applicant's continuing rehabilitative efforts not required by the terms of community supervision;

(3) the applicant's employment record;

(4) whether the disposition offense contains an element of actual or threatened bodily injury or coercion against another person under the Texas Penal Code or the law of the jurisdiction where the offense occurred;

(5) the required mental state of the disposition offense;

(6) whether the conduct resulting in the arrest resulted in the loss of or damage to property or bodily injury;

(7) the type and amount of restitution made by the applicant;

(8) the applicant's prior community service;

(9) the applicant's present value to the community;

(10) the applicant's post-arrest accomplishments;

(11) the applicant's age at the time of arrest; and

(12) the applicant's prior military history.

(e) A person must successfully complete the minimum training required for the license sought:

(1) training for the peace officer license consists of:

(A) the current basic peace officer course;

(B) a commission recognized, POST developed, basic law enforcement training course, to include:

(i) out of state licensure or certification; and

(ii) submission of the current eligibility application and fee; or

(C) a commission approved academic alternative program, taken through a licensed academic alternative provider, and after September 1, 2003, at least an associate's degree.

(2) training for the jailer license consists of the current basic county corrections course(s);

(3) training for the public security officer license consists of the current basic peace officer course; and

(4) passing any examination required for the license sought while the endorsement remains valid.

(f) The commission shall issue a peace officer or jailer license to any person who is otherwise qualified for that license, even if that person is not subject to the licensing law or rules by virtue of election or appointment to office under the Texas Constitution.

(g) A sheriff who first took office on or after January 1, 1994, must meet the licensing requirements of §1701.302 of the Texas Occupations Code

(h) A constable taking office after August 30, 1999, must meet the licensing requirements of §86.0021 of the Texas Local Government Code.

(i) The commission may issue a provisional license, consistent with §1701.311 of the Texas Occupations Code, to an agency for a person to be appointed by that agency. An agency must submit all required applications currently prescribed by the commission and all required fees before the individual is appointed. Upon the approval of the application, the commission will issue a provisional license. A provisional license is issued in the name of the applicant; however, it is issued to and shall remain in the possession of the agency. Such a license may neither be transferred by the applicant to another agency, nor transferred by the agency to another applicant. A provisional license may not be reissued and expires:

(1) 12 months from the original appointment date;

(2) on leaving the appointing agency;

(3) on the date the holder fails the peace officer licensing examination for the third time; or

(4) on failure to comply with the terms stipulated in the provisional license approval.

(j) The commission may issue a temporary jailer license, consistent with §1701.310 of the Texas Occupations Code. An agency must submit all required applications currently prescribed by the commission and all required fees before the individual is appointed. Upon the approval of the application, the commission will issue a temporary jailer license. A temporary jailer license expires:

(1) 12 months from the original appointment date;

(2) on completion of training and passing of the jailer licensing examination; or

(3) on the date the holder fails the jailer licensing examination for the third time.

(k) A person who fails to comply with the standards set forth in this section shall not accept the issuance of a license and shall not accept any appointment. If an application for licensure is found to be false or untrue, it is subject to cancellation or recall.

(l) The effective date of this section is July 6, 2009.

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

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CHAPTER 223. ENFORCEMENT

37 TAC §223.15

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to Title 37, §223.15, concerning Suspension of License, without changes to the proposed text as published in the March 27, 2009, issue of the *Texas Register* (34 TexReg 2113) and will not be republished.

The amendment adds language to 37 TAC §223.15, Suspension of License. Subsection (i) is added to identify factors considered for mitigating circumstances. Subsection (j) is amended to clarify the beginning date for a suspension. Subsection (k) is amended to clarify the probation of a suspension. Subsection (l) is amended to clarify terms of probation. Subsection (m) is amended to clarify the length of probation. Subsection (n) is amended to clarify the conditions for extending a suspension. Subsection (o) is amended to clarify requirements for reinstatement. Subsection (p) is amended to clarify the notification responsibilities of the commission. Subsection (q) is amended to clarify the length of a suspension. Subsection (r) is added to reflect the effective date of these changes.

One comment was received from the Houston Police Officer's Union regarding adoption of this amendment. The comment questioned whether the "and" in subsection (i)(9) made all of the items required before mitigating circumstances could be considered. The agency response is that subsection (i) is to identify which items will be considered when determining mitigating factors for each case.

The amendment is adopted under Texas Occupations Code Chapter 1701, §1701.501, Disciplinary Action and §1701.502, Felony Conviction or Placement On Community Supervision.

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37 TAC §223.16

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to Title 37, §223.16, concerning Suspension of License for Constitutionally Elected Officials, without changes to the proposed text as published in the March 27, 2009, issue of the *Texas Register* (34 TexReg 2114) and will not be republished.

The amendment adds language to 37 TAC §223.16, Suspension of License for Constitutionally Elected Officials. Subsection (i) is added to identify factors considered for mitigating circumstances. Subsection (j) is amended to clarify the beginning date for a suspension. Subsection (k) is amended to clarify the probation of a suspension. Subsection (l) is amended to clarify terms of probation. Subsection (m) is amended to clarify the length of probation. Subsection (n) is amended to clarify the conditions for extending a suspension. Subsection (o) is amended to clarify requirements for reinstatement. Subsection (p) is amended to clarify the notification responsibilities of the commission. Subsection (q) is amended to clarify the length of a suspension. Subsection (r) is added to reflect the effective date of these changes.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code Chapter 1701, §1701.501, Disciplinary Action and §1701.502, Felony Conviction or Placement On Community Supervision.

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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37 TAC §223.20

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to Title 37, §223.20, concerning Revocation of License for Constitutionally

Elected Officials, without changes to the proposed text as published in the March 27, 2009, issue of the *Texas Register* (34 TexReg 2118) and will not be republished.

The amendment adds language to 37 TAC §223.20, Revocation of License for Constitutionally Elected Officials. Subsection (b) is amended to clarify felony convictions for revocation. Subsection (c) is amended to clarify misdemeanors directly related to duties for revocation. Subsection (d) is amended to clarify that revocation is a permanent disqualification. Subsection (e) is amended to clarify the process for conditional revocation. Subsection (f) is amended to clarify the reinstatement process. Subsection (g) is amended to clarify the notification responsibilities of the commission. Subsection (h) is amended to clarify the revocation of licenses. Subsection (i) is amended to clarify the date of revocation. Subsection (j) is amended to reflect the effective date of these changes. Subsections (k), (l), and (m) have been deleted.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code Chapter 1701, §1701.501, Disciplinary Action and §1701.502, Felony Conviction or Placement On Community Supervision.

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

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CHAPTER 229. TEXAS PEACE OFFICERS' MEMORIAL

37 TAC §229.3

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to Title 37, §229.3, concerning Specific Eligibility of Memorial, with changes to the proposed text as published in the March 27, 2009, issue of the *Texas Register* (34 TexReg 2120) and will be republished.

The amendment adds language to 37 TAC §229.3, Specific Eligibility of Memorial. The title will be amended to reflect the title of Texas Government Code §3105.003. Subsection (a) is amended to reflect changes to the Texas Government Code §3105.003 and to clarify the eligibility requirements. Subsection (b) is amended to reflect the effective date of these changes.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Government Code, Chapter 3150, §3105.003, Eligibility for Memorial.

§229.3. Specific Eligibility of Memorial.

(a) An officer identified in §229.1 of this chapter is eligible for inclusion on the memorial if the fatal incident:

(1) was a direct result of a line of duty, on or off duty incident;

(2) was an indirect result but directly attributed to a line of duty, on or off duty incident; or

(3) was a direct result of a felonious assault on the officer, perpetrated because of the officer's status, regardless of duty status.

(b) The effective date of this section is July 6, 2009.

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

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

TRD-200902412

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Effective date: July 6, 2009

Proposal publication date: March 27, 2009

For further information, please call: (512) 936-7700

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37 TAC §229.5

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to Title 37, §229.5, concerning Determination Standards, without changes to the proposed text as published in the March 27, 2009, issue of the *Texas Register* (34 TexReg 2121) and will not be republished.

The amendment adds language to 37 TAC §229.5, Determination Standards. Subsections (a), (b) and (d) are amended to reflect changes to the Texas Government Code §3105.003. Subsection (e) is amended to reflect the effective date of these changes.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Government Code, Chapter 3150, §3105.003, Eligibility for Memorial.

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 June 15, 2009.

TRD-200902413

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Effective date: July 6, 2009

Proposal publication date: March 27, 2009

For further information, please call: (512) 936-7700

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37 TAC §229.7

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to Title 37, §229.7, concerning Deaths Not Included, without changes to the

proposed text as published in the March 27, 2009, issue of the *Texas Register* (34 TexReg 2122) and will not be republished.

The amendment adds language to 37 TAC §229.7, Deaths Not Included. Subsections (a) - (c) are amended to reflect changes to the Texas Government Code §3105.003.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Government Code, Chapter 3150, §3105.003, Eligibility for Memorial.

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 June 15, 2009.

TRD-200902414

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Effective date: July 6, 2009

Proposal publication date: March 27, 2009

For further information, please call: (512) 936-7700

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.

Adopted Rule Reviews

Texas State Library and Archives Commission

Title 13, Part 1

The Texas State Library and Archives Commission has completed the review of 13 TAC Chapter 8, concerning the TexShare Library Consortium, in accordance with the requirements of Government Code, §2001.039. Notice of the review was published in the April 24, 2009, issue of the *Texas Register* (34 TexReg 2609).

The commission finds that the reasons for the adoption of the rules in Title 13, Chapter 8, continue to exist. The rules were adopted pursuant to the Government Code, §441.225(b), which permits the Texas State Library and Archives Commission to adopt rules to govern the operation of the consortium. The rules are necessary to carry out the statutory obligations of the Texas State Library and Archives Commission to establish and maintain the TexShare consortium as a resource sharing consortium.

The commission readopts Chapter 8 in accordance with the Government Code, §2001.039. No comments were received regarding the review of the chapter.

TRD-200902387
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Filed: June 12, 2009

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IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Department of Agriculture

Request for Applications: Texans Feeding Texans: Home-Delivered Meal Grant Program

In accordance with Texas Agriculture Code, §12.042, the state legislature has appropriated funding to the Texas Department of Agriculture (TDA) for distribution, pursuant to the Texans Feeding Texans: Home-Delivered Meal Grant Program (HDMGP), to governmental agencies or qualifying non-profit organizations that deliver meals to homebound persons that are elderly and/or have a disability. TDA will begin accepting applications from eligible organizations September 11, 2009. Total funding for this application period is approximately $10 million.

Eligibility Criteria. To be eligible for HDMGP funds, an applying organization must meet the following criteria:

1. Must be a governmental agency or a nonprofit private organization that is exempt from taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c)(3) of that code, that is a direct provider of home-delivered meals to the elderly or persons with disabilities in this state;

2. If a nonprofit private organization, must have a volunteer board of directors;

3. Must practice nondiscrimination;

4. Must have an accounting system or fiscal agent approved by the county in which it provides meals;

5. Must have a system to prevent the duplication of services to the organization's clients;

6. Must agree to use funds received under this section only to supplement and extend existing services related directly to home-delivered meal services;

7. Must have received a grant from the county in which the organization provides meals; and

8. Must submit the grant application using the form provided by TDA;

9. Must submit a completed county resolution form, as provided by TDA; and

10. Must comply with HDMGP rules adopted by TDA (4 TAC §§1.950 - 1.962).

For purposes of this Grant Program, "Homebound" means a person who is unable to leave his or her residence without aid or assistance or whose ability to travel from his or her residence is substantially impaired; "Elderly" means an individual who is 60 years of age or older; and "Disability" means a physical, mental or developmental impairment, temporarily or permanently limiting an individuals capacity to adequately perform one or more essential activities of daily living, which include, but are not limited to, personal and health care, moving around, communicating and housekeeping.

Submitting an Application. Applications will be accepted beginning September 1, 2009, and must be submitted on the form provided by TDA. Application forms are currently available on TDA's website at www.TexasAgriculture.gov, or available upon request from TDA by calling (512) 463-6695. Applications must be submitted to TDA headquarters in Austin, Texas. If mailing in the application, please make sure it is in a properly addressed envelope, bearing sufficient postage and **postmarked no later than November 1, 2009**. Applications must be certified by the applicant, include required supporting documentation, and bear the notarized signatures of the organization's authorized official and board chair, if applicable. An organization must submit a separate application for each county in which it provides home-delivered meal services.

Deadline for Submission of Applications. The postmark deadline for mailing of applications to TDA is **November 1, 2009.**

TDA will distribute funds after all valid applications are processed. Funds must be distributed by February 1, 2010. In the event that the amount qualifying grants exceeds the amount of funds available, funds may be distributed on a pro rata basis.

Grant Agreement. Eligible organizations that qualify to receive grant funds must execute a Grant Agreement with TDA, prior to the disbursement of any grant funds.

Further Information. Additional information about the HDMGP, the application process and program rules can be found on TDA's website at www.TexasAgriculture.gov. In addition, organizations may contact Ms. Lindsay Dickens, TDA Grants Specialist, at (512) 463-6695 or Lindsay.Dickens@TexasAgriculture.gov for more information.

TRD-200902448
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: June 16, 2009

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Request for Proposals: Texans Feeding Texans: Surplus Agricultural Products Grant Program

Statement of Purpose. Pursuant to the Texas Agriculture Code Chapter 21, the Texas Department of Agriculture (TDA) hereby requests proposals for projects, for the period October 1, 2009 through September 30, 2011, that collect and distribute surplus Texas agricultural products to food banks and other charitable organizations that serve needy or low-income individuals. For purposes of this request for proposals, the term "Texas agricultural product" means an agricultural, apicultural, horticultural, or vegetable food product, either in its natural or processed state, that has been produced, processed, or otherwise had value added to the product in this state, including: (1) fish or other aquatic species; (2) livestock, a livestock product, or a livestock by-product; (3) poultry, a poultry product, or a poultry by-product; and (4) wildlife processed for food or by-products. In addition to agricultural products grown in excess of a producer's needs, the term "surplus" includes any products not meeting that definition that are made available by a producer for distribution to food banks and other charitable organizations that serve the needy or low-income individuals.

