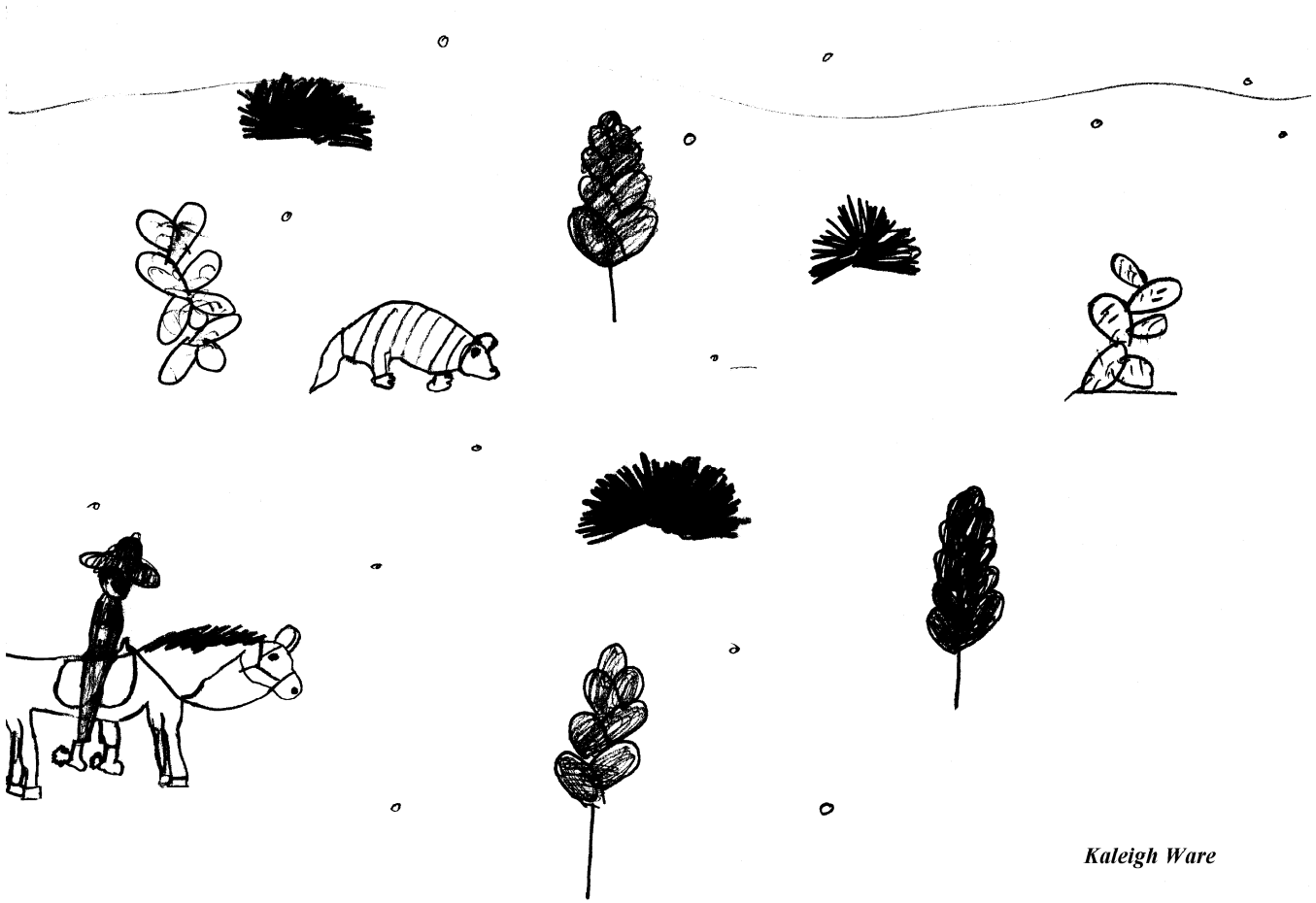

TEXAS REGISTER

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Kaleigh Ware

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

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THE GOVERNOR

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

Appointments

Appointments for June 16, 2009

Appointed as Justice of the First Appellate District, Place 8, for a term until the next General Election and until his successor shall be duly elected and qualified, Michael C. Massengale of Houston. Mr. Massengale is replacing Justice Tim Taft who resigned.

Appointments for July 10, 2009

Appointed as the Texas State Board of Education Chair for a term to expire February 1, 2011, Gail Lowe of Lampasas (replacing Don McLeroy of College Station).

Appointments for July 17, 2009

Appointed to the Aging and Disability Services Council for a term to expire February 1, 2013, Gary Don Newsom of Austin (replacing Tom Oliver of Baytown who is deceased).

Appointed to the OneStar National Service Commission for a term to expire March 15, 2012, Robert G. Marbut, Jr. of San Antonio (replacing Gregorio Flores of San Antonio whose term expired).

Appointed to the OneStar National Service Commission for a term to expire March 15, 2012, Constance E. Roberts of Cedar Park (Ms. Roberts is being reappointed).

Appointed to the OneStar National Service Commission for a term to expire March 15, 2012, Dolores Schwertner of Miles (Ms. Schwertner is being reappointed).

Appointed to the OneStar National Service Commission for a term to expire March 15, 2012, Arturo Serna, Jr. of San Marcos (Mr. Serna is being reappointed).

Appointed to the OneStar National Service Commission for a term to expire March 15, 2012, Reymundo Torres of El Paso (Mr. Torres is being reappointed).

Appointed to the rank of Major General in Headquarters, Texas State Guard, Austin, Texas, pursuant to Government Code 431.055, with all rights, privileges and emoluments appertaining to this office, effective July 25, 2009, Brigadier General Raymond C. Peters of Austin.

Designating Robert G. Marbut, Jr. as presiding officer of the OneStar National Service Commission for a term at the pleasure of the Governor. Mr. Marbut is replacing Walter Diggles, Sr. of Jasper as presiding officer.

Appointments for July 24, 2009

Appointed as Judge of the 78th Judicial District Court, Wichita County, for a term until the next General Election and until his successor shall be duly elected and qualified, Wayne Bernard Fudge of Burkburnett (replacing Roy Sparkman of Wichita Falls who resigned).

Appointed to the Texas Department of Motor Vehicles Board, pursuant to HB 3097, 81st Legislature, Regular Session, effective September 1, 2009, for a term to expire February 1, 2015, Victor Vandergriff of Arlington. Mr. Vandergriff will serve as presiding officer of the board.