Eligibility. Grant proposals will be accepted from non-profit organizations that have a 501(c)(3) IRS designation. These organizations must be established and operate under religious, charitable or educational purposes and not financial gain. Additionally, these organizations must not distribute any of their income to their members, directors or officers. Organizations must have at least 5 years of experience coordinating a statewide network of food banks and charitable organizations that serve each of the 254 counties in this state.

Funding Parameters. Proposals are limited to $1,000,000 per year for a total possible biennial budget of $2,000,000. Funding is limited to the operation of a program that coordinates the collection and transportation of surplus Texas agricultural products to a statewide network of food banks that provide food to the needy or low-income individuals.

TDA reserves the right to fund projects partially or fully. Where more than one proposal is acceptable for funding, TDA may request cooperation between grantees or revision/adjustment to a proposal in order to avoid duplication and to realize the maximum benefit to the state.

Eligible Expenses. Generally, expenses that are necessary and reasonable for proper and efficient performance and administration of a project are eligible; however, these expenses must be properly documented with sufficient backup detail, including copies of paid invoices. Examples of eligible expenditures are:

1. Personnel costs - both salary and benefits;

2. Travel - in-state only and incurred by grant personnel on official grant-related business;

3. Equipment - nonexpendable, tangible personal property having a useful life of more than one year and costs $5,000 or more;

4. Supplies and direct operating expenses - equipment that costs less than $5,000, office supplies, postage, telecommunications, printing, fidelity bond, packaging, collection, transportation, etc.; and

5. Indirect costs - no more than 10%.

Ineligible Expenses. Expenses that are prohibited by state or federal law are ineligible. Examples of these expenditures are:

1. Alcoholic beverages;

2. Entertainment;

3. Contributions - charitable or political;

4. Fundraising;

5. Expenses falling outside of the contract period;

6. Expenses for expenditures not specifically listed in the project budget; and

7. Expenses that are not adequately documented.

Submission Requirements. Each proposal must include the following criteria:

1. Cover sheet with project title, name, title, address, telephone and fax numbers, and email address of the individual designated as the point of contact.

2. Project summary, not to exceed one page.

3. Identification of the key personnel to be involved in the project, including information on their experience.

4. Measurable goals - a description of realistic goals that are measurable and potentially attainable.

5. Evaluation plan - a description of the method(s) to be used to determine the success of the project.

6. Work plan - a description of how the collection and distribution of surplus agriculture products will be accomplished.

7. Project budget - must be detailed with year 1 and year 2 expenditures and include justification for proposed line item expenditures.

Reporting Requirements. Upon award, the following reports will be required:

1. Narrative reports on a quarterly basis from one to three pages in length detailing accomplishments of project objectives for the time periods specified in the award document.

2. Final compliance narrative report shall be due either upon completion of the project or thirty (30) days after the termination of the grant project, whichever occurs first. The final report shall contain:

(a) A project summary - history of the project, objectives, importance, effort, and results;

(b) Details pertaining to the measured goals and project evaluation;

(c) A description of the successes, challenges, and any limitations; and

(d) A description of future plans - include how the project will continue after the grant is expended and how additional funding may address expansion efforts.

3. Budget reports on a quarterly basis for the time periods specified in the award document that details the grant award funds spent to date.

General Compliance Information.

1. All grant awards are subject to the availability of appropriations and authorizations by the Texas Legislature.

2. Any delegation by the Grantee to a subcontractor regarding any duties and responsibilities imposed by the grant award shall be approved in advance by TDA and shall not relieve the Grantee of its responsibilities to TDA for their performance.

3. Any information or documentation submitted to TDA is subject to disclosure under the Texas Public Information Act.

4. Awarded grant projects must remain in full compliance or be subject to termination at the discretion of TDA.

5. Grant recipients must keep a separate bookkeeping account with a complete record of all expenditures relating to the research project. Records shall be maintained for three years after the completion of the research project or as otherwise agreed upon with TDA. TDA and the Texas State Auditor's Office reserve the right to examine all books, documents, records, and accounts relating to the research project at any time throughout the duration of the agreement and for three years immediately following completion of the project. If there has been any litigation, claim, negotiation, audit or other action started prior to the expiration of the three-year period involving the records, then the records must be retained until the completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later. TDA and the Texas State Auditor's Office reserve the right to inspect the research locations and to obtain from the research team full information regarding all project activities.

6. If the Grantee has a financial audit performed in any year during which Grantee receives funds from TDA, and if TDA requests information about the audit, the Grantee shall provide such information to TDA or provide information as to where the audit report can be publicly viewed, including the audit transmittal letter, management letter, and any schedules in which the Grantee's funds are included.

7. Grant awards to Texas institutions shall comply in all respects with the Uniform Grant Management Standards (UGMS). A copy may be downloaded from the following website: www.governor.state.tx.us/divisions/stategrants/guidelines/files/U GMS012001.doc

Deadline for Submission of Responses. Responses to this request should be submitted to Ms. Mindy Weth Fryer, Grants Specialist, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. The street address is 1700 North Congress, 11th Floor, Austin, Texas 78701. Fax: (888) 223-9048, e-mail: grants@TexasAgriculture.gov.

Submissions must be received no later than 5:00 p.m. on August 17, 2009.

TDA will send an acknowledgement receipt by email indicating the response was received.

For questions regarding submission of the proposal and TDA documentation requirements, please contact Ms. Mindy Weth Fryer, Grants Specialist, at (512) 463-6908 or by email at grants@TexasAgriculture.gov.

TRD-200902447
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: June 16, 2009

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Office of the Attorney General

Request for Proposals for Consulting Services - Group Health Insurance Program for Children in the Title IV-D Caseload

The Texas Office of the Attorney General (OAG) Child Support Division (CSD) is the state agency organizational unit required to develop and implement a statewide integrated system for child support and medical support enforcement required under part D of Title IV of the Social Security Act (Title IV-D). The OAG was granted authority by the 81st Texas Legislature to secure a group health insurance provider and services of a third party administrator that will provide affordable and accessible health insurance for children in the Title IV-D caseload whose parents do not have employer sponsored health insurance or other private health insurance and are not eligible for government sponsored medical programs.

In accordance with Texas Government Code, Chapter 2254, the OAG is issuing a Request for Proposals (RFP) for the OAG to enter into contract(s) with one (or more) consultant(s) or a consulting firm (the Consultant) with the competence, knowledge and qualifications in the business of group health insurance and third party administration. The Consultant(s) awarded the contract(s) shall assist and advise the OAG in the development and implementation of a group health insurance program for children in the Title IV-D caseload.

This is not the complete bid package. The complete bid package will be available on or after June 26, 2009 and will be posted on the Electronic State Business Daily (ESBD) found at http://esbd.cpa.state.tx.us/. Search under Agency Name "OFFICE OF THE ATTORNEY GENERAL - 302" and Search Type "SEARCH BID / PROCUREMENT OPPORTUNITIES."

Deadline for submitting a proposal pursuant to this RFP and actual receipt by the OAG is Monday, July 27, 2009 at 2:00 p.m. (local time, Austin Texas). Proposals received after this deadline will not be accepted and will be returned to the originating source.

Point of Contact: Ted N. White, Assistant Attorney General, Office of the Attorney General, Child Support Division (email: Ted.White@cs.oag.state.tx.us)

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

For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-200902450
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: June 16, 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 June 5, 2009, through June 11, 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 June 17, 2009. The public comment period for this project will close at 5:00 p.m. on July 17, 2009.

FEDERAL AGENCY ACTIONS:

Applicant: South Padre Island Economic Development Corporation; Location: The project is located in wetlands adjacent to Laguna Madre, at 6801 Padre Boulevard, or immediately south of the Laguna Madre Water District, in South Padre Island, Cameron County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Isabel, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 682723; Northing: 2892002. Project Description: The project consists of filling 0.63 acres of saltwater coastal flat wetlands for the purpose of constructing a Marine Science Center, which will house aquariums and associated equipment, a marine mammal stranding facility, a lecture room, and associated parking for 80 to 90 vehicles. The applicant is proposing mitigation with the enhancement of 1.0 to 1.3 acres of existing cattail wetlands that are located between the project site and Laguna Madre. The applicant is also required to compensate for the filling of 0.023 acres of adjacent wetlands filled under Nationwide Permit 18 (SWG-2007-0858). CCC Project No.: 09-0181-F1. Type of Application: U.S.A.C.E. permit application #SWG-2009-00065 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).

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-200902454
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: June 17, 2009

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Comptroller of Public Accounts

Notice of Request for Proposals

Pursuant to Chapter 2254, Subchapter B, and §403.301 and §403.3011, Texas Government Code; §§5.12, 5.13 and 5.102, Property Tax Code; and Chapter 271, Local Government Code, the Comptroller of Public Accounts (Comptroller) announces the issuance of a Request for Proposals (RFP #195a) from qualified, independent firms to provide consulting services to Comptroller. The successful respondent will assist Comptroller in conducting Appraisal Standards Reviews (ASR) of up to twenty-seven (27) county appraisal districts throughout the state on an as-needed, as requested basis, and other related consulting services. The successful respondent will be expected to begin performance of the contract, if any, on or about September 1, 2009, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., Room 201, Austin, Texas 78774 (Issuing Office), telephone number: (512) 305-8673, to obtain a copy of the RFP. Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP was made available for pick-up at the above-referenced address on Friday, June 26, 2009, after 10:00 a.m., Central Zone Time (CZT), and during normal business hours thereafter. Comptroller also made the complete RFP available electronically on the Electronic State Business Daily at: http://esbd.cpa.state.tx.us after 10:00 a.m. CZT on Friday, June 26, 2009.

Non-Mandatory Letters of Intent and Questions: All Non-Mandatory Letters of Intent and questions regarding the RFP must be sent via facsimile to Mr. Harris at: (512) 463-3669, not later than 2:00 p.m. CZT, on Friday, July 10, 2009. Official responses to questions received by the foregoing deadline will be posted electronically on the Electronic State Business Daily no later than Friday, July 17, 2009, or as soon thereafter as practical. Non-Mandatory Letters of Intent or Questions received after the deadline will not be considered. Respondents shall be solely responsible for confirming the timely receipt of Non-Mandatory Letters of Intent and Questions in the Issuing Office.

Closing Date: Proposals must be received in the Assistant General Counsel's Office at the address specified above (Room 201) no later than 2:00 p.m. CZT, on Friday, July 24, 2009. Proposals received after this time and date will not be considered. Proposals will not be accepted from respondents that do not submit proposals by the foregoing deadline. Respondents shall be solely responsible for confirming the timely receipt of proposals in the Issuing Office.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. Comptroller will make the final decision regarding the award of a contract under this RFP. Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is under no legal or other obligation to execute any contracts on the basis of this notice or the distribution of any RFP. 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 - June 26, 2009, after 10:00 a.m. CZT; Non-Mandatory Letters of Intent and Questions Due - July 10, 2009, 2:00 p.m. CZT; Official Responses to Questions Posted - July 17, 2009, or as soon thereafter as practical; Proposals Due - July 24, 2009, 2:00 p.m. CZT; Contract Execution - August 13, 2009, or as soon thereafter as practical; Commencement of Project Activities - September 1, 2009, or as soon thereafter as practical.

TRD-200902461
Pamela Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: June 17, 2009

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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 06/22/09 - 06/28/09 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 06/22/09 - 06/28/09 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 07/01/09 - 07/31/09 is 5.00% for Consumer/Agricultural/Commercial/credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 07/01/09 - 07/31/09 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-200902442
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: June 16, 2009

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Credit Union Department

Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Applications to Expand Field of Membership - Approved

Bluebonnet Credit Union, Houston, Texas - See *Texas Register* issue, dated March 27, 2009.

Texas Dow Employees Credit Union, Lake Jackson, Texas - See *Texas Register* issue, dated March 27, 2009.

TRD-200902453

Harold E. Feeney
Commissioner
Credit Union Department
Filed: June 17, 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 **July 27, 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 July 27, 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: Darrell Hall dba 2620 Estates; DOCKET NUMBER: 2008-0834-PWS-E; IDENTIFIER: RN103018818; LOCATION: Grimes County; TYPE OF FACILITY: public water supply (PWS); RULE VIOLATED: 30 Texas Administrative Code (TAC) §290.110(b)(4), by failing to maintain a free chlorine residual of at least 0.2 milligrams per liter (mg/L) throughout the distribution system; 30 TAC §290.39(m), by failing to provide written notification to the commission of the startup of a new PWS system; 30 TAC §290.39(e)(1) and Texas Health and Safety Code (THSC), §341.035(c), by failing to submit detailed engineering reports prior to activating a new PWS system; 30 TAC §290.42(e)(3), by failing to provide disinfection equipment; and 30 TAC §290.41(c)(3)(O) and §290.43(e), by failing to provide an intruder-resistant fence; PENALTY: $6,885; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: Air Liquide Large Industries U.S. LP; DOCKET NUMBER: 2009-0222-AIR-E; IDENTIFIER: RN100233998; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: steam producing and electricity plant; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), Air Permit Number 56212, Special Condition (SC) Number 2A, Federal Operating Permit (FOP) Number 1735, Special Terms and Conditions (STC) Number 5, and THSC, §382.085(b), by failing to comply with the permitted limit of 0.06 pound per million British Thermal Units per hour of nitrogen oxide (NO_x); 30 TAC §116.115(c) and §122.143(4), Air Permit Number 9346, SC Number 4, FOP Number 1735, STC Number 5, and THSC, §382.085(b), by failing to comply with the permitted limit of NO_x emissions; 30 TAC §116.115(c) and §122.143(4), Air Permit Number 73110, SC Number 8B, FOP Number 1735, STC Number 5, and THSC, §382.085(b), by failing to comply with the permitted parts per million limit of carbon monoxide; and 30 TAC §§122.143(4), 122.145(2)(A), and 122.146(5)(C), FOP Number 1735, General Terms and Conditions (GTC), and THSC, §382.085(b), by failing to include the NO_x exceedances in the permit compliance certification reports and deviation reports; PENALTY: $82,455; Supplemental Environmental Project (SEP) offset amount of $32,982 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: Aqua Utilities, Inc. dba Aqua Texas, Inc.; DOCKET NUMBER: 2009-0354-MWD-E; IDENTIFIER: RN102957024; LOCATION: Hood County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013022001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for five-day carbonaceous biochemical oxygen demand and total suspended solids (TSS); and 30 TAC §305.125(17) and TPDES Permit Number WQ0013022001, Monitoring and Reporting Requirements Number 1, by failing to timely submit monitoring results at the intervals specified in the permit; PENALTY: $3,520; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: B & B Ready Mix, Inc.; DOCKET NUMBER: 2009-0461-AIR-E; IDENTIFIER: RN104188784; LOCATION: Seagoville, Dallas County; TYPE OF FACILITY: concrete batch plant; RULE VIOLATED: 30 TAC §116.115(b) and (c) and §116.615(9), Standard Permit Number 50248, General Requirements, and THSC, §382.085(b), by failing to maintain air pollution emission capture and abatement equipment in good working order and working properly during normal operations and by failing to meet a performance standard of no visible emissions exceeding 30 seconds in any six-minute period from the batch drop point; PENALTY: $970; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: D & M Water Supply Corporation; DOCKET NUMBER: 2009-0261-PWS-E; IDENTIFIER: RN101441533; LOCATION: Douglass, Nacogdoches County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.46(q)(1), by failing to issue a boil water notification; and 30 TAC §290.51(a)(3) and the Code, §5.702, by failing to pay all annual and late public health service fees; PENALTY: $620; ENFORCEMENT COORDINATOR: Amanda Henry, (713) 767-3500; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: Eagle Rock Field Services, L.P.; DOCKET NUMBER: 2009-0331-AIR-E; IDENTIFIER: RN100220557; LOCATION: Dumas, Moore County; TYPE OF FACILITY: natural gas compressor station; RULE VIOLATED: 30 TAC §122.143(4) and §122.145(2)(A) and (B), FOP Number O-00490, GTC, and THSC, §382.085(b), by failing to submit a deviation report; PENALTY: $1,875; ENFORCEMENT COORDINATOR: Danielle Porras, (512)

239-2602; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(7) COMPANY: City of Encinal; DOCKET NUMBER: 2009-0075-IHW-E; IDENTIFIER: RN105025902; LOCATION: near Encinal, Webb County; TYPE OF FACILITY: property; RULE VIOLATED: 30 TAC §327.5(a), by failing to immediately abate and contain a spill or discharge and remove the discharged or spilled substance; PENALTY: $1,270; ENFORCEMENT COORDINATOR: John Shelton, (512) 239-2563; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5427, (956) 425-6010.

(8) COMPANY: Equalizer, Inc.; DOCKET NUMBER: 2009-0446-AIR-E; IDENTIFIER: RN105020903; LOCATION: Waco, McLennan County; TYPE OF FACILITY: liquid fertilizer processing plant; RULE VIOLATED: 30 TAC §101.4 and THSC, §382.085(a) and (b), by failing to prevent nuisance dust emissions from impacting off property receptors; PENALTY: $800; ENFORCEMENT COORDINATOR: Kirk Schoppe, (512) 239-0489; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(9) COMPANY: City of Groveton; DOCKET NUMBER: 2008-1769-MWD-E; IDENTIFIER: RN102844297; LOCATION: Groveton, Trinity County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010556001, Interim Effluent Limitations and Monitoring Requirements Numbers 1 and 6, and the Code, §26.121(a)(1), by failing to comply with permitted effluent limits; and 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0010556001, Monitoring and Reporting Requirements Number 1, by failing to provide monitoring results at the intervals specified in the permit; PENALTY: $31,531; SEP offset amount of $31,531 applied to repairing or replacing failing or inadequately designed private sewer lines, access units, and clean-outs for low-income residents; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(10) COMPANY: Harris County Municipal Utility District Number 109; DOCKET NUMBER: 2009-0305-MWD-E; IDENTIFIER: RN102178191; LOCATION: Humble, Harris County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0011533001, Final Effluent Limitations and Monitoring Requirements Number 2, and the Code, §26.121(a), by failing to maintain the permitted effluent limits for total chlorine residual after de-chlorination; PENALTY: $10,000; SEP offset amount of $10,000 applied to Gulf Coast Waste Disposal Authority - River, Lakes, Bay 'N Bayous Trash Bash; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: Huntsman Petrochemical Corporation; DOCKET NUMBER: 2009-0330-AIR-E; IDENTIFIER: RN100219252; LOCATION: Port Neches, Jefferson County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), Air Permit Number 19823, SC Number 1, FOP Number O-02288, SC Number 16, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $19,050; SEP offset amount of $7,620 applied to Jefferson County - Retrofit/Replacement of Heavy Equipment and Vehicles with Alternative Fueled Equipment and Vehicles; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3100; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(12) COMPANY: INEOS NOVA LLC; DOCKET NUMBER: 2009-0209-AIR-E; IDENTIFIER: RN100542224; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 5252, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to notify the TCEQ within 24 hours when the benzene emissions exceeded the reportable quantity; PENALTY: $5,642; SEP offset amount of $2,257 applied to Houston Regional Monitoring Corporation - Houston area Monitoring; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(13) COMPANY: McMullen County Water Control and Improvement District 2; DOCKET NUMBER: 2009-0125-PWS-E; IDENTIFIER: RN101398808; LOCATION: McMullen County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.41(c)(3)(J), by failing to provide a concrete sealing block around the wellhead; 30 TAC §290.46(f)(2) and (3)(E)(iv), by failing to provide water system records to commission personnel upon request; 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted; 30 TAC §290.46(m)(1)(A), by failing to perform an annual inspection of the facility's ground storage tanks; and 30 TAC §290.46(m)(1)(B), by failing to perform an annual inspection of the facility's pressure tank; PENALTY: $972; ENFORCEMENT COORDINATOR: Andrea Linson-Mgbeoduru, (512) 239-1482; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(14) COMPANY: Mobil Chemical Company Inc.; DOCKET NUMBER: 2009-0193-AIR-E; IDENTIFIER: RN100211903; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: polyethylene plastic manufacturing plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), New Source Review Permit Number 6860, SC Number 1, FOP Number O-01243, GTC and STC Number 10A, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $3,675; SEP offset amount of $1,470 applied to Jefferson County - Retrofit/Replacement of Heavy Equipment and Vehicles with Alternative Fueled Equipment and Vehicles; ENFORCEMENT COORDINATOR: Kirk Schoppe, (512) 239-0489; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(15) COMPANY: T R Moore; DOCKET NUMBER: 2009-0792-OSI-E; IDENTIFIER: RN105705081; LOCATION: Woodville, Tyler County; TYPE OF FACILITY: on site sewage; 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: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(16) COMPANY: North San Saba Water Supply Corporation; DOCKET NUMBER: 2009-0413-PWS-E; IDENTIFIER: RN101225613; LOCATION: San Saba, San Saba County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.109(c)(1)(A), by failing to collect routine distribution coliform samples; 30 TAC §290.46(f)(2) and (3)(D)(ii), by failing to provide water system records to commission personnel at the time of the investigation; 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted; 30 TAC §290.41(c)(3)(O) and §290.43(e), by failing to enclose all well units and storage tanks with an intruder-resistant fence; 30 TAC §290.46(m)(4), by failing to maintain all treatment units, storage and pressure maintenance

facilities, distribution system lines and related appurtenances in a watertight condition; 30 TAC §290.45(b)(1)(D)(iv) and THSC, §341.0315(c), by failing to provide an elevated storage capacity of 100 gallons per connection; and 30 TAC §290.45(b)(1)(D)(iii) and THSC, §341.0315(c), by failing to provide two or more service pumps having a total capacity of two gallons per minute (gpm) per connection; PENALTY: $1,274; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (316) 825-3100; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(17) COMPANY: Paint Rock Independent School District; DOCKET NUMBER: 2009-0411-PST-E; IDENTIFIER: RN101864007; LOCATION: Paint Rock, Concho County; TYPE OF FACILITY: school bus fleet fueling and maintenance; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(iii), by failing to ensure that a valid, current TCEQ delivery certificate is posted at the facility in a location where it is clearly visible at all times; 30 TAC §334.10(b), by failing to maintain underground storage tank (UST) records and make them immediately available for inspection upon request; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor the UST for releases; 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; and 30 TAC §334.50(d)(1)(B)(iii)(IV) and the Code, §26.3475(c)(1), by failing to measure any water level in the bottom of the tank to the nearest 1/8-inch at least once a month and make appropriate adjustments to the inventory control records; PENALTY: $4,900; SEP offset amount of $3,920 applied to Texas Parent Teacher Association (PTA) - *Clean School Bus Program*; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(18) COMPANY: Robert E. Baker and Pleasure Point Homeowners Association, Inc. dba Pleasure Point Water Supply Corporation; DOCKET NUMBER: 2008-1850-PWS-E; IDENTIFIER: RN101281749; LOCATION: Angelina 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); 30 TAC §290.113(f)(5) and THSC, §341.0315(c), by failing to comply with the MCL for haloacetic acid; 30 TAC §290.41(c)(3)(N), by failing to provide well number 3 with a flow measuring device to measure production yields and provide for the accumulation of water production data; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment; 30 TAC §290.46(m)(1)(A), by failing to perform an annual inspection on each of the facility's ground storage tanks; 30 TAC §290.46(m)(1)(B), by failing to perform an annual inspection on each of the facility's pressure tanks; 30 TAC §290.43(c)(3), by failing to provide the overflow on the ground storage tanks with a gravity-hinged and weighted cover that fits tightly with no gap over 1/16-inch; 30 TAC §290.46(d)(2)(A) and §290.110(b)(4), by failing to operate the disinfection equipment to maintain the residual disinfectant concentration in the water within the distribution system at least 0.2 mg/L of free chlorine; 30 TAC §290.46(f)(3)(A)(i)(III), (ii)(III), (iv), (D)(i), and (i), by failing to maintain and make available to the commission upon request an accurate and up-to-date record of water works operation and maintenance activities; 30 TAC §290.41(c)(1)(F), by failing to provide sanitary control easements covering all land within 150 feet of the facility's wells; 30 TAC §290.45(b)(1)(C)(i) and THSC, §341.0315(c), by failing to provide a minimum well capacity of 0.6 gpm per connection; 30 TAC §29.45(b)(1)(C)(ii) and THSC, §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection; 30 TAC §290.45(b)(1)(C)(iii) and THSC, §341.0315(c), by failing to provide two or more service pumps having a total capacity of two gpm per connection; 30 TAC §290.45(b)(1)(C)(iv) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 20 gallons per connection; 30 TAC §290.46(n)(2), by failing to provide an accurate and up-to-date map of the distribution system; and 30 TAC §290.121(a) and (b), by failing to have a complete and up-to-date chemical and microbiological monitoring plan; PENALTY: $6,773; ENFORCEMENT COORDINATOR: Andrea Linson-Mgbeoduru, (512) 239-1482; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(19) COMPANY: City of Queen City; DOCKET NUMBER: 2009-0515-PWS-E; IDENTIFIER: RN101388858; LOCATION: Queen City, Cass County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.113(f)(4), TCEQ Agreed Order Docket Number 2005-0658-PWS-E, Ordering Provision Number 2.d., and THSC, §341.0315(c), by failing to comply with the MCL for TTHM; PENALTY: $745; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 490-3096; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(20) COMPANY: City of Savoy; DOCKET NUMBER: 2009-0418-MWD-E; IDENTIFIER: RN102921988; LOCATION: Fannin County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0014273001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, and the Code, §26.121(a), by failing to comply with permit effluent limits for biochemical oxygen demand, TSS, and total residual chlorine; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: Shore-Tech, Inc. dba L & M Water Development Company; DOCKET NUMBER: 2008-0329-PWS-E; IDENTIFIER: RN102685351; LOCATION: Galveston County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by failing to comply with the MCL for TTHM; and 30 TAC §290.51(a)(3), by failing to pay all annual and late public health service fees; PENALTY: $352; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(22) COMPANY: Stallion Oilfield Services Limited; DOCKET NUMBER: 2009-0496-WR-E; IDENTIFIER: RN105695357; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: water diversion site; RULE VIOLATED: 30 TAC §297.11 and the Code, §11.121, by failing to obtain a water right permit prior to diverting, storing, impounding, taking, or using water of the state; PENALTY: $575; ENFORCEMENT COORDINATOR: Evette Alvarado, (512) 239-2573; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: Jim West; DOCKET NUMBER: 2009-0828-WOC-E; IDENTIFIER: RN105116404; LOCATION: Limestone 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: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(24) COMPANY: Fred S. Williams Jr.; DOCKET NUMBER: 2009-0794-WOC-E; IDENTIFIER: RN105709893; LOCATION: near Chillicothe, Wilbarger 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: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(25) COMPANY: WW Webber, Inc.; DOCKET NUMBER: 2009-0796-WQ-E; IDENTIFIER: RN104143714; LOCATION: Vidor, Orange County; TYPE OF FACILITY: highway and street construction; 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: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-200902437
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 16, 2009

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Enforcement Orders

An agreed order was entered regarding Evans Weaver, Docket No. 2007-0393-LII-E on June 5, 2009 assessing $625 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.

An agreed order was entered regarding Olmito Water Supply Corporation, Docket No. 2007-0686-MWD-E on June 5, 2009 assessing $8,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gary Shiu, Staff Attorney at (713) 767-3500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dolores A. Luke dba Big Horn Services, Docket No. 2007-0743-MLM-E on June 5, 2009 assessing $1,730 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 Price Construction, Ltd., Docket No. 2007-0876-AIR-E on June 5, 2009 assessing $5,145 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding International Airport Square Investments, Ltd. dba Roadway Inn International Airport, Docket No. 2007-1014-MWD-E on June 5, 2009 assessing $39,900 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari Gilbreth, Staff Attorney at (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Newark, Docket No. 2007-1065-MWD-E on June 5, 2009 assessing $21,812 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gary Shiu, Staff Attorney at (713) 767-3500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding West Houston Airport Corporation, Docket No. 2007-1726-MWD-E on June 5, 2009 assessing $28,980 in administrative penalties with $5,796 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Joel Garza, Docket No. 2007-1830-MLM-E on June 5, 2009 assessing $2,370 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.