Rick Perry, Governor

TRD-200903196



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 Opinion

RQ-0812-GA

Requestor:

The Honorable Patrick Rose

Chair, Committee on Human Services

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78768-2910

Re: Jurisdiction over land that is annexed by two separate special districts (RQ-0812-GA)

Briefs requested by August 26, 2009

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

TRD-200903195

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: July 28, 2009



Opinions

Opinion No. GA-0729

David L. Lakey, M.D.

Commissioner

Texas Department of State Health Services

Post Office Box 149347

Austin, Texas 78714-9347

Re: Authority of the Department of State Health Services to enforce state asbestos regulations against municipalities (RQ-0775-GA)

S U M M A R Y

The term "person" in the Texas Asbestos Health Protection Act, chapter 1954 of the Occupations Code, includes a municipality. However, we think it unlikely that a court would conclude the inclusion of a municipality in the definition of person constitutes a clear and unambiguous waiver of immunity from suit for a violation of section 1954.259(b).

Even if governmental immunity is retained, it does not mean that every enforcement action about which you ask is necessarily barred.

Opinion No. GA-0730

The Honorable Heather Hollub

25th Judicial District Attorney

113 South River, Suite 205

Seguin, Texas 78155

Re: Whether a district attorney's occupation of office space leased by the county from the district attorney's spouse constitutes a conflict of interest (RQ-0780-GA)

S U M M A R Y

A district attorney's occupation of office space leased by the county commissioners court from the spouse of the district attorney under the factual scenario described in the requestor's brief does not constitute a conflict of interest under chapter 171 of the Local Government Code.

Opinion No. GA-0731

The Honorable Rex Emerson

Kerr County Attorney

Kerr County Courthouse

700 Main Street, Suite BA-103

Kerrville, Texas 78028

Re: Whether the Kerr County Sheriff is required to maintain a room in the jail dedicated to recording the interrogation of a person arrested for driving while intoxicated (RQ-0783-GA)

S U M M A R Y

Section 24 of the Act of May 27, 1983, 68th Leg., R.S., ch. 303, requires counties with a population of 25,000 or more to purchase and maintain electronic devices to make visual recordings of persons arrested within the county for the offense of driving while intoxicated. Section 24, which remains in effect, does not require a county to maintain a room dedicated to videotaping the arrested persons, nor does it specify the location where the equipment is to be used.

Opinion No. GA-0732

The Honorable Rob Eissler

Chair, Committee on Public Education

Texas House of Representatives

Post Office Box 2910
Austin, Texas 78768-2910

Re: Whether the State of Texas may permit unauthorized aliens to receive the benefit of in-state tuition at Texas state colleges and universities (RQ-0742-GA)

S U M M A R Y

Education Code sections 54.052(a)(3) and 54.053(3) would conflict with and thus be preempted by section 505 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, codified at 8 U.S.C. §1623, if the state statutes provide a "postsecondary education benefit" to an alien who is not lawfully present in the United States on the basis of "residence," within the meaning of the federal statute, "unless a citizen or national of the United States is eligible for such a benefit . . . without regard to whether the citizen or national is such a resident." 8 U.S.C. §1623(a) (2006). However, the terms "postsecondary education benefit" and "residence" are not defined in the federal law. In addition, no Texas or federal court has construed these terms or considered the substantive application of the federal law to a statute similar to the Texas statutes. Thus, while a federal or state court in Texas, following the reasoning of an intermediate California state appellate court decision, could find that 8 U.S.C. §1623 preempts Education Code sections 54.052(a)(3) and 54.053(3) to the extent of the conflict with the federal law, given the paucity of judicial precedent, this office cannot predict with certainty that a court would so find.

The United States Supreme Court has "approved bona fide residency requirements in the field of public education." *Martinez v. Bynum*, 461 U.S. 321, 326-27 (1983). Additionally, the Court has recognized "that a State has a legitimate interest in protecting and preserving the quality of its colleges and universities and the right of its own bona fide residents to attend such institutions on a preferential tuition basis." *Vlandis v. Kline*, 412 U.S. 441, 452-53 (1973). "This 'legitimate interest' permits a 'State [to] establish such reasonable criteria for in-state status as to make virtually certain that students who are not, in fact, bona fide residents of the State, but who have come there solely for educational purposes, cannot take advantage of the in-state rates.'" *Bynum*, 461 U.S. at 327 (quoting *Vlandis*, 412 U.S. at 453-54).

Accordingly, a federal or state court in Texas would likely conclude that Education Code sections 54.052(a)(3) and 54.053(3) do not facially violate the federal Equal Protection Clause because the statutory prerequisites for in-state tuition are reasonable requirements that serve Texas's legitimate or substantial interest in assuring that only bona fide residents that graduate from Texas high schools or receive the diploma equivalent from this state are eligible for in-state tuition. However, no court has addressed whether a statute similar to the Texas statutes conforms to the mandates of the Equal Protection Clause.

Opinion No. GA-0733

The Honorable Hope Andrade
Texas Secretary of State
Post Office Box 12697
Austin, Texas 78711-2697

Re: Effect of a final conviction for a felony or misdemeanor crime involving moral turpitude on a notary public's application or commission (RQ-0785-GA)

S U M M A R Y

The Secretary of State is precluded from appointing or commissioning as a notary public an applicant with a conviction of a felony or a crime involving moral turpitude. The Secretary of State may, but is not required to, initiate commission revocation proceedings against a notary public on the basis of a conviction of a felony or a crime involving moral turpitude.

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

TRD-200903194
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: July 28, 2009



EMERGENCY RULES

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

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 815. UNEMPLOYMENT INSURANCE

SUBCHAPTER F. EXTENDED BENEFITS

40 TAC §§815.170 - 815.174

The Texas Workforce Commission (Commission) adopts on an emergency basis the following new subchapter to Chapter 815 relating to Unemployment Insurance:

Subchapter F. Extended Benefits, §§815.170 - 815.174

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The Commission adopts the new rules on an emergency basis pursuant to the authority granted to it under House Bill (HB) 4586, enacted by the 81st Texas Legislature, Regular Session (2009) to adjust unemployment eligibility periods, as necessary, to maximize receipt of 100 percent federally shared extended unemployment benefits in accordance with the American Recovery and Reinvestment Act of 2009, enacted February 17, 2009 (P.L. 111-5), Division B, Title II, relating to Assistance for Unemployed Workers and Struggling Families, §2005.