An agreed order was entered regarding Tony Hutcheson dba Elm Grove Mobile Home Park, Docket No. 2007-1911-PWS-E on June 5, 2009 assessing $2,062 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tommy Henson, 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 Danny Wilde, Docket No. 2008-0097-MSW-E on June 5, 2009 assessing $5,025 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin Thompson, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Shobhana Patel dba Bear Food Mart, Docket No. 2008-0123-PST-E on June 5, 2009 assessing $1600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin Thompson, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Curtis Cashion, Docket No. 2008-0176-PST-E on June 5, 2009 assessing $7,875 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 Patriot Car Wash LLC, Docket No. 2008-0235-WQ-E on June 5, 2009 assessing $1,070 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin Thompson, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Charlie Parrish dba Parrish Country Store, Docket No. 2008-0252-PST-E on June 5, 2009 assessing $7,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin Thompson, Staff Attorney at (512) 239-0600,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Linda Hill Barton, Docket No. 2008-0425-PST-E on June 5, 2009 assessing $7,875 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 order was entered regarding Patricia A. Farris, Docket No. 2008-0436-PST-E on June 5, 2009 assessing $6,300 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin Thompson, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Silvester and Martha Martinez, Docket No. 2008-0537-MSW-E on June 5, 2009 assessing $1,050 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.

A default order was entered regarding Kermit Willett, Docket No. 2008-0567-MLM-E on June 5, 2009 assessing $2290 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin Thompson, 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 City of Crandall, Docket No. 2008-0589-MWD-E on June 5, 2009 assessing $63,616 in administrative penalties with $63,616 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Jecha, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Jimmy Miller, Executor of the Latham Miller Estate, Docket No. 2008-0666-PST-E on June 5, 2009 assessing $11,550 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.

A default order was entered regarding Danny J. Shipman, Jr. dba Kim's Septic Service, Docket No. 2008-0912-SLG-E on June 5, 2009 assessing $1,530 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.

A default order was entered regarding Carmen Martinez, Docket No. 2008-0914-PST-E on June 5, 2009 assessing $22,050 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.

A default order was entered regarding JMJ Organics LTD, Docket No. 2008-0964-MSW-E on June 5, 2009 assessing $6,539 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.

A default order was entered regarding Cain Addition HomeOwners Association CAHA, Docket No. 2008-0975-PWS-E on June 5, 2009 assessing $1,850 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.

A default order was entered regarding S & J Endeavors, L.L.C., Docket No. 2008-0998-WQ-E on June 5, 2009 assessing $2,100 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.

A default order was entered regarding John Tran dba Quality Cleaners and dba Deluxe Drycleaning, Docket No. 2008-1047-DCL-E on June 5, 2009 assessing $6,500 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 Dennis James Schouten, Cornelius Thomas Schouten, and Nicholas Schouten dba D & L Dairy, Docket No. 2008-1097-AGR-E on June 5, 2009 assessing $5,215 in administrative penalties with $1,043 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Richard Sullivan dba Country View Mobile Home Park and Richard Sullivan dba Valley Estates, Docket No. 2008-1127-PWS-E on June 5, 2009 assessing $1,475 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 Gerard Ortiz dba River Oaks Water System, Docket No. 2008-1287-PWS-E on June 5, 2009 assessing $3,906 in administrative penalties with $781 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 City of Eustace, Docket No. 2008-1343-MWD-E on June 5, 2009 assessing $12,360 in administrative penalties with $2,472 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 ONEOK Hydrocarbon Southwest, LLC, Docket No. 2008-1407-AIR-E on June 5, 2009 assessing $13,100 in administrative penalties with $2,620 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 Angelina County, Docket No. 2008-1426-MSW-E on June 5, 2009 assessing $13,000 in administrative penalties with $2,600 deferred.

Information concerning any aspect of this order may be obtained by contacting John Shelton, 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 Francisca Richter dba Hillside Water Works, Docket No. 2008-1559-PWS-E on June 5, 2009 assessing $383 in administrative penalties with $76 deferred.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was entered regarding Jesus Rivera dba El Burrito Stop N Go, Docket No. 2008-1572-PST-E on June 5, 2009 assessing $7,365 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tommy Henson, 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 Shell Oil Company, Docket No. 2008-1621-AIR-E on June 5, 2009 assessing $21,275 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Bryan Elliott, Enforcement Coordinator at (512) 239-6162, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Richard Billings dba Oak Hill Ranch Water Company, Docket No. 2008-1651-PWS-E on June 5, 2009 assessing $669 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 Southwest Convenience Stores, LLC, Docket No. 2008-1662-AIR-E on June 5, 2009 assessing $2,620 in administrative penalties with $524 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pecan Grove Homes, LP, Docket No. 2008-1676-WQ-E on June 5, 2009 assessing $6,050 in administrative penalties with $1,210 deferred.

Information concerning any aspect of this order may be obtained by contacting Lauren Smitherman, Enforcement Coordinator at (512) 239-5223, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Conner Steel Products Inc., Docket No. 2008-1679-AIR-E on June 5, 2009 assessing $32,600 in administrative penalties with $6,520 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SandRidge CO2, LLC, Docket No. 2008-1695-AIR-E on June 5, 2009 assessing $10,500 in administrative penalties with $2,100 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 Loay Daraghmeh dba Speedmax 1, Docket No. 2008-1707-PST-E on June 5, 2009 assessing $4,388 in administrative penalties with $877 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Virgil Wayne Wiley, Docket No. 2008-1724-MLM-E on June 5, 2009 assessing $3,486 in administrative penalties with $697 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 Exxon Mobil Corporation, Docket No. 2008-1726-AIR-E on June 5, 2009 assessing $26,450 in administrative penalties with $5,290 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 STAR FUELS, INC. dba Phillips 66, Docket No. 2008-1738-PST-E on June 5, 2009 assessing $2,518 in administrative penalties with $503 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 Western Rim Investment Advisors, Inc., Docket No. 2008-1775-WQ-E on June 5, 2009 assessing $19,758 in administrative penalties with $3,951 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CLEMSA LUMBER COMPANY, Docket No. 2008-1787-IWD-E on June 5, 2009 assessing $1,290 in administrative penalties with $258 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.

An agreed order was entered regarding Citgo Refining and Chemicals Company L.P., Docket No. 2008-1793-AIR-E on June 5, 2009 assessing $20,459 in administrative penalties with $4,091 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 Bennie Dennis, Docket No. 2008-1808-WOC-E on June 5, 2009 assessing $1,992 in administrative penalties with $398 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 E. I. du Pont de Nemours and Company, Docket No. 2008-1817-AIR-E on June 5, 2009 assessing $6,916 in administrative penalties with $1,383 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.

An agreed order was entered regarding Chevron Phillips Chemical Company LP, Docket No. 2008-1878-AIR-E on June 5, 2009 assessing $14,560 in administrative penalties with $2,912 deferred.

Information concerning any aspect of this order may be obtained by contacting Kirk Schoppe, Enforcement Coordinator at (512) 239-0489, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ConocoPhillips Company, Docket No. 2008-1890-AIR-E on June 5, 2009 assessing $10,000 in administrative penalties with $2,000 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 City of Mart, Docket No. 2008-1907-MWD-E on June 5, 2009 assessing $18,375 in administrative penalties with $3,675 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rosa Santis and Whittlesey Landscape Supplies & Recycling, Inc., Docket No. 2008-1929-MSW-E on June 5, 2009 assessing $900 in administrative penalties with $180 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 VIMEX ENTERPRISES, INC. dba Audrey Shell, Docket No. 2008-1939-PST-E on June 5, 2009 assessing $9,692 in administrative penalties with $1,938 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Hewitt, Docket No. 2008-1946-PWS-E on June 5, 2009 assessing $5,636 in administrative penalties with $1,127 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.

A default order was entered regarding Deloris Petty dba Denton Estates Mobile Home Park, Docket No. 2008-1967-PWS-E on June 5, 2009 assessing $22,844 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.

An agreed order was entered regarding Hipolito Martinez, Docket No. 2009-0014-LII-E on June 5, 2009 assessing $736 in administrative penalties with $147 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 City of Shepherd, Docket No. 2009-0017-MWD-E on June 5, 2009 assessing $6,910 in administrative penalties with $1,382 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 A N Trading, Inc. dba Buddy's Discount Store, Docket No. 2009-0045-PST-E on June 5, 2009 assessing $6,490 in administrative penalties with $1,298 deferred.

Information concerning any aspect of this order may be obtained by contacting Brianna Carlson, Enforcement Coordinator at (956) 425-6021, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Joseph Realty Group, LLC, Docket No. 2009-0049-EAQ-E on June 5, 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 M & O SERVICES, L.L.C. dba Shell Super Stop 10, Docket No. 2009-0054-PST-E on June 5, 2009 assessing $19,499 in administrative penalties with $3,899 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 United States Department of Agriculture, Animal and Plant Health Inspection Service, Docket No. 2009-0055-PWS-E on June 5, 2009 assessing $2,850 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LUCKHANY ENTERPRISES INC. dba M&M Food Mart, Docket No. 2009-0066-PST-E on June 5, 2009 assessing $11,116 in administrative penalties with $2,223 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of West, Docket No. 2009-0082-MWD-E on June 5, 2009 assessing $7,260 in administrative penalties with $1,452 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.

An agreed order was entered regarding Pilot Travel Centers LLC dba Pilot Travel Center 435, Docket No. 2009-0086-AIR-E on June 5, 2009 assessing $1,220 in administrative penalties with $244 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dripping Springs Independent School District, Docket No. 2009-0104-EAQ-E on June 5, 2009 assessing $3,750 in administrative penalties with $750 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 City of Groesbeck, Docket No. 2009-0108-PWS-E on June 5, 2009 assessing $3,378 in administrative penalties with $675 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Targa Midstream Services Limited Partnership, Docket No. 2009-0130-AIR-E on June 5, 2009 assessing $3,800 in administrative penalties with $760 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 TERMINAL MARKET GARAGE, L.L.C. dba Terminal Market Garage, Docket No. 2009-0139-PST-E on June 5, 2009 assessing $7,000 in administrative penalties with $1,400 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 JOSO Enterprises, Inc. dba Shell on Plano Parkway, Docket No. 2009-0162-PST-E on June 5, 2009 assessing $7,192 in administrative penalties with $1,438 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RACETRAC PETROLEUM, INC. dba Racetrac 574, Docket No. 2009-0177-PST-E on June 5, 2009 assessing $4,846 in administrative penalties with $969 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 Sanderson Farms, Inc., Docket No. 2009-0190-PWS-E on June 5, 2009 assessing $525 in administrative penalties with $105 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.

An agreed order was entered regarding OHM SAI, INC. dba Docs One Stop, Docket No. 2009-0248-PST-E on June 5, 2009 assessing $5,728 in administrative penalties with $1,145 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 Essner Manufacturing, L.P., Docket No. 2009-0249-AIR-E on June 5, 2009 assessing $1,600 in administrative penalties with $320 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Stanton, Docket No. 2009-0259-PWS-E on June 5, 2009 assessing $975 in administrative penalties.

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.

A field citation was entered regarding William K. Ingram, Docket No. 2009-0241-OSI-E on June 5, 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 United Fuel & Energy Corporation, Docket No. 2009-0242-PST-E on June 5, 2009 assessing $3,500 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 Scott A. Bundy, Docket No. 2009-0243-WOC-E on June 5, 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 Deanna Lee, Docket No. 2009-0244-WOC-E on June 5, 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 David Nelson, Docket No. 2009-0246-WOC-E on June 5, 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 City of San Marcos, Docket No. 2009-0256-WQ-E on June 5, 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 Bill Nichols dba Bills Double Six Mini Mart, Docket No. 2009-0379-PST-E on June 5, 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.