The Commission must take immediate action in order to continue paying unemployed individuals who are exhausting their regular and emergency unemployment benefits. During this period of high, sustained unemployment, these 100 percent federally shared extended benefits are vital to out-of-work Texans who are struggling to pay their bills while seeking work. These benefits also serve as a much-needed stabilizing factor in local economies. Therefore, the Commission finds that imminent peril to the public welfare requires adoption of rules without 30 days' notice in the *Texas Register*. On the same basis, the Commission also finds that imminent peril to the public welfare requires adoption of rules with an expedited effective date that is effective immediately on filing with the Secretary of State, so that these rules can be implemented immediately under the emergency rulemaking provisions of Texas Government Code §2001.034 and §2001.036.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER F. EXTENDED BENEFITS

The Commission adopts on an emergency basis new Subchapter F, as follows:

§815.170. State "On" and "Off" Indicator Weeks: Conditional Trigger.

New §815.170 adds a new, conditional trigger under which Texas could enter into an extended benefit eligibility period, allowing the state to receive 100 percent federally shared extended benefits as authorized under P.L. 111-5.

There are two methods under which a state may trigger on to an extended benefit period:

(1) a specified threshold under the Insured Unemployment Rate (IUR) methodology; and

(2) a specified threshold under the Total Unemployment Rate (TUR) methodology.

Texas Labor Code, Chapter 209, provides for the use of the IUR methodology. However, its threshold is so high that Texas would have to have substantial levels of chronic unemployment before triggering on to an extended benefit period. The U.S. Department of Labor (DOL) has advised states that they may enact a temporary, conditional TUR trigger in order to take advantage of 100 percent federally shared extended benefits. The TUR trigger described in this section is conditional upon 100 percent federal sharing of extended benefits as recommended and approved by DOL.

§815.171. High Unemployment Period: Maximum Total Extended Benefit Amount.

New §815.171 adds a definition of "high unemployment period" and provides a different methodology for calculating an individual's maximum total extended benefit amount if the state has triggered on to a "high unemployment period."

The Federal-State Extended Unemployment Compensation Act of 1970 (Federal EB Law), *et seq.*, requires that if a state has opted to enact the optional TUR trigger, it must also provide for increased benefits under a "high unemployment period."

§815.172. Concurrent Emergency Unemployment Compensation Programs.

New §815.172 stipulates that Texas will pay extended unemployment benefits after all regular and emergency unemployment compensation has been exhausted. There are additional administrative requirements associated with implementing extended benefits that are not applicable to other 100 percent federally funded emergency unemployment compensation programs. Ordering payment of extended benefits after all other types of unemployment benefits have been exhausted helps the Agency make better use of the resources available to serve claimants. This ordering of benefits is allowable under P.L. 111-5.

§815.173. Eligibility Requirements during a Period of 100 Percent Federally Shared Benefits.

New §815.173 provides that individuals who exhaust emergency unemployment compensation are otherwise eligible for extended unemployment benefits even if their benefit year for regular benefits has exhausted. This provision is intended to consider individuals eligible for extended benefits if they exhaust emergency unemployment compensation after their benefit year ends.

§815.174. Financing of Extended Benefits.

New §815.174 clarifies that the benefit charging provisions of Texas Labor Code, Chapter 209, Subchapter E relating to taxed employers, do not apply to circumstances in which 100 percent of extended benefits are shared by the federal government. The charging provisions are intended to account for the 50 percent of benefits that would be funded from the state's share under the standard provisions of the Federal EB Law. Because there is no state sharing under this subchapter, the taxed employer charging provisions are not necessary.

This section further clarifies that charges to governmental employers (§209.084 of the Act) and Indian tribes (§209.0845 of the Act) shall apply.

The effective date of these rules shall be immediate upon the date of filing the adoption with the Secretary of State pursuant to Texas Government Code §2001.036(a)(2).

These rules are adopted on an emergency basis pursuant to:

Texas Government Code §2001.034, which provides the Commission with the authority to adopt rules on an emergency basis;

Texas Government Code §2001.036, which provides the Commission with the authority to adopt rules with an expedited effective date;

Texas Labor Code §301.0015(a)(6) and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities; and

Texas Labor Code §301.062, which provides the Commission with the power to make findings and determine issues under Title 4 of the Texas Labor Code.

§815.170. State "On" and "Off" Indicator Weeks: Conditional Trigger.

(a) In addition to the state "on" indicator provisions for extended benefits in the Act, and with respect to weeks of unemployment beginning on or after February 17, 2009, a week is a state "on" indicator week if:

(1) the average rate of total unemployment in Texas (seasonally adjusted), as determined by the U.S. Secretary of Labor, for the period consisting of the most recent three months for which data for all states are published before the close of such week equals or exceeds 6.5 percent; and

(2) the average rate of total unemployment in Texas (seasonally adjusted), as determined by the U.S. Secretary of Labor, for the three-month period referred to in paragraph (1) of this subsection, equals or exceeds 110 percent of such average for either or both of the corresponding three-month periods ending in the two preceding calendar years.

(b) In addition to the state "off" indicator provisions for extended benefits in the Act, there is a state "off" indicator for only a week if, for the period consisting of such week and the immediately preceding twelve weeks, none of the options specified in subsection (a) of this section result in an "on" indicator.

(c) This section continues in effect until the week ending four weeks prior to the last week of unemployment for which 100 percent federal sharing is available under P.L. 111-5, Division B, Title II, §2005(a), without regard to the extension of federal sharing for certain claims as provided under §2005(c) of such law.

§815.171. High Unemployment Period: Maximum Total Extended Benefit Amount.

(a) If the conditions under §815.170(a) of this subchapter are met except that the average rate of total unemployment equals or exceeds 8 percent, a high unemployment period shall exist.

(b) Effective with respect to weeks beginning in a high unemployment period, the total extended benefit amount payable to an eligible individual for the individual's eligibility period is 80 percent of the total amount of regular benefits that were payable to the individual under the Act in the individual's benefit year.

(c) This section applies as long as §815.170 of this subchapter is in effect.

§815.172. Concurrent Emergency Unemployment Compensation Programs.