TRD-200902459
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 17, 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 **July 27, 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 July 27, 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: Amistad Lake Developments, Inc.; DOCKET NUMBER: 2009-0078-PWS-E; TCEQ ID NUMBER: RN101177541; LOCATION: 11207 Highway 90 West, Del Rio, Val Verde County; TYPE OF FACILITY: public water supply system; RULES VIOLATED: 30 TAC §290.109(c)(3)(A)(ii) and §290.122(c)(2)(B), by failing to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive result on a routine sample and by failing to provide public notification of the failure to collect samples; and 30 TAC §290.109(c)(2)(F) and §290.122(c)(2)(B), by failing to collect at least five distribution coliform samples during the months following a total coliform positive sample results and by failing to provide public notification of the failure to collect samples; PENALTY: $1,801; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(2) COMPANY: D & M Water Supply Corporation; DOCKET NUMBER: 2007-1211-MWD-E; TCEQ ID NUMBER: RN102287604; LOCATION: 6,500 feet west-southwest of the intersection of Farm-to-Market Road (FM) 3228 and FM 1275 Nacogdoches, Nacogdoches County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number 13927001, Effluent Limitations and Monitoring Requirements Numbers 1, 6, and 9, TCEQ Agreed Order Docket Number 2005-1625-MWD-E, Ordering Provision Number 2, and TWC, §26.121(a), by failing to comply with permitted effluent limitations; 30 TAC §305.125(a) and TPDES Permit Number 13927001, Monitoring and Reporting Requirements Number 7(c), by failing to submit effluent noncompliance notification reports as required by the permit; 30 TAC §305.125(1) and §317.3(b)(1), and TPDES Permit Number 13927001, Operational Requirements Number 1, by failing to provide standby pumps for lift stations; 30 TAC §305.125(5) and TPDES Permit Number 13927001, Operations Requirements Number 1, by failing to ensure that the facility and all of its systems of collection, treatment, and disposal are properly maintained; and 30 TAC §305.125(1) and TPDES Permit Number 13927001, Effluent Limitations and Monitoring Requirements, Number 1, by failing to collect effluent monitoring samples at a frequency required by the permit; PENALTY: $28,980, Supplemental Environmental Project (SEP) offset amount of $28,980 applied to Texas Association of Resource Conservation and Development Areas, Inc., Water or Wastewater Assistance; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: Denison Snow White Laundry, LLC dba Shaffer Cleaners and dba Snow White aka Snow White Laundry; DOCKET NUMBER: 2006-1468-DCL-E; TCEQ ID NUMBER: RN104097787 and RN104097795; LOCATION: 2815 West Morton Street, Denison, Grayson County (Shaffer Facility) and 314 West Woodard Street, Denison, Grayson County (Snow White Facility); TYPE OF FACILITY: dry cleaning drop station (Shaffer Facility) and dry cleaning facility (Snow White Facility); RULES VIOLATED: 30 TAC §337.11(e) and Texas Health and Safety Code (THSC), §374.102, by failing to renew the Shaffer Facility's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning and/or drop station facility; and 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the Snow White Facility's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning and/or drop station facility; PENALTY: $2,370; STAFF ATTORNEY: Dinniah Chahin, Litigation Division, MC 175, (512) 239-0617; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Edelia I. Trevio; DOCKET NUMBER: 2008-1687-PST-E; TCEQ ID NUMBER: RN102270501; LOCATION: 866 South Padre Island Drive, Corpus Christi, Nueces County; TYPE OF FACILITY: real property; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an underground storage tank (UST) system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: $2,550; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(5) COMPANY: Exxon Mobil Corporation; DOCKET NUMBER: 2007-1985-AIR-E; TCEQ ID NUMBER: RN102579307, RN102574803, and RN102212925; LOCATION: 2800 Decker Drive, Baytown, Harris County (Plant Number 1), 5000 Bayway Drive, Baytown, Harris County (Plant Number 2), and 3525 Decker Drive, Baytown, Harris County (Plant Number 3); TYPE OF FACILITY: oil refining and supply company (Plant Number 1) and chemical plant (Plant Numbers 2 and 3); RULES VIOLATED: 30 TAC §116.715(a), THSC, §382.085(b), Permit Number 18287, Special Condition (SC) Number 1, by failing to prevent unauthorized emissions from the Fluid Catalytic Cracking Unit 3 (FCCU3) of Plant Number 1 during an emissions event that began on October 14, 2005, and lasted 17 hours and 34 minutes, releasing 1,125 pounds (lbs) of ammonia, 263,767 lbs carbon monoxide (CO), 900 lbs of hydrogen cyanide, 1,271 lbs of particulate matter (PM), and 11,441 lbs of sulfur dioxide (SO_2); 30 TAC §116.715(a), THSC, §382.085(b), Permit Number 18287, SC Number 1, by failing to prevent unauthorized emissions from the Girbotol Unit of Plant Number 1 during an emissions event that began on June 24, 2006, and lasted 18 hours and 1 minute, releasing 159,599 lbs of SO_2, 3,293 lbs of hydrogen sulfide (H_2S), 34 lbs of Hazardous Air Pollutant (HAP) carbon disulfide, 275 lbs of the HAP carbonyl sulfide (COS), and 331 lbs of nitrogen oxide (NO_x); 30 TAC §116.715(a) and THSC, §382.085(b), Permit Number 18287, SC Number 1, by failing to prevent unauthorized emissions from Power Plant 4 and Substation 29 of Plant Number 1 during an avoidable emissions event that began on October 5, 2006, and lasted 8 hours and 48 minutes, releasing 6,686.3 lbs of CO, 28.21 lbs of H_2S, 431.2 lbs of NO_x, 2,592 lbs of SO_2, 8 lbs of the HAP COS, and 3,201 lbs of volatile organic compound (VOC) including 7 lbs of the highly reactive volatile organic compound (HRVOC) propylene; 30 TAC §116.715(a), THSC, §382.085(b), Permit Number 18287, SC Number 1, by failing to prevent unauthorized emissions from the FCCU2 of Plant Number 1 during an emissions event (incident numbers 77470 and 78472) that began on June 16, 2006, and lasted 116 hours, releasing 446,831 lbs of CO, 6,013 lbs of SO_2, and 313 lbs of NO_x; 30 TAC §116.715(a), THSC, §382.085(b), Permit Number 18287, SC Number 1, by failing to prevent unauthorized emissions from Booster Station 4 of Plant Number 1 during an avoidable emissions event that began January 17, 2007, and lasted 27 hours and 11 minutes, releasing 23,812 lbs of SO_2, 4,509 lbs of CO, 258 lbs of H_2S, 829 lbs of NO_x, and 1,291 lbs of VOC; 30 TAC §111.111(a)(1)(B) and §116.715(a), THSC, §382.085(b), Permit Number 18287, SC Number 1, by failing to prevent unauthorized emissions from Booster Station 4, Pipestill 7, and the Flexicoker Unit of Plant Number 1 during an avoidable emissions event that began on January 24, 2007, and lasted 25 hours, releasing 130.04 lbs of H_2S, 12,042.08 lbs of SO_2, 1,538 lbs of VOC, 3,320.03 lbs of CO, 216.01 lbs of NO_x, and 4 lbs of sulfur, and resulting in 100% opacity averaged over a six-minute period; 30 TAC §116.715(a), THSC, §382.085(b), Permit Number 18287, SC Number 1, by failing to prevent unauthorized emissions from Booster Station 4 of Plant Number 1 during an avoidable emissions event that began February 21, 2007, and lasted 25 hours and 8 minutes, releasing 18,786 lbs of SO_2, 2,757.1 lbs of CO, 706.88 lbs of VOC, 506.7 lbs of NO_x, and 203.76 lbs of H_2S; 30 TAC §116.715(a), THSC, §382.085(b), and Permit Number 18287, SC Number 1, by failing to prevent unauthorized emissions from the Flexicoker of Plant Number 1 during an avoidable emissions event that began February 24, 2007, and lasted 9 hours and 11 minutes releasing 10.89 lbs of n-butane, 19.53 lbs of butane, 9.01 lbs of ethylene, 4.67 lbs of isobutene, 28.34 lbs of propane, 18.03 lbs of propylene, 161.76 lbs of VOC, 22.25 lbs of H_2S, 2,859.05 lbs of SO_2, 7,806.09 lbs of CO, 192.5 lbs of NO_x, and 15.43 lbs of sulfur; 30 TAC §116.715(a), THSC, §382.085(b), Permit Number 18287, SC Number 1, by failing to prevent unauthorized emissions from the FCCU3 of Plant Number 1 during an avoidable emissions event that began November 1, 2006, and lasted 25 hours and 36 minutes, releasing 40,681 lbs of CO, 123 lbs of ammonia, 99 lbs of hydrogen cyanide, 24 lbs of NO_x, 44 lbs of PM, and 685 lbs of SO_2; 30 TAC §116.715(a), THSC, §382.085(b), and Permit Number 18287, SC Number 1, by failing to prevent unauthorized emissions from the FCCU3 of Plant Number 1 during an emissions event that began November 20, 2006, and lasted 48 hours and 24 minutes, releasing 197,548 lbs of CO, 226 lbs of ammonia, and 285 lbs of hydrogen cyanide; 30 TAC §116.715(a), THSC, §382.085(b), and Permit Number 18287, SC Number 1, by failing to prevent unauthorized emissions from the Flexicoker Unit, the Catalytic Light Ends Unit 3, the West Loop Flare System and the Fuels North Flare System of Plant Number 1 during an avoidable emissions event that began on April 27, 2007, and lasted 5 hours and 30 minutes, releasing 2,491.4 of SO_2, 1,102 lbs of CO, 26.83 lbs of H_2S, 0.79 lbs of sulfur, 106.2 lbs of NO_x, 2,282.3 lbs of VOC, 1,560 lbs of HRVOC ethylene, 7.2 lbs of HRVOC propylene, and 2.3 lbs of the HRVOC 1-butene + isobutylene; 30 TAC §116.715(a), THSC, §382.085(b), Permit Number 18287, SC Number 1, by failing to prevent unauthorized emissions from the Hydrocracking Unit of Plant Number 1 during an emissions event that began on August 4, 2006, and lasted 43 hours, releasing 29,876 lbs of SO_2, 1,121 lbs of VOC, 1,118 lbs of CO, 423 lbs of propane, 325 lbs of H_2S, 293 lbs of N-butane, 261 lbs of isobutene, 206 lbs of NO_x, 33 lbs of propylene, 21 lbs of butane, 9 lbs ethylene, and 1 lb of 1,3-butadiene; 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to submit the initial notification for the August 4, 2006, emissions event; 30 TAC §116.715(a), THSC, §382.085(b), and Permit Number 18287, SC Number 1, by failing to prevent unauthorized emissions from the FCCU2 of Plant Number 1 during an emissions event that began June 12, 2006, and lasted 87 hours, releasing 98,121 lbs of CO; 30 TAC §101.20(1) and (2) and §113.340, 40 Code of Federal Regulations (CFR) §60.482-6(a)(2) and §63.648(a) and THSC, §382.085(b), by failing to properly seal

the ends of four lines at Plant Number 1 associated with valve Tag Numbers, G833, H415, H944, and H943 which were in VOC and HAP service; 30 TAC §§101.20(1) - (3), 113.340, 115.352(4), and 116.715(a), THSC, §382.085(b), 40 CFR §60.482-6(a)(1) and §63.648(a), and Permit Number 18287/PSD-TX-730M3, SC Number 50E, by failing to equip the end of an open-ended line or valve with a cap, blind flange, plug, or a second valve at Plant Number 1; 30 TAC §101.20(3) and §116.715(a), Permit Number 18287/PSD-TX-730M3, SC Numbers 1 and 11A, THSC, §382.085(b), by failing to prevent unauthorized emissions from pressure relief valve PV368 on July 27, 2004, at the Catalytic Light Ends Unit 3 at Plant Number 1; 30 TAC §116.715(a), THSC, §382.085(b), and Permit Number 20211, SC Number 1, by failing to prevent unauthorized emissions from the Butyl Plant of Plant Number 2 during an emissions event that began May 14, 2007, and lasted 102 hours releasing 132,538 lbs of the HAP hydrogen chloride, 3,768 lbs of the HAP methyl chloride, 1,133 lbs of CO, 222 lbs of the HRVOC isobutylene, and 163 lbs of NO_x; 30 TAC §116.715(a) and §111.111(a)(1)(A), THSC, §382.085(b), and Permit Number 3452, SC Number 1, by failing to prevent unauthorized emissions, the Cold Ends Unit of Plant Number 3, during an emissions event that began January 1, 2006, and lasted 360 hours and 30 minutes releasing 19,740.9 lbs of the HAP 1,3-butadiene, 82,441 lbs of the HRVOC propylene, 62,637 lbs of other VOC, 32,213 lbs of CO, and 15,434 lbs of NO_x; 30 TAC §116.715(a), THSC, §382.085(b), and Permit Number 3452, SC Number 1, by failing to prevent unauthorized emissions from propylene product pump TP-05A of Plant Number 3 during an avoidable emissions event that began December 10, 2005, and lasted 3 hours and 11 minutes releasing 13,903.95 lbs of the HRVOC propylene, 144.78 lbs of other VOCs, 636 lbs of CO, and 88 lbs of NO_xx; 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to submit initial notification within 24 hours of discovery of the December 10, 2005, emissions event at Plant Number 3, by submitting the report, which was due by December 11, 2005, at 13:04, but was not submitted until December 11, 2005, at 14.17; 30 TAC §116.715(a), THSC, §382.085(b), and Permit Number 3452, SC Number 1, by failing to prevent unauthorized emissions from the Butadiene Unit, Debutanizer Tower, Primary Flare (Flare Number 1) of Plant Number 3 during an avoidable emissions event that began June 3, 2007, and lasted 3 hours and 53 minutes, releasing 228 lbs of the HAP 1-3 butadiene, 245.2 lbs of VOC, including 18 lbs of the HRVOC cis-2-butene, 159 lbs of the HRVOC isobutylene and 21 lbs of the HRVOC trans-2-butene, 139 lbs of CO and 15 lbs of NO_x; and 30 TAC §116.715(a), THSC, §382.085(b), and Permit Number 3452, SC Number 1, by failing to prevent unauthorized emissions from the Cold Ends Unit of Plant Number 3, during an avoidable emissions event that began June 25, 2007, and lasted 12 hours and 11 minutes, releasing 8,449 lbs of VOC, including 4,098 lbs of the HRVOC ethylene, 1,106 lbs of the HRVOC propylene, 372 lbs of the HRVOC isobutylene, and 104 lbs of the HRVOC trans-2-butylene, 9,827 lbs of CO, 908 lbs of the HAP benzene, 594 lbs of the HAP 1,3 butadiene, 408 lbs of the HAP toluene, 91 lbs of the HAP styrene, 71 lbs of the HAP ethylbenzene and 71 lbs of the HAP zylene, 1,183 lbs of NO_x, 5 lbs of H_2S and 0.08 lbs of SO_2; PENALTY: $496,201, SEP offset amount of $248,100 applied to Houston Regional Monitoring Corporation (HRMC) - HRMC Houston Area Air Monitoring; STAFF ATTORNEY: Kathleen C. Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(6) COMPANY: ExxonMobil Oil Corporation; DOCKET NUMBER: 2008-0153-AIR-E; TCEQ ID NUMBER: RN102450756; LOCATION: 1795 Burt Street, Beaumont, Jefferson County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §101.20(3) and §116.115(c), Permit Numbers 19566/PSD-TX-768M1/PSD-TX-932 and 46534/PSD-TX-992, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions from the Coker Flare (EPN 60FLR_004) and the Fluid Catalytic Cracking Unit Scrubber (EPN 06STK_00) during an emissions event that began on January 12, 2007, and lasted 31 hours, releasing 45.55 tons of SO_2, 3,490 lbs of VOC, 307 lbs of NO_x, 990 lbs of H_2S, 2,219 lbs of CO from the Coker Flare and 26.29 tons of CO from the FCCU Scrubber; 30 TAC §101.20(3) and §116.115(c), Permit Numbers 19566/PSD-TX-768M1/PSD-TX-932 and 46534/PSD-TX-992, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions from the Coker Flare during an emissions event that began on May 6, 2007, and lasted 34 hours and 15 minutes, releasing 83.127 tons of SO_2, 7,873 lbs of VOC, 906 lbs of NO_x, 1,806 lbs of H_2S and 6,544 lbs of CO; 30 TAC §116.115(c), Permit Number 49146, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions from the Effluent Water Treatment System (EPN 47FUG_001) and Tank 594 (EPN 49 TIF_0594) during an emissions event that began on April 27, 2007, and lasted 27 hours and 30 minutes, releasing 48.4 lbs of benzene, a VOC, from the Effluent Water Treatment System and 633.66 lbs of VOC were released from Tank 594; 30 TAC §116.115(c) and §122.143(4), New Source Review (NSR) Permit Number 19566, SC Number 1, Federal Operating Permit (FOP) Number O-01871, SC Number 7, and THSC, §382.085(b), by failing to prevent unauthorized emissions from the Coker Flare, EPN 60FLR_004, in the Coker Unit during an emissions event (Incident Number 95371) that occurred on August 2, 2007, and lasted 3 hours and 50 minutes, releasing 13,796.40 lbs of SO_2, 419.20 lbs of CO, 149.90 lbs of H_2S, 57.70 lbs of NO_x, and 644 lbs of VOC; 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 19566, SC Number 1, FOP Number O-01871, SC Number 7, and THSC, §382.085(b), by failing to prevent unauthorized emissions from the Coker Flare, EPN 60FLR_004, in the Coker Unit during an emissions event (Incident Number 95960) that occurred on August 14, 2007, and lasted 12 hours and 41 minutes, releasing 33,632.20 lbs of SO_2, 1,062.60 lbs of CO, 365.50 lbs of H_2S, 147.10 lbs of NO_x, and 1,548.35 lbs of VOC; and 30 TAC §116.115(c) and §112.143(4), THSC, §382.085(b), FOP O-01871, SC Number 7, and NSR Permit 19566, SC Number 1, by failing to prevent unauthorized emissions from the Coker Flare, EPN 60FLR_004 during an emissions event that began on September 18, 2007, and lasted for 72 hours and 34 minutes, releasing 79,666 lbs of SO_2, 3,750 lbs of VOC, 2,438 lbs of CO, and 865 lbs of H_2S; PENALTY: $106,600; SEP offset amount of $53,300 applied to Jefferson County Retrofit/Replace Heavy Equipment and Vehicles with Alternative Fueled Equipment and Vehicles; STAFF ATTORNEY: Kathleen C. Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(7) COMPANY: Hwy 29 Grocery, Inc. dba Jiffy Mart 3; DOCKET NUMBER: 2008-0639-PST-E; TCEQ ID NUMBER: RN104250774; LOCATION: 13420 West State Highway 29, Liberty Hill, Williamson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(c)(4) and TWC, §26.3475(d), by failing to inspect and test the cathodic protection system for operability and adequacy of protection at a frequency of at least once every three years; 30 TAC §334.50(a)(1)(A) and §334.50(b)(2)(A)(i)(III) and TWC, §26.3475(a) and (c)(1), by failing to provide a release detection method capable of detecting a release from any portion of the USTs system which contains regulated substances; and 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs at the facility; PENALTY: $8,367; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(8) COMPANY: Northwest Petroleum LP dba Sam Bass Shell; DOCKET NUMBER: 2008-0617-MLM-E; TCEQ ID NUMBER: RN101493351; LOCATION: 806 Sam Bass Road, Round Rock, Williamson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as a motor fuel; 30 TAC §213.5(d)(1), by failing to provide a functioning continuous monitoring leak detection system for USTs over the Edwards Aquifer; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the UST identification number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube according to the UST registration and self-certification form; and 30 TAC §115.222(3) and THSC, §382.085(b), by failing to prevent a gasoline leak, as detected by sight, sound, or smell, anywhere in the liquid transfer or vapor balance system; PENALTY: $9,600; STAFF ATTORNEY: Stephanie J. Frazee, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