The Agency shall pay unemployment compensation benefits under other emergency unemployment compensation programs that may be in effect prior to paying extended benefits under this subchapter.

§815.173. Eligibility Requirements during a Period of 100 Percent Federally Shared Benefits.

(a) Notwithstanding other eligibility provisions for extended benefits in the Act, an individual's eligibility period shall include any eligibility period provided for in P.L. 111-5, Division B, Title II, §2005(b).

(b) This section applies as long as §815.170 of this subchapter is in effect.

§815.174. Financing of Extended Benefits.

(a) If there is 100 percent federal sharing for extended benefits pursuant to P.L. 111-5, Division B, Title II, §2005, the provisions of Subchapter E, Chapter 209 of the Act relating to taxed employers shall not apply.

(b) The provisions of §209.084, regarding Charges to Governmental Employer, and §209.0845, regarding Charges to Indian Tribe, of the Act shall continue to apply.

(c) This section applies as long as §815.170 of this subchapter is in effect.

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

Filed with the Office of the Secretary of State on July 21, 2009.
TRD-200902974
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission
Effective Date: July 21, 2009
Expiration Date: November 17, 2009
For further information, please call: (512) 475-0829



PROPOSED RULES

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

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

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 17. MARKETING AND PROMOTION

SUBCHAPTER C. GO TEXAN AND DESIGN MARK

The Texas Department of Agriculture (the department) proposes an amendment to Chapter 17, Subchapter C, §17.52, concerning meats that may be certified and promoted by licensees as part of the department's GO TEXAN promotional marketing program, and the repeal of §17.58, concerning the GO TEXAN Beef Program. The amendment to §17.52 is proposed to include all meats including beef, lamb, goat, pork, poultry and exotics to be classified as GO TEXAN meats, for purposes of certification and promotion under the GO TEXAN program and use of the GO TEXAN mark. The repeal of §17.58 is proposed to eliminate the specific requirements regarding Texas beef, and to allow the department to incorporate beef into §17.52. With the repeal of §17.58, removing unnecessary requirements, and the proposed amendment to §17.52, which will include beef, more beef producers will be eligible for the GO TEXAN program.

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

Mr. Richards has also determined that for the first five years that the proposed amendment and repeal are in effect, the public benefit of the proposed amendment and repeal will expand eligibility to members that are currently producing, processing or selling beef to benefit from the GO TEXAN program. There will be no effect on microbusinesses, small businesses or persons required to comply with the amended section and repeal, as proposed, therefore, no regulatory flexibility analysis is required.

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

4 TAC §17.52

The amendment of §17.52 is proposed under the Texas Agriculture Code, §12.0175, which provides that the department by

rule may establish programs to promote and market agricultural products and other products grown, processed, or produced in the state and that the department may adopt rules necessary to administer a program established under this section, including rules governing the use of any registered logo of the department.

Texas Agriculture Code, Chapter 12 is affected by the proposal.

§17.52. *Application for Registration to Use the GO TEXAN and Design Mark.*

(a) (No change.)

(b) Unless permission is otherwise granted by the department, the GO TEXAN and Design mark may only be used by registrants and licensees to certify and promote the following Texas agricultural products:

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

(7) meat(s). In order to be certified as "GO TEXAN" meat(s), applicants must meet the following criteria:

(A) Beef. Must be from cattle that have been born, raised, fed, slaughtered and/or fabricated in Texas.

(B) Lamb and goat. Must be from sheep or goats that have been born, raised, fed, slaughtered and/or fabricated in Texas.

(C) Pork. Must be from domesticated swine that have been born, raised, fed, slaughtered and/or fabricated in Texas.

(D) Poultry. Must be from poultry that have been born, raised, slaughtered and/or fabricated in Texas.

(E) Exotics. Must be from exotic animals that have been born, raised, fed, slaughtered and/or fabricated in Texas.

(F) For purposes of this paragraph, "fabricated" shall be defined as the process of taking a carcass and cutting the carcass into wholesale or retail cuts of meat.

~~{(7) lamb or goat meat(s). In order to be certified as "GO TEXAN" lamb or goat meat(s), lamb or goat meat(s) must be from a lamb or goat that has been fed in Texas for at least 30 days and:}~~

~~{(A) be from a lamb or goat that has been slaughtered in Texas; or}~~

~~{(B) be from a lamb or goat slaughtered and fabricated in Texas;}~~

~~{(C) for purposes of this paragraph, "fabricated" shall be defined as the process of taking a carcass and cutting the carcass into wholesale or retail cuts of meat;}~~

(8) - (17) (No change.)

(c) - (p) (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 July 27, 2009.

TRD-200903174

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: September 6, 2009

For further information, please call: (512) 463-4075



4 TAC §17.58

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

The repeal of §17.58 is proposed under the Texas Agriculture Code, §12.0175, which provides that the department by rule may establish programs to promote and market agricultural products and other products grown, processed, or produced in the state and that the department may adopt rules necessary to administer a program established under this section, including rules governing the use of any registered logo of the department.

Texas Agriculture Code, Chapter 12 is affected by the proposal.

§17.58. *GO TEXAN Beef Program.*

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

Filed with the Office of the Secretary of State on July 27, 2009.

TRD-200903173

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: September 6, 2009

For further information, please call: (512) 463-4075



TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 2. TEXAS BOOTSTRAP LOAN PROGRAM

10 TAC §§2.1 - 2.17

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Housing and Community Affairs or in the Texas

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

The Texas Department of Housing and Community Affairs proposes the repeal of 10 TAC Chapter 2, §§2.1 - 2.17, concerning the Texas Bootstrap Loan Program. These sections are proposed for repeal in order to draft new language to include changes from Senate Bill 679, which was approved during the 81st Legislative Session.

Mr. Michael Gerber, Executive Director, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeal as proposed.

Mr. Gerber 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 enforcing the repeal will be more clarity and certainty in the requirements of the Texas Bootstrap Loan Program. There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

The public comment period will be held August 7, 2009 to September 7, 2009 to receive input on these rules. Written comments may be submitted to Texas Department of Housing and Community Affairs, 2009 Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: tdhcarulecomments@tdhca.state.tx.us, or by fax to (512) 469-9606. ALL COMMENTS MUST BE RECEIVED BY SEPTEMBER 7, 2009.

The repeal is proposed pursuant to the authority of the Texas Government Code, Chapter 2306 which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

The repeal affects no other code, article or statute.

§2.1. *Purpose.*

§2.2. *Definitions.*

§2.3. *Allocation of Funds.*

§2.4. *Applicant Requirements.*

§2.5. *Application Limitations.*

§2.6. *Program Activities.*

§2.7. *Prohibited Activities.*

§2.8. *Distribution of Funds.*

§2.9. *Application and Award Process.*

§2.10. *General Threshold Criteria.*

§2.11. *Selection Criteria for Texas Bootstrap Loan Program.*

§2.12. *Program Administration.*

§2.13. *Owner-Builder Qualifications.*

§2.14. *Types of Funding Transactions.*

§2.15. *Leveraged Loans.*

§2.16. *Property guidelines and related issues.*

§2.17. *Nonprofit Owner-Builder Housing Program (NOHP) Certification.*

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 July 27, 2009.

TRD-200903171
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: September 6, 2009
For further information, please call: (512) 475-3916



10 TAC §§2.1 - 2.13

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 2, §§2.1 - 2.13, concerning the Texas Bootstrap Loan Program. The new sections are proposed in order to include changes from Senate Bill 679, which was approved during the 81st Legislative Session, align processes with the current Reservation System, and incorporate changes recommended by the Department's Internal Audit Division.

Mr. Michael Gerber, Executive Director, has determined that for the first five (5) year period the new sections are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the new sections as proposed.

Mr. Gerber has also determined that for each year of the first five (5) years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be more clarity and certainty in the requirements of the Texas Bootstrap Loan Programs. There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the new sections as proposed.

The public comment period will be held August 7, 2009 to September 7, 2009 to receive input on these rules. Written comments may be submitted to Texas Department of Housing and Community Affairs, 2009 Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: tdhcarulecomments@tdhca.state.tx.us, or by fax to (512) 469.9606. ALL COMMENTS MUST BE RECEIVED BY September 7, 2009.

The new sections are proposed pursuant to the authority of the Texas Government Code, Chapter 2306 which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

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

§2.1. Purpose.

(a) This chapter clarifies the administration of the Texas Department of Housing and Community Affairs Texas Bootstrap Loan Program also known as the Owner-Builder Loan Program. The Texas Bootstrap Loan Program provides assistance to income-eligible individuals, families and households to purchase or refinance real property, on which to build new residential housing or improve existing residential housing. The Program is administered in accordance with Subchapter FF, Chapter 2306 of the Texas Government Code.

(b) The Texas Bootstrap Loan Program is a self-help construction Program that is designed to provide very low-income families an opportunity to help themselves attain homeownership or repair their existing homes through sweat equity. All Owner-Builder applicants under this Program are required to provide through personal labor at least 65% of labor necessary to build or rehabilitate the home. All applicable building codes and housing standards are adhered to under this

Program. In addition, nonprofit organizations can combine these funds with other sources of funds. The total amount of Amortized repayable loans made by the Department and other entities to an Owner-Builder may not exceed \$90,000 per housing unit.

§2.2. Definitions.

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

(1) Activity--A form of assistance by which Texas Bootstrap Loan Program funds are used to provide incentives to develop and support affordable housing and homeownership through acquisition, new construction, reconstruction, and rehabilitation of residential housing.

(2) Administrative Deficiencies--The absence of information or a document from the Owner-Builder application as required by these rules and Program Manual.

(3) Amortized--A loan in which the principal as well as the interest, if applicable, is payable monthly or in some other periodic installment over the term of the loan.

(4) Board--The governing board of the Texas Department of Housing and Community Affairs.

(5) Colonia--A geographic area located in a county some part of which is within one-hundred fifty (150) miles of the international border of this state that:

(A) has a majority population composed of individuals and families of low income and very low income, based on the federal Office of Management and Budget poverty index, and meets the qualifications of an economically distressed area under §17.921, Texas Water Code; or

(B) has the physical and economic characteristics of a Colonia, as determined by the Department.

(6) Colonia Self-Help Center--As defined under Subchapter Z, Chapter 2306 of the Texas Government Code.

(7) Committed--Funds reserved to an Owner-Builder and approved by the Department.

(8) Department--The Texas Department of Housing and Community Affairs.

(9) Development--Projects that have a construction component, either in the form of new construction or the rehabilitation of single family residential housing that meet the Texas Bootstrap Loan Program requirements.

(10) Drawn--Funds approved by the Department and disbursed to the Nonprofit Owner-Builder Housing Provider (NOHP).

(11) Economically Distressed Area--A county that contains an area that meets the criteria for an economically distressed area under §17.921, Texas Water Code; and has adopted and enforces the model rules under §16.343, Texas Water Code.

(12) Grant--Financial assistance that is awarded in the form of money to a housing sponsor for a specific purpose and that is not required to be repaid. A Grant includes a forgivable loan.

(13) HUD--United States Department of Housing and Urban Development.

(14) Life of Loan Flood Certification--Life of Loan Flood Certification tracks the flood zone of the property for the life of the loan.

(15) Loan Origination Agreement--A written agreement, including all amendments thereto between the Department and the NOHP that authorizes the NOHP to originate certain loans under the Texas Bootstrap Loan Program.

(16) New Construction--Any single-family structure not meeting the definition of Rehabilitation or Reconstruction.

(17) NOFA--Notice of Funding Availability.

(18) NOHP--Nonprofit Owner-Builder Housing Provider.

(19) Nonprofit Organization--An organization that:

(A) is organized under state or local laws;

(B) has no part of its net earnings benefiting any member, founder, contributor, or individual;

(C) has a current tax exemption ruling from the Internal Revenue Service (IRS) under §501(c)(3), a charitable, nonprofit corporation, of the Internal Revenue Code of 1986, as evidenced by a certificate from the IRS that is dated 1986 or later. The exemption ruling must be effective on the date of the Application and must continue to be effective throughout the length of any contract agreements; or classification as a subordinate of a central organization nonprofit under §501(c)(3) of the Internal Revenue Code, as evidenced by a current group exemption letter, that is dated 1986 or later, from the IRS that includes the Applicant. The group exemption letter must specifically list the Applicant.

(D) A nonprofit organization's pending application for §501(c)(3) status cannot be used to comply with the tax status requirement.