TRD-200902445

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: June 16, 2009

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 27, 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 July 27, 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: Javier Hernandez; DOCKET NUMBER: 2008-1706-PST-E; TCEQ ID NUMBER: RN101677920; LOCATION: southwest corner of West Schunior Street and Rena Rae Street, Edinburg, Hidalgo County; TYPE OF FACILITY: two inactive underground storage tanks (UST); RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: $5,250; STAFF ATTORNEY: Rebecca Combs, Litigation Division, MC 175, (512) 239-6936; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(2) COMPANY: Larry G. Moore; DOCKET NUMBER: 2008-0011-PST-E; TCEQ ID NUMBER: RN101736494; LOCATION: 11017 United States (US) Highway 79, Panola, Panola County; TYPE OF FACILITY: former gasoline station; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, four USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and 30 TAC §334.7(d)(3), by failing to provide an amended registration for any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition; PENALTY: $3,675; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(3) COMPANY: Norman Barnett dba Villa Utilities; DOCKET NUMBER: 2008-1620-PWS-E; TCEQ ID NUMBER: RN102675550; LOCATION: 6423 Lemoine Lane, Channelview, Harris County; TYPE OF FACILITY: public water system; 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 Compliance 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 the compliance monitoring data to the TCEQ by July 1st; PENALTY: $614; STAFF ATTORNEY: Sharesa Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(4) COMPANY: Thomas Jones and Mary Jones; DOCKET NUMBER: 2008-0281-PST-E; TCEQ ID NUMBER: RN102219763; LOCATION: 28042 US Highway 377, Gordonville, Grayson County; TYPE OF FACILITY: gasoline service station, which is now closed; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, three USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition; PENALTY: $3,675; STAFF ATTORNEY: Gary Shiu, Litigation Division, MC 175, (713) 422-8916; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200902446

Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 16, 2009

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Notice of Water Quality Applications

The following notices were issued during the period of May 27, 2009 through June 11, 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

TEXAS PARKS AND WILDLIFE DEPARTMENT has applied for a renewal of TCEQ Permit No. WQ0011189001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day via surface irrigation of 1.85 acres of non-public access pasture land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located in Lake Brownwood State Park, approximately 0.1 mile north of Park Road 15 and 0.3 mile east of Park Headquarters in Brown County, Texas.

CITY OF ROBY has applied for a renewal of Permit No. WQ0010684001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 45,000 gallons per day via surface irrigation of 16.15 acres of non-public access agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately one mile east of the intersection of State Highway 30 and U.S. Highway 180, south of U.S. Highway 180 in Fisher County, Texas.

PROTESTANT EPISCOPAL CHURCH COUNCIL OF THE DIOCESE OF TEXAS has applied for a renewal of TPDES Permit No. WQ0011462003, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 33,500 gallons per day. The facility is located approximately 2,000 feet north of the Grimes/Waller County Line and 1,000 feet west of County Road 362 in Grimes County, Texas 77868.

CAROTEX INC which operates Carotex Port Arthur Plant, has applied for a major amendment to TPDES Permit No. WQ0001674000 to authorize the addition of boiler blowdown to the waste stream at Outfall 001. The current permit authorizes the discharge of treated barge washwater, tank washwater, ballast water, Marpol water, hydrostatic test water, spills cleanup, storm water, bilge water, and storage tank condensate water at a daily average flow not to exceed 48,000 gallons per day via Outfall 001, and storm water on an intermittent and flow variable basis via Outfall 002. The facility is located at 1500 Intracoastal Drive, approximately one (1) mile downstream and southeast of the Rainbow/Veterans Bridge, in the City of Port Arthur, Jefferson County, Texas 77643.

PERSTORP COATINGS INC which operates a plant that manufactures aliphatic polyisocyanate resins, organo rare earth products, and rare earth products, has applied for a major amendment of TPDES Permit No. WQ0001822000, to remove total radium-226 and total radium-228 effluent limitations at Outfall 002. The current permit authorizes a discharge of treated wastewater consisting of process water from rare earth and organo rare earth manufacturing, utility water, storm water, and treated domestic sewage at a daily average flow not to exceed 125,000 gallons per day via Outfall 001; and storm water on an intermittent and variable basis via Outfall 002. The facility located at 6213 Highway 332 East, two miles southeast of the intersection of State Highway 288 and State Highway 332, in the extraterritorial jurisdiction of the City of Freeport, Brazoria County, Texas.

UNITED STATES DEPARTMENT OF THE ARMY AND AMERICAN WATER OPERATIONS AND MAINTENANCE INC which operates vehicle cleaning and sewage treatment facilities at Ft. Hood, has applied for a renewal of TPDES Permit No. WQ0002233000, which authorizes the discharge of wash rack treated wastewaters on an intermittent and flow variable basis via Outfall 001 and 002; wash rack treated wastewaters commingled with storm water on an intermittent and flow variable basis via Outfalls 004, 005, and 006; and treated domestic wastewater via Outfall 010 at a daily average flow not to exceed 30,000 gallons per day. The draft permit authorizes the discharge of wash rack treated wastewaters commingled with storm water via Outfalls 004, 005, and 006 on an intermittent and flow variable basis; and treated domestic wastewater via Outfall 010 at a daily average flow not to exceed 30,000 gallons per day. The facility is located in the main cantonment area and near Belton Lake at Fort Hood, Bell and Coryell County, Texas.

LUMINANT BIG BROWN MINING COMPANY LLC AND LUMINANT MINING COMPANY LLC which operates the Big Brown and Turlington Lignite Mining Areas, a lignite surface mining facility, has applied for a major amendment to TPDES Permit No. WQ0002700000 to add Outfall 002 for the discharge of wastewater from the new Turlington Active Mining Area, and Outfall 102 for the discharge of wastewater from the new Turlington Post Mining Area, to the permit. The current permit authorizes the discharge from retention ponds including previously monitored effluents in the (Big Brown) active mining area on an intermittent and flow variable basis via Outfall 001; the discharge of wastewater from retention ponds including previously monitored effluents in the (Big Brown) post-mining area on an intermittent and flow variable basis via Outfall 101; and the discharge of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per day via Outfall 201. The location of the Big Brown Mine Area is within a 6-mile radius west of Fairfield Lake and 8 miles north of the City of Fairfield along Farm-to-Market Road (FM) 2570 and the location of the Turlington Mine Area is within a 6-mile radius east of Fairfield Lake and 6 miles northeast of the City of Fairfield along FM 235 and FM 240, Freestone County, Texas.

HUDSON PRODUCTS CORPORATION which operates Hudson Products Plant, an industrial products manufacturing plant, has applied for a renewal of TPDES Permit No. WQ0003985000, which authorizes the discharge of process wastewater, utility wastewater, storm water runoff, and previously monitored effluent from internal Outfall 101 at a daily average flow not to exceed 360,000 gallons per day via Outfall 001. The facility is located approximately 0.2 miles north of U.S. Highway 59 and approximately 1.3 miles west of State Highway 360, near the City of Beasley, Fort Bend, County, Texas.

CITY OF LUBBOCK which operates the municipally owned recreational Jim Bertram Lake System, has applied for a renewal of TPDES Permit No. WQ00004599000, which authorizes the discharge of groundwater from beneath the City of Lubbock Land Application Site at a daily average flow not to exceed 3,000,000 gallons per day via Outfall 001. The facility is located on the North Fork Double Mountain Fork Brazos River, within the city limit of Lubbock, Lubbock County, Texas.

CITY OF LAKE JACKSON has applied for a renewal of TPDES Permit No. WQ0010047001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 5,850,000

gallons per day. The facility is located at 151 Canna Lane, approximately 0.9 mile southwest of the intersection of Oak Drive and State Highway 332 in Brazoria County, Texas.

MEMORIAL VILLAGES WATER AUTHORITY has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0010584001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,050,000 gallons per day. The facility is located approximately 1,500 feet south by southwest of the San Felipe Drive Bridge where it crosses Buffalo Bayou and approximately 1,500 feet south by southeast of the intersection of San Felipe Drive and Farnham Park and east of the terminus of Farnham Park in Harris County, Texas.

TEXAS DEPARTMENT OF AGING AND DISABILITY SERVICES SAN ANGELO STATE SCHOOL has applied for a renewal of TCEQ Permit No. WQ0010634001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 133,000 gallons per day via surface irrigation of 35 acres of non-public access grassland. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately 16 miles northwest of the City of San Angelo on U.S. Highway 87 in Tom Green County, Texas. The disposal site is located in the drainage area of O.C. Fisher Lake in Segment 1425 of the Colorado River Basin.

TEXAS DEPARTMENT OF CRIMINAL JUSTICE has applied for a renewal of TPDES Permit No. WQ0010878001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 540,000 gallons per day. The plant site is located outside the northwest corner of the security compound of the Clemens Units, approximately 0.5 mile north of the intersection of State Highway 36 and Farm-to-Market Road 2004, and approximately 5.0 miles southeast of the City of Brazoria in Brazoria County, Texas 77342.

THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ) has initiated a minor amendment of the Texas Pollutant Discharge Elimination System (TPDES) permit WQ0011258001 issued to City of La Vernia to include that Sewage sludge shall be tested once during the term of the permit on Page 12 and Page 21 because it had been inadvertently left out of the permit issued on January 15, 2009. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located on River Street approximately 2,000 feet east of Farm-to-Market Road 775 in Wilson County, Texas.

CITY OF TROY has applied for a renewal of TPDES Permit No. WQ0011263001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 309,000 gallons per day. The facility is located at 1111 North Central Access Road, approximately 5,500 feet north of the center of the City of Troy and lying between Interstate Highway 35 and the Missouri, Kansas, and Texas Railroad in Bell County, Texas.

TRAVIS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO 17 has applied for a new permit, Permit No. WQ0013294003, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 165,000 gallons per day via non-public access subsurface drip irrigation system with a minimum area of 48.599 acres. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site will be located on the north side of State Highway 71, approximately 4.1 miles west of the intersection of State Highway 71 and Ranch Road 620; 1,400 feet southwest of the intersection of Flintrock Road and Tonkawa Trail; and 1,510 feet south of the intersection of Flintrock Road and Serene Hills Drive in Travis County, Texas.

STRAIGHTWAY INC has applied for a renewal of TPDES Permit No. WQ0014040001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The facility will be located at the intersection of Farm-to-Market Road 1161 and County Road 218 in Wharton County, Texas.

EL PASO COUNTY TOMILLO WATER IMPROVEMENT DISTRICT has applied for a renewal of TPDES Permit No. WQ0014529001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 730,000 gallons per day. The facility is located at 695 Henderson Road, at the northwest corner of the intersection of Henderson Road and the Tornillo Drain, approximately 7,000 feet southwest of Highway 20 in El Paso County, Texas.

CW SCOA WEST LP has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014936001 to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 280,000 gallons per day. The facility will be located approximately 1,400 feet South of the intersection of US Highway 290 and Skinner Road in Northwest Harris County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Si deséa información en Español, puede llamar al 1-800-687-4040.

TRD-200902458
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 17, 2009

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Texas Health and Human Services Commission

Notice of Adopted Nursing Facility Payment Rates for State Veterans Homes

Adopted Rates. As the single state agency for the state Medicaid program, the Texas Health and Human Services Commission (HHSC) adopts the following per day payment rates for the state-owned veterans nursing facilities for fiscal year (FY) 2009 effective September 1, 2008: Big Spring, $133.00; Bonham, $133.00; Floresville, $133.00; Temple, $133.00; McAllen, $133.00; El Paso, $133.00 and Amarillo, $133.00. Effective March 1, 2009 the rates adopted are: Big Spring, $136.00; Bonham, $136.00; Floresville, $136.00; Temple, $136.00; McAllen, $136.00; El Paso, $136.00 and Amarillo, $136.00.

HHSC conducted a public hearing to receive public comment on the proposed payment rates for state-owned veterans homes in the nursing facility program operated by the Texas Department of Aging and Disability Services. There were no comments received during this hearing. The hearing was held in compliance with Title 1 of the Texas Administrative Code (TAC) §355.105(g), which requires public hearings on proposed payment rates. The public hearing was held on May 14, 2009, at 1:00 p.m. in the Permian Basin Conference Room of Building H, Braker Center, at 11209 Metric Boulevard, Austin, Texas 78758-4021.

Methodology and Justification. The adopted rates were determined in accordance with the rate reimbursement setting methodology at 1 TAC §355.311.

TRD-200902327

Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: June 10, 2009

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Notice of Public Hearing on Proposed Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on July 13, 2009, at 10:00 a.m. to receive public comment on rate increases for the 24-Hour Residential Child Care (24-HR RCC) program operated by the Department of Family and Protective Services (DFPS). The hearing will be held in compliance with Texas Administrative Code (TAC) Title 1, §355.7103(a)(2), which requires public notice and hearings on proposed 24-HR RCC reimbursements. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. Persons requiring Americans with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Meisha Scott by calling (512) 491-1445, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. HHSC proposes to increase the rates for 24-HR RCC services. The proposed rates will be effective September 1, 2009, and were determined in accordance with the rate setting methodologies listed below under "Methodology and Justification."

Methodology and Justification. The proposed rates were determined in accordance with the proposed amended Rate-Setting Methodology for 24-Hour Residential Child-Care Reimbursements, to be codified at 1 TAC §355.7103. The proposed amendment to §355.7103 will be published in the July 3, 2009, issue of the *Texas Register.* These changes are being made in accordance with the 2010-11 General Appropriations Act (Article II, S.B. 1, 81st Legislature, Regular Session, 2009), which appropriated $12,975,376 in general revenue funds for the State Fiscal Year 2010-2011 biennium for rate increases for 24-HR RCC.

Briefing Package. A briefing package describing the proposed payment rates will be available on June 29, 2009. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Meisha Scott by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at meisha.scott@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Meisha Scott, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Meisha Scott at (512) 491-1998; or by e-mail to meisha.scott@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Meisha Scott, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-200902456
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: June 17, 2009

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Public Notice

The Texas Health and Human Services Commission announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed effective date for this amendment is September 1, 2009.

The proposed amendment will adjust payment rates for the Nursing Facility Program as a result of the 2010-11 General Appropriations Act (Article II, Health and Human Services, 81st Legislature, Regular Session, 2009), which appropriated general revenue funds for provider rate increases for the Nursing Facility Program. The reimbursement methodology will be modified to indicate that for the period beginning September 1, 2009, and ending August 31, 2011, NF payment rates will, on average, be equal to the payment rates in effect August 31, 2009, plus 2.7 percent. The amendment will also delete the provision for reinvestment under the Direct Care Staff Rate Component effective September 1, 2009.

The proposed adjustment of payment rates is estimated to result in additional annual aggregate expenditures of $5,619,401 for the remainder of federal fiscal year (FFY) 2009 (September 1, 2009, through September 30, 2009), with approximately $3,863,900 in federal funds and approximately $1,755,501 in state general revenue. For FFY 2010, the proposed adjustment of payment rates is estimated to result in additional annual aggregate expenditures of $67,448,246, with approximately $47,112,600 in federal funds and approximately $20,335,646 in state general revenue.

The proposed deletion of the provision for reinvestment is estimated to result in an aggregate annual savings of $264,885 for the remainder of FFY 2009, with approximately $182,135 in federal funds and approximately $82,750 in state general revenue. For FFY 2010, the proposed deletion of the provision for reinvestment is estimated to result in an aggregate savings of $3,178,624, with approximately $2,220,269 in federal funds and approximately $958,355 in state general revenue.

Overall, the proposed amendment is estimated to result in additional annual aggregate expenditures of $5,354,516 for the remainder of FFY 2009, with approximately $3,681,765 in federal funds and approximately $1,672,751 in state general revenue. For FFY 2010, the proposed amendment is estimated to result in additional annual aggregate expenditures of $64,269,622, with approximately $44,892,331 in federal funds and approximately $19,377,291 in state general revenue.

To obtain copies of the proposed amendment or to submit written comments, interested parties may contact Pam McDonald by mail at Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, Mail Code H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1373; by facsimile at (512) 491-1998; or by e-mail at pam.mcdonald@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200902332
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: June 11, 2009

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Public Notice

The Texas Health and Human Services Commission announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed effective date for this amendment is September 1, 2009.

The proposed amendment will adjust payment rates for the Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR) Pro-

gram as a result of the 2010-11 General Appropriations Act (Article II, Health and Human Services, 81st Legislature, Regular Session, 2009), which appropriated general revenue funds for provider rate increases for the ICF/MR Program. The reimbursement methodology will be modified to indicate that for the period beginning September 1, 2009 and ending August 31, 2011, ICF/MR payment rates will, on average, be equal to the payment rates in effect August 31, 2009 plus 1.5 percent.

The proposed adjustment of payment rates is estimated to result in additional annual aggregate expenditures of $459,043 for the remainder of federal fiscal year (FFY) 2009 (September 1, 2009, through September 30, 2009), with approximately $315,638 in federal funds and approximately $143,405 in state general revenue. For FFY 2010, the proposed adjustment of payment rates is estimated to result in additional annual aggregate expenditures of $5,508,515, with approximately $3,847,698 in federal funds and approximately $1,660,817 in state general revenue.

To obtain copies of the proposed amendment or to submit written comments, interested parties may contact Pam McDonald by mail at Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, Mail Code H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1373; by facsimile at (512) 491-1998; or by e-mail at pam.mcdonald@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200902333
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: June 11, 2009

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Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Austin	Heart Clinic of Austin P.A.	L06238	Austin	00	06/05/09
Houston	Statewide Maintenance Company	L06229	Houston	00	06/04/09
Lamesa	Dawson County Hospital District dba Medical Arts Hospital	L06244	Lamesa	00	05/21/09
Mansfield	Steven P. Havard, M.D. P.A.	L06249	Mansfield	00	06/01/09
Pasadena	Turner Industries Group L.L.C.	L06235	Pasadena	00	06/05/09
Throughout Tx	Lighthouse Environmental Services Inc.	L06224	Pasadena	00	06/09/09

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Abilene	Desert Industrial X-Ray L.P.	L04590	Abilene	96	06/08/09
Abilene	Abilene Cardiology Consultants P.A.	L04315	Abilene	33	06/05/09
Abilene	Hendrick Medical Center	L02433	Abilene	99	06/10/09
Austin	ARA Imaging	L05862	Austin	44	06/04/09
Austin	Seton Healthcare dba Seton Medical Center Austin	L02896	Austin	104	06/02/09
Austin	Austin Texas Radiation Oncology Group P.A. dba Austin Cancer Centers	L01761	Austin	58	06/09/09
Beaumont	RTPS Acquisition Company L.L.C. dba Southeast Texas Cardiology Associates II L.L.P.	L05204	Beaumont	14	06/01/09
Carrollton	Patients Comprehensive Diagnostic and Radiation Therapy Center Inc.	L05661	Carrollton	4	06/09/09
Corpus Christi	Valero Refining-Texas L.P. dba Valero Bill Greehey Refinery	L03360	Corpus Christi	29	06/04/09
Deer Park	IRISDNT Inc.	L04769	Deer Park	74	06/01/09
Desoto	Heartmasters P.A.	L05760	Desoto	05	06/03/09
Dumas	Moore County Hospital District dba Memorial Hospital	L03540	Dumas	23	06/01/09
El Paso	EP Medical Imaging Technology L.P. dba El Paso Medical Imaging Technology	L06095	El Paso	04	06/08/09
El Paso	Western Refining Company L.P.	L02669	El Paso	18	06/02/09
El Paso	Center For Intergrative Cancer Medicine P.A.	L05880	El Paso	05	06/02/09
Fort Worth	Texas Health Harris Methodist	L01837	Fort Worth	119	06/03/09
Friendswood	Iso Tex Diagnostics Inc.	L02999	Friendswood	46	06/01/09
Houston	Framo Engineering Houston Inc.	L05867	Houston	05	06/05/09
Houston	University of Houston	L01886	Houston	60	06/05/09
Houston	University of Texas M.D. Anderson Cancer Center	L00466	Houston	117	06/03/09
Houston	Baylor College of Medicine	L00680	Houston	99	06/02/09
Houston	The University of Texas Health Science Center	L02774	Houston	57	06/03/09
Houston	Caltex Holdings L.P.	L01793	Houston	32	06/01/09
Kaufman	Texas Health Presbyterian Hospital of Kaufman	L03337	Kaufman	18	06/04/09
Longview	Eastman Chemicals Company	L00301	Longview	112	06/04/09
Lubbock	Covenant Health System dba Joe Arrington Cancer Research and Treatment Center	L04881	Lubbock	48	06/09/09
Lubbock	University Medical Center	L04719	Lubbock	106	06/04/09

AMENDMENTS TO EXISTING LICENSES ISSUED: (continued)

Location	Name	License #	City	Amend-ment #	Date of Action
Lubbock	Covenant Health System dba Joe Arrington Cancer Research and Treatment Center	L04881	Lubbock	47	06/03/09
Lubbock	Texas Tech University	L01536	Lubbock	89	06/02/09
McAllen	Harish Koolwal, M.D. P.A. Valley Heart Center	L05149	McAllen	15	06/04/09
Midland	The University of Texas Systems	L04648	Midland	11	06/09/09
Odessa	Smith International Inc. dba Smith Services	L05644	Odessa	04	06/04/09
Odessa	West Texas Imaging Center	L04562	Odessa	11	06/03/09
Plano	RCOA Imaging Services Inc.	L05329	Plano	15	06/05/09
Plano	Medical Edge Healthcare Group P.A. dba Heart First	L05555	Plano	25	06/09/09
Port Lavaca	Union Carbide Corporation	L00051	Port Lavaca	94	06/09/09
San Antonio	Snip and Ference P.A.	L00106	San Antonio	23	06/08/09
San Antonio	VHS San Antonio Partners L.L.C. dba Baptist Health System	L00455	San Antonio	187	06/05/09
San Antonio	VHS San Antonio Imaging Partners L.P.	L04506	San Antonio	69	06/03/09
San Antonio	Texas Cancer Center	L05786	San Antonio	14	05/27/09
San Antonio	Christus Santa Rosa Health Care	L02237	San Antonio	102	06/09/09
San Antonio	U.T. Medicine San Antonio	L05410	San Antonio	11	06/09/09
San Marcos	Hunter Industries Ltd.	L04175	San Marcos	08	06/08/09
Seguin	Guadalupe Regional Medical Center	L02292	Seguin	32	06/04/09
Smithville	Smithville Regional Hospital	L04428	Smithville	17	06/08/09
Snyder	Scurry County Hospital District dba Cogdell Memorial Hospital	L02409	Snyder	33	06/09/09
Throughout Tx	Mobile Diagnostic Systems Inc. dba Diagnostic Health Services	L03212	Addison	31	06/09/09
Throughout Tx	Weld Spec Inc.	L05426	Beaumont	85	06/09/09
Throughout Tx	R&R Testing Inc.	L06222	Channelview	02	06/04/09
Throughout Tx	Frac Tech Services L.T.D.	L06188	Cisco	01	06/04/09
Throughout Tx	N-Spec Quality Services Inc.	L05113	Corpus Christi	36	06/02/09
Throughout Tx	National Inspection Services L.L.C.	L05930	Crowley	25	06/09/09
Throughout Tx	Pavetex Engineering and Testing Inc.	L05533	Dripping Springs	10	06/09/09
Throughout Tx	Integrity Testing and Inspection Inc.	L06027	El Paso	08	06/01/09
Throughout Tx	Gray Wireline Services Inc.	L03541	Fort Worth	33	06/09/09
Throughout Tx	Insight Health Corporation	L05504	Garland	10	06/10/09
Throughout Tx	RTD Pipeline Services USA L.P.	L05985	Houston	12	06/08/09
Throughout Tx	Metco	L03018	Houston	198	06/02/09
Throughout Tx	Professional Service Industries Inc.	L00203	Houston	125	06/01/09
Throughout Tx	Oceaneering International Inc.	L04463	Ingleside	68	06/04/09
Throughout Tx	American X-Ray and Inspection Services Inc.	L05974	Midland	18	06/03/09
Throughout Tx	Perf-O-Log Inc.	L05478	Midland	22	06/08/09
Throughout Tx	Furgo Consultants Inc.	L04322	Pasadena	100	06/03/09
Throughout Tx	NDS Products Inc.	L00991	Pasadena	47	06/10/09
Throughout Tx	Duininck Brothers Inc.	L03957	Roanoke	14	06/09/09
Tomball	Clinic for Cardiovascular Care P.A. dba Cardiovascular Clinic of Texas	L05670	Tomball	8	06/09/09

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of 25 Texas Administrative Code (TAC) Chapter 289, regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - MC 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-200902460
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: June 17, 2009

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Texas Department of Housing and Community Affairs

Community Services Block Grant Public Hearings for 2010-2011 State Application and Plan

In accordance with the U.S. Department of Health and Human Services' requirement for the Community Services Block Grant (CSBG) and as part of the public information consultation and public hearing requirements in 10 Texas Administrative Code §5.209, on the use of CSBG funds, the Texas Department of Housing and Community Affairs (TDHCA) is conducting a series of public hearings. The primary purpose of the hearings is to solicit comments on the proposed Texas Community Services Block Grant 2010-2011 State Application and Plan which describes the proposed use and distribution of CSBG funds for Federal Fiscal Years 2010 and 2011. As federal statute requires, not less than ninety percent of the CSBG funds will be distributed to CSBG eligible entities and not more than five percent will be used for state administration, including support for monitoring and the provision of technical assistance and training. The remaining five percent will be utilized to fund state discretionary projects/initiatives and for disaster assistance recovery.