(20) Open Reservation Cycle--A defined period during which an NOHP may submit Owner-Builder applications according to a published NOFA and which will be reviewed on a first come-first serve basis until all funds available are committed, or until the NOFA is closed. Owner-Builder applications will be reviewed in accordance with Program rules and the Program Manual. The Department may release funds in a two year funding cycle or less than two (2) years.

(21) Owner-Builder--A person, other than a person who owns or operates a construction business and who owns or purchases a piece of real property through a warranty deed and deed of trust; or is purchasing a piece of real property under a contract for deed entered into before January 1, 1999; and who undertakes to make improvements to that property.

(22) Participant--An organization which submits an application to the Department to be certified as an NOHP.

(23) Program--Texas Bootstrap Loan Program also known as the Owner-Builder Loan Program.

(24) Program Manual--A set of guidelines designed to be an implementation tool for the NOHP that has executed a Loan Origination Agreement and allows the NOHP to search for terms, statutes, regulations, forms and attachments. The Program Manual is developed by the Department and amended or supplemented from time to time.

(25) Reconstruction--The rebuilding of a new single-family structure on the same lot where housing exists at the time of Owner-Builder loan application. Texas Bootstrap Loan Program funds may also be used to build a new foundation or repair an existing foundation.

(26) Rehabilitation--Includes the alteration, improvement or modification of an existing single family structure. It may also include moving an existing single family structure to a foundation constructed with Texas Bootstrap Loan Program funds.

(27) Related Party--As defined in §2306.6702 of the Texas Government Code.

(28) Reservation--An amount of funds set-aside for each individual Owner-Builder applicant registered into the Department's Texas Bootstrap Loan Program Registration website.

(29) Self-Help Housing Construction--The self-help housing process enables Owner-Builders to rehabilitate, reconstruct or construct their own homes, usually working together in groups on other eligible Owner-Builder's houses at the same time. Owner-builders use their own "sweat equity" to reduce the cost of their homes.

(30) Single family structure--A property designed and built to support the habitation of one person or one household.

(31) Very Low-Income Families--Owner-Builders who do not have an annual income that exceeds 60% of the greater of the state or local median family income, as determined by the Department, when combined with the income of any person who resides with the Owner-Builder.

§2.3. Allocation of Funds.

(a) The Department administers all Texas Bootstrap Loan Program funds provided to the Department in accordance with Subchapter FF, Chapter 2306 of the Texas Government Code. The Department shall solicit gifts and grants to make loans under this chapter.

(b) The Department may also make loans under this chapter from:

(1) available funds in the housing trust fund established under §2306.201, of the Texas Government Code;

(2) federal block grants that may be used for the purposes of this chapter; and

(3) the Owner-Builder revolving loan fund established under §2306.7581, of the Texas Government Code.

(c) The Department shall establish an Owner-Builder revolving loan fund for the sole purpose of funding loans pursuant to §2306.7581 of the Texas Government Code.

(d) The Department shall deposit money received in repayment of a loan to the Owner-Builder revolving loan fund pursuant to §2306.7581 of the Texas Government Code.

(e) Each state fiscal year the Department shall transfer at least \$3 million to the Texas Bootstrap Loan Program revolving fund from money received under the federal HOME Investment Partnerships Program established under Title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §§12701, et seq.) from money in the housing trust fund; or from money appropriated by the legislature to the Department pursuant to §2306.7581 of the Texas Government Code.

(f) In a state fiscal year the Department may use not more than 10% of the revenue available to enhance the ability of tax-exempt organizations described by §2306.755(a) of the Texas Government Code to enhance the number of such organizations that are able to implement the Program. The Department shall use that available revenue to provide financial assistance, technical training and management support.

§2.4. Participant Requirements.

(a) Eligible Participants. The following organizations or entities are eligible to participate in the Texas Bootstrap Loan Program:

(1) Colonia Self Help Centers established under §2306, Subchapter Z, Texas Government Code; or

(2) Nonprofit Owner-Builder Housing Provider (NOHP) certified by the Department pursuant to §2306.755 of the Texas Government Code.

(b) Ineligible Participants: The following violations may cause a Participant, and any applications they have submitted, to be ineligible:

(1) Previously funded Participants(s) who have been partially or fully deobligated due to failure to meet contractual obligations during twelve (12) month period prior to the NOFA published date;

(2) Participants who have not satisfied all eligibility requirements described in the Program rules and NOFA to which they are responding;

(3) Participants that have failed to make timely payment on fee commitments or on debt instruments held by the Department and for which the Department has initiated formal collection actions;

(4) Participants that have been debarred by HUD or the Department; or

(5) Participants whose staff violates the state's revolving door policy.

(c) Noncompliance. Each Participant will be reviewed for its compliance history by the Department. Participants found to be in material noncompliance, or otherwise violating the compliance rules of the Department, will be terminated.

(d) Eligibility requirements. Participant must be certified as an NOHP or must be a Colonia Self-Help Center and must have entered into a Loan Origination Agreement with the Department in order to be eligible to participate in the Texas Bootstrap Loan Program Reservation system and as more fully described in the NOFA. The Participant must have the capacity to administer and manage resources as evidence by previous experience of managing state and/or federal programs.

(e) If indicated by the Department, comply with all requirements to utilize the Department's website to provide necessary data to the Department.

§2.5. Program Activities.

All eligible Participants that satisfy the requirements of §2.4, of this title (relating to Participant Requirements) may reserve funds and submit a loan application on behalf of an Owner-Builder applicant for the Texas Bootstrap Loan Program.

§2.6. Prohibited Activities.

The following activities are prohibited in relation to the origination of a Texas Bootstrap Loan Program Loan, but may be charged as an allowable cost by a third (3rd) party lender for the origination of all other loans originated in connection with a Texas Bootstrap Loan Program Loan.

(1) Payment of delinquent property taxes or related fees or charges on properties to be assisted with Texas Bootstrap Loan Program funds;

(2) Loan Origination Fees;

(3) Application fee;

(4) Discount fees;

(5) Underwriter fee;

(6) Loan Processing fees; and

(7) Other fees not approved by the Department.

§2.7. Distribution of Funds.

(a) Set-Asides: In accordance with §2306.753(d) of the Texas Government Code, at least two-thirds (2/3) of the dollar amount of loans made under this chapter in each fiscal year must be made to Owner-Builders whose property is located in a county that is eligible to receive financial assistance under Subchapter K, Chapter 17, Texas Water Code.

(b) Balance of State: The remaining one-third (1/3) of the dollar amount of loans may be made to Owner-Builders in either a county under subsection (a) of this section or a county not eligible to receive financial assistance under Subchapter K, Chapter 17, Texas Water Code.

(c) Reservation procedures. Reservations of funds are available to the Nonprofit Owner-Builder Housing Provider (NOHP) on first-come, first-served basis. In all cases the NOHP must register each Owner-Builder applicant on the Texas Bootstrap Loan Program Reservation System via the Department's website. Maximum Reservations allowed for an NOHP at any given time may not exceed ten in the two-thirds set-aside as noted in §2306.753(d) of the Texas Government Code. The NOHP is allowed up to five Reservations at any given time under the Balance of the State set-aside. The NOHP may enter additional Reservations after a loan has closed and all required closing documents have been submitted to the Department for funding.

(d) A Reservation of funds with respect to the Program may be subject to cancellation if all documents required in the Program Manual are not submitted to the Department within ten (10) business days of the date the registration was entered into the Reservation system and/or if the performance benchmarks outlined in these Program rules are not adhered to. Registration of an Owner-Builder applicant does not guarantee funding.

(e) Modification of loan Reservation. After a Reservation has been secured and the Owner-Builder applicant has been deemed eligible to participate in the Program, the NOHP must notify the Department of any changes to the Owner-Builder application, such as a cancellation, change in the sales price or change in the loan amount. The NOHP will not be permitted to change, exchange, replace or switch Owner-Builder applicants once the loan has been registered.

(f) Once a Reservation has been awarded, the Department may grant one forty-five (45) day extension of required benchmarks due to extenuating circumstances that were beyond the Owner-Builder's and/or the NOHPs control. If the NOHP cannot meet the required benchmarks after the forty-five (45) day extension, the Reservation will be cancelled. In order to receive another Reservation on the same Owner-Builder applicant the NOHP must submit an updated application to ensure the Owner-Builder applicant still meets all guidelines and requirements under Texas Bootstrap Loan Program Rules and Program Manual.

§2.8. Criteria for Funding.

(a) All Notices of Funding Availability (NOFA) will be presented to the Board for approval. The Department will publish a NOFA in the *Texas Register* and on the Department's website. The NOFA will be published as an Open Reservation Cycle. The NOFA will establish and define the terms and conditions for the submission of Reservations. The NOFA will also indicate the approximate amount of available funds.

(b) A nonprofit organization must have been certified by the Department as a Nonprofit Owner-Builder Housing Provider (NOHP) and must have executed a Loan Origination Agreement to be eligible to submit a Reservation on behalf of an Owner-Builder applicant. A Reservation containing false information and/or not received by the deadline will be disqualified. The NOHP will be notified in writing of any Reservations cancelled. All Reservations must be received by the

Department by 5:00 p.m. of the tenth (10th) business day, regardless of method of delivery.

(c) Reservations received by the Department in response to a NOFA will be handled in the following manner:

(1) The Department will accept Reservations until the all funds under the NOFA have been committed. The Department may limit the eligibility of Reservations in the NOFA.

(2) Each Reservation will be assigned a "received date" based on the date and time the Reservation was entered into the Texas Bootstrap Loan Program Reservation System. Each Reservation will be reviewed in accordance with the Program rules.

(3) The Department will ensure that the Reservation is reviewed for the completeness of submission of all materials required under the NOFA, and information requested in the Program Manual. Reservations must comply with all applicable Texas Bootstrap Loan Program and Housing Trust Fund requirements or regulations established in these rules. Reservations that do not comply with such requirements are disqualified. Disqualified Reservations will be notified in writing.

(4) Administrative Deficiencies. If a Reservation contains deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Reservation, the Department staff may request clarification or correction of such Administrative Deficiencies. The Department staff may request clarification or correction in a deficiency notice in the form of an e-mail, facsimile or a telephone call to the NOHP advising that such a request has been transmitted. An NOHP may not change or supplement a Reservation in any manner after submission, except in response to a direct request from the Department. NOHP must submit the requested information to the Department within five (5) business days of notification of deficiency.

(5) The Department may decline to fund any Reservation if the proposed housing activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Reservation which are entered, and may decide it is in the Department's best interest to refrain from committing the funds.

(6) In the event of a tie between two or more Reservations, the Department reserves the right to determine which Reservation will receive funding. The Department will give priority to Reservations to Owner-Builders with an annual income of less than \$17,500 and Reservations to Owner-Builders who will reside in counties and municipalities that agree in writing to waive the capital recovery fees, building permit fee or other fees related to the building of the houses to be built with the loan proceeds. Tied Reservations may also receive a partial recommendation for funding.

(d) Alternative Dispute Resolution Policy. In accordance with §2306.082 of the Texas Government Code, it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures (ADR) under the Governmental Dispute Resolution Act, Chapter 2009 of the Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at 10 TAC §1.17.

§2.9. Program Administration.

(a) Per household assistance from the Department for any Texas Bootstrap Loan Program loans may not exceed \$45,000 per-household pursuant to §2306.754(b) of the Texas Government Code. The Owner-Builder must obtain the amount necessary that exceeds \$45,000 from other sources of funds. The total amount of Amortized repayable loans made by the Department and other entities to an Owner-Builder under the Program may not exceed \$90,000 pursuant to §2306.754(b) of the Texas Government Code. For purposes of these rules, a Grant includes a forgivable loan.

(b) A loan made by the Department shall be secured by a first (1st) lien on the real property if the Department's loan is the largest Amortized, repayable loan secured by the real property; or

(c) The Department may accept a parity lien position if the original principal amount of the leveraged loan is equal to or greater than the Department's loan; or

(d) The Department may accept a subordinate lien position if the original principal amount of the leveraged loan is at least \$1,000 or greater than the Department's loan. However liens related to other subsidized funds provided in the form of grants and nonamortizing loans, such as deferred payment or forgivable loans, must be subordinate to the Department's loan.

(e) The Department, through a Nonprofit Owner-Builder Housing Provider (NOHP), shall make loans for Owner-Builder applicants to enable them to:

(1) purchase or refinance real property on which to build new residential housing;

(2) build new residential housing; or

(3) improve existing residential housing.

(f) The NOHP will be granted a 6% administration fee upon completion of the house and closing of each mortgage loan.