The draft Application/Plan is to be presented to the TDHCA Board of Directors on June 25, 2009. Once approved, the document is to be posted and available for review on the Department's website at www.tdhca.state.tx.us in the CSBG category.

The schedule for the public hearings is as follows:

Tuesday, July 7, 2009

6:00 p.m. - 8:00 p.m.

Coastal Bend Council of Governments, Large Conference Room

2910 Leopard Street

Corpus Christi, Texas

Wednesday, July 8, 2009

1:30 p.m. - 3:30 p.m.

Gulf Coast Community Services Association, Room # 225

University Business Park-Building One

5000 Gulf Freeway

Houston, Texas

Wednesday, July 8, 2009

1:30 p.m. - 3:30 p.m.

Urban League of Greater Dallas, Conference Room

4315 South Lancaster Road

Dallas, Texas

Thursday, July 9, 2009

1:30 p.m. - 3:30 p.m.

Texas Department of Housing and Community Affairs, Room # 116

221 East 11th Street

Austin, Texas

Thursday, July 9, 2009

6:00 p.m. - 8:00 p.m.

City of Lubbock's City Hall Council Chambers, Municipal Building, Room # 101

1625 13th Street

Lubbock, Texas

Individuals who require auxiliary aids or services should contact Gina Esteves, ADA Responsible Employee, at least two days before the scheduled hearing at (512) 475-3943 or Relay Texas at 1-800-735-2989 so that appropriate arrangements can be made.

A representative from TDHCA will be present at each of the public hearings to explain the planning process and receive comments from interested citizens and affected groups regarding the proposed Application/Plan. For questions, contact J. Al Almaguer, Senior Planner, in the Community Services Section at (512) 475-3908 or al.almaguer@tdhca.state.tx.us. Comments may be provided in writing or by oral testimony at the hearings. Written comments may be submitted to TDHCA at the time of each hearing or by mail no later than July 24, 2009.

TRD-200902464
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: June 17, 2009

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Texas Department of Insurance

Company Licensing

Application to change the name of VEREX ASSURANCE, INC. to GENWORTH RESIDENTIAL MORTGAGE ASSURANCE CORPORATION, a foreign fire and casualty company. The home office is in Madison, Wisconsin.

Application to change the name of MID-CONTINENT PREFERRED LIFE INSURANCE COMPANY to AMERICAN BENEFIT LIFE INSURANCE COMPANY, a foreign life company. The home office is in Oklahoma City, Oklahoma.

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-200902462
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: June 17, 2009

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Public Utility Commission of Texas

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On June 12, 2009, Grande Communications filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60341. Applicant intends to reflect a change in ownership/control.

The Application: Application of Grande Communications for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 37107.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than July 1, 2009. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 37107.

TRD-200902441
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 16, 2009

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Request for Comments

The Public Utility Commission of Texas (commission) has initiated a project relating to a database for electric customer bill payment information. Project Number 36860, *Rulemaking Relating to Customer Database of Bill Payment Information,* has been established for this proceeding. The commission requests that interested parties file comments in response to the following questions:

1. Does the commission have authority to do the following: a) create an electric utility customer bill payment database or authorize a third party to do so; b) collect information about electric utility customer payment history or authorize a third party to do so; and c) require a Retail Electric Provider (REP) to provide electric utility customer bill payment information to the commission or a third party to be shared with other REPs? Please provide support and rationale for your position.

2. For what purpose can the information contained in an electric utility customer bill payment database be used? What limitations, if any, are there on the use of that information?

3. Does the commission have authority to implement a "hard disconnect" policy? Does the authority differ depending on whether the "hard disconnect" is voluntary or mandatory? Please provide support and rationale for your position.

4. What information should the REPs be required to provide to include in the database? What access to the database should be provided and what limitations, if any, should be placed on access?

5. How should information in the database be protected?

6. How would the establishment of an electric utility bill payment database benefit retail electric service customers?

7. How should the database be funded? Does the commission have authority to mandate funding of the database? Please provide support and rationale for your position.

Responses may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 within 31 days of the date of publication of this notice. All responses should reference Project Number 36860.

Questions concerning this notice should be referred to Cliff Crouch, Competitive Markets Division, at (512) 936-7296. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200902451
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 16, 2009

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Supreme Court of Texas

Order Adopting Amendments to Texas Rule of Disciplinary Procedure 6.06 and Board of Disciplinary Appeals Internal Procedural Rules

Misc. Docket No. 09-9089

ORDERED that:

1. Texas Rule of Disciplinary Procedure 6.06 and the Board of Disciplinary Appeals (BODA) Internal Procedural Rules are amended as follows.

2. By order dated February 24, 2009, in Misc. Docket No. 09-9034, the Supreme Court of Texas proposed amendments to Texas Rule of Disciplinary Procedure 6.06 and BODA Internal Procedural Rules and invited public comment. Following public comment, the Court made additional revisions to Texas Rule of Disciplinary Procedure 6.06.

3. This Order contains the final version of the amended rules that take effect on July 1, 2009. The comment appended to Texas rule of Disciplinary Procedure 6.06 is intended to inform the construction and application of the rule.

4. The Clerk is directed to:

a. file a copy of this Order with the Secretary of State;

b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal;*

c. send a copy of this Order to each elected member of the Legislature; and

d. cause a copy of this Order to be posted on the website of the Supreme Court of Texas at http://www.supreme.courts.state.tx.us.

In Chambers, this 8th day of June, 2009.

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Wallace B. Jefferson, Chief Justice

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Nathan L. Hecht, Justice

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Harriet O'Neill, Justice

Dale Wainwright, Justice

Scott Brister, Justice

David M. Medina, Justice

Paul W. Green, Justice

Phil Johnson, Justice

Don R. Willett, Justice

TEXAS RULES OF DISCIPLINARY PROCEDURE

6.06. ~~Publication of~~ Court and Board of Disciplinary Appeals Opinions

~~All cases involving the Professional Misconduct or Disability of an attorney appealed to the Courts of Appeals or to the Supreme Court of Texas must be published in the official reporter system. This provision takes precedence over the applicable Texas Rules of Appellate Procedure.~~

A. *Court Opinions:* In any case arising out of a Complaint, an opinion of a court of appeals issued on or after May 1, 1992 has precedential value regardless of its designation.

B. *Board of Disciplinary Appeals Opinions:* Board of Disciplinary Appeals opinions are open to the public and must be made available to public reporting services, print or electronic, for publishing. These opinions are persuasive, not precedential, in disciplinary proceedings tried in district court.

Comment to 2009 change: Rule 6.06 is divided into two subdivisions. The language in subdivision A is amended to remove an outdated reference to the official reporter system and to be consistent with Texas Rule of Appellate Procedure (TRAP) 47 amendments intended to prospectively discontinue designating opinions as either "published" or "unpublished." The erroneously designated opinions addressed in subdivision A have precedential value from May 1, 1992 on because that is the effective date of the prior version of the rule, which mandated publication of [a]ll cases involving the Professional Misconduct or Disability of an attorney appealed to the Courts of Appeal [sic] or to the Supreme Court of Texas." New subdivision B addresses Board of Disciplinary Appeals (BODA) opinions and includes a distribution provision similar to TRAP 47.3. This change provides for the publication of BODA opinions issued in any type of case, whether pursuant to BODA's original or appellate jurisdiction.

BODA INTERNAL PROCEDURAL RULES

Rule 1.16 BODA Opinions

(a) BODA may render judgment with or without written opinion in any disciplinary matter. In accordance with TRDP 6.06, all written opinions of BODA are open to the public and shall be made available to the public reporting services, print or electronic, for publishing. A majority of the members who participate in considering the disciplinary matter must determine if an opinion will be written. The names of the participating members must be noted on all written opinions of BODA.

(b) Only a member who participated in the decision of a disciplinary matter may file or join in a written opinion concurring in or dissenting from the judgment of BODA. For purposes of this Rule, in hearings in which evidence is taken, no member may participate in the decision unless that member was present at the hearing. In all other proceedings, no member may participate unless that member has reviewed the record. Any member of BODA may file a written opinion in connection with the denial of a hearing or rehearing en banc.

(c) A BODA determination in an appeal from a grievance classification decision under TRDP 2.10 is not a judgment for purposes of this Rule and may be issued without a written opinion.

Rule 4.10 Decision and Judgment

(a) **Decision.** BODA may affirm in whole or in part the decision of the evidentiary panel, modify the panel's finding(s) and affirm the finding(s) as modified, reverse in whole or in part the panel's finding(s) and render such decision as the panel should have rendered, or reverse the panel's finding(s) and remand the cause for further proceedings to be conducted by:

(1) the panel that entered the finding(s); or

(2) a statewide grievance committee panel appointed by BODA and composed of members selected from the state bar districts other than the district from which the appeal was taken.

~~(b) Opinions. BODA may render judgment with or without written opinion.~~

(b~~e~~) **Notice of Orders and Judgment.** When BODA renders judgment or grants or overrules a motion, the clerk shall give notice to the parties or their attorneys of record of the disposition made of the cause or of the motion, as the case may be. The notice shall be given by first-class mail and be marked so as to be returnable to the clerk in case of nondelivery.

(c~~d~~) **Mandate.** In every case where BODA reverses or otherwise modifies the judgment appealed from, BODA shall issue a mandate in accordance with its judgment and deliver it to the evidentiary panel.

TRD-200902334
Kennon Peterson
Rules Attorney
Supreme Court of Texas
Filed: June 11, 2009

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Texas Department of Transportation

Request for Proposal - Professional Services

The Texas Department of Transportation (department) announces a Request for Proposal (RFP) for professional services pursuant to Government Code, Chapter 2254, Subchapter A. The term of the contract will be from project initiation to August 21, 2011. The department will administer the contract. The RFP will be released on June 26, 2009.

Purpose: The Texas Department of Transportation is seeking qualified Certified Public Accounting (CPA) firms to provide financial/audit services for Disadvantaged Business Enterprises. This solicitation is to provide CPA financial/audit services to Disadvantaged Business Enterprises (DBEs) through the Technical Assistance Program (TAP) for participation in the department contracts and procurements. Vendors shall provide services to DBEs throughout the state of Texas. Please note: the DBE must be certified in a highway construction category as defined by the Federal Highway Administration (FHWA) for at least six months in order to receive services under the contract agreement. TxDOT will verify certification status of each DBE prior to approving the submitted TAP Request Form. Each DBE is eligible to receive up

to $10,000 of services as a part of the TAP Program. TxDOT will notify and apprise each DBE of available funds remaining.

Eligible Applicants: Eligible applicants will include Disadvantaged Business Enterprises (DBEs), a business certified according to federal requirements for minority-owned and woman-owned businesses as stated in 49 C.F.R., Subchapter A, Part 26. TxDOT will verify certification status of each DBE.

Program Goal: To provide financial services to Disadvantaged Business Enterprises (DBEs) for participation in the department contracts and procurements.

Review and Award Criteria: Each response will first be screened for completeness and timeliness. Proposals that are deemed incomplete or arrive after the deadline will not be reviewed. A team of reviewers from the department will evaluate the proposals as to the accounting firm's competence, knowledge, and qualifications and as to the reasonableness of the proposed fee for the services. The criteria and review process are further described in the RFP.

Deadlines: The department must receive proposals prepared according to instructions in the RFP package on or before July 21, 2009.

To Obtain a Copy of the RFP: Requests for a copy of the RFP should be submitted to Autumn Harrison, Business Outreach and Program Services Branch, General Services Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483, telephone (512) 374-5389, fax (512) 374-5391, email aharri2@dot.state.tx.us. Copies will also be available on the Electronic State Business Daily (ESBD) at (http://esbd.cpa.state.tx.us/).

TRD-200902455
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: June 17, 2009

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University of North Texas System

Notice of Award of Major Consulting Contract

Description of Activities Consultant Will Conduct:

The selected consulting firm is responsible for assisting the University of North Texas System (UNT System) and member institutions in studying and analyzing the UNT System's Human Resources and Informational Technology functions currently managed and planned at the institution level and to recommend those functions that would be best handled at the UNT System level.

Name and Business Address of Consultant:

Alvarez & Marsal Business Consulting, LLC

Trammel Crow Tower

2001 Ross Avenue, Suite 1400

Dallas, Texas 75201

Total Value and Beginning and Ending Dates of Contract:

Value: $300,000.00

Beginning Date: June 5, 2009

Ending Date: Shall remain in effect until the completion, approval, and acceptance of all services; and the delivery of final payment to Alvarez & Marsal Business Consulting, LLC

Dates on Which Documents, Films, Recordings, or Reports that Consultant is required to present are due:

Date: Various depending on analysis completion--Should be within 8 weeks of the beginning of the analysis

TRD-200902382
Carrie Stoeckert
Assistant Director of PPS
University of North Texas System
Filed: June 12, 2009

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Texas Water Development Board

Request for Qualifications for Bond Counsel

The Texas Water Development Board (Board) is issuing a Request for Qualifications for bond counsel services. The deadline for proposals is noon (12:00 p.m. central standard time), July 20, 2009. All proposals must be received by the Board by noon (12:00 p.m. central standard time), July 20, 2009 in order to be considered.

The Board will make its selection based upon demonstrated competence, experience, knowledge, and qualifications. The Board will then negotiate a contract at a fair and reasonable price with the firm(s) selected. By issuing the Request for Qualifications, the Board has not committed to employ bond counsel nor does the suggested scope of service or term of agreement therein require that the bond counsel be employed for any or all of those purposes. The Board reserves the right to make those decisions after receipt of proposals and the Board's decisions on these matters are final. The Board reserves the right to negotiate individual elements of the proposal and to reject any and all proposals.

Copies of the Request for Qualifications may be obtained from the Board's website at www.twdb.state.tx.us.

TRD-200902463
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Filed: June 17, 2009

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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).