(g) Loan Origination Agreement. Upon approval by the Department, the nonprofit organization certified as an NOHP or Colonia Self-Help Centers shall enter into, execute, and deliver to the Department the Loan Origination Agreement.

(h) Amendments. The Department, acting by and through its executive director or his/her designee, may authorize, execute, and deliver modifications and/or amendments to any Program written agreement provided that:

(1) Time extensions. The executive director may collectively provide up to one (1) six (6) month extension to the end date of any Loan Origination Agreement. Any additional time extension granted by the executive director shall include a statement by the executive director relating to unusual, non-foreseeable or extenuating circumstances. If the extension is longer than six (6) months and the executive director determines that a statement related to unusual, non-foreseeable, or extenuating circumstances cannot be issued, it will be presented to the Governing Board for approval, approval with modifications, or denial of the requested extension; and

(2) In the case of all other modifications or amendments, such modification or amendment does not, in the estimation of the executive director, significantly decrease the benefits to be received by the Department.

(i) Sanctions/Deobligation. The Department will apply its Administration Rules, Title 10, Part 1, Chapter 1, Texas Administrative Code.

(j) The Department may use all applicable provisions and/or any relevant rules to assure compliance with these rules or Loan Origination Agreement.

(k) Additional Funds. In the event the Department has additional funds in the same funding cycle, the Department, with Board approval, will distribute funds in accordance to §2.7(a) and (b) of this title (relating to Distribution of Funds).

(l) The Department may terminate the Loan Origination Agreement in whole or in part. If the NOHP has not achieved performance benchmarks as outlined in Loan Origination Agreement, Program rules and Program Manual. Performance benchmarks must be satisfactorily completed as follows:

(1) If the Owner-Builder applicant qualifies for the Program, the Department will issue an applicant eligibility letter (approval letter) which reserves the funds (up to \$45,000 per Reservation) for twelve (12) months from the Reservation date. Owner-Builder applicant will not be required to re-qualify for the Program if the Owner-Builder applicant closes on the loan on or before the expiration date stated on the applicant eligibility letter issued by the Department. If the Owner-Builder fails to close on the loan on or before the expiration date stated on the applicant eligibility letter, the Owner-Builder applicant will be required to re-qualify for the Program. In an effort to expedite expenditure of funds, the NOHP will be required to meet specific performance benchmarks on the home within twelve (12) months of the Reservation. If the NOHP fails to meet the required benchmarks, the Reservation may be subject to cancellation in accordance with the Loan Origination Agreement. The Department may provide one forty-five (45) day extension to benchmark deadlines due to extenuating circumstances that were beyond the Owner-Builder's and/or the NOHPs control. If the NOHP cannot meet the required benchmarks after the forty-five (45) day extension, the Reservation will be cancelled. In order to receive another Reservation on the same Owner-Builder applicant the NOHP will be instructed to submit an updated application if funds are available, to ensure the Owner-Builder applicant meets all Texas Bootstrap Loan Program Rules. Once an Owner-Builder has been deemed eligible and funds have been reserved, the NOHP must meet the following performance benchmarks depending on the type of loan being requested:

(A) Purchase Money Loan:

(i) Within ninety (90) days of the respective Reservation date the NOHP must have initiated the preconstruction process, which includes the homeownership education and counseling programs of the organization.

(ii) Within one-hundred-eighty (180) days of the respective Reservation date construction must have started on the unit; and

(iii) Within one (1) year of the respective Reservation date the unit must be 100% complete and the purchase money loan must have closed with the Owner-Builder applicant.

(B) Interim and Residential Construction Loans:

(i) Within ninety (90) days of the respective Reservation date, the loan must close and construction must have started on the unit;

(ii) Within one-hundred-eighty (180) days of the respective Reservation date, the unit must be at 40% completion;

(iii) Within two-hundred-seventy (270) days of the respective Reservation date, the unit must be at 80% completion; and

(iv) Within one (1) year of the respective Reservation date, the unit must be 100% complete and the purchase money loan must have closed with the Owner-Builder applicant.

(2) Quarterly reports are due by the NOHP to the Department on the 20th of the month following the end of each calendar quarter. All funding may be suspended until reports are received.

(m) Roles and responsibilities for administering the Program contract. NOHPs are required to:

(1) Qualify potential Owner-Builders for loans;

(2) Provide Owner-Builder homeownership education classes;

(3) Supervise and assist Owner-Builders in building and/or rehabilitate housing;

(4) Facilitate loans made or purchased by the Department under the Program; and

(5) Implement and administer the Program on behalf of the Department.

(n) Loan Origination/Loan Servicing. An NOHP must enter into a Loan Origination Agreement with the Department in order to participate in the Program. If the NOHP wishes to service the loans originated on behalf of the Department it must enter into a Loan Servicing Agreement with the Department. The Department may grant the request upon reviewing the NOHP capacity to implement those specific functions.

(o) First Year Consultation Agreement. The NOHP agrees that if notified by the Department that Owner-Builder has failed to make a scheduled payment due under the Program loan, or other payments due under the Program loan documents issued under the Program, within the first twelve (12) months of funding, the NOHP will be required to meet with the Owner-Builder and provide counseling and assistance until the payments are made current. After consultation and in the event that the Department and NOHP are not able to reach a consensus about NOHPs effort to bring the Program loan current as required under this chapter, the Department in accordance with its administrative rules may apply appropriate graduated sanctions leading up to, but not limited to deobligation of funds and future debarment from participation in the Program.

(p) Conflict of Interest. The NOHP shall ensure that no employee, officer, or agent of NOHP shall participate in the selection, or in the award or administration of a subcontract supported by funds provided under this Program if a conflict of interest, real or apparent, would be involved. Such conflict of interest would arise when the employee, officer, or agent; any member of his or her immediate family; his or her partner; or, any organization which employs, or is about to employ any of the above; has a financial or other interest in the firm or person selected to perform the subcontract. The NOHP may not accept an application from any of its officers or employees nor any spouse or person related within the third (3rd) degree of affinity (marriage) or consanguinity (blood) to any officer or employee of the NOHP.

(q) Administrative Fee. The NOHP may request their administrative fee upon completion of the house and closing of each mortgage loan.

(r) Blueprints. If NOHPs activity is interim or residential construction, NOHP must provide an original copy of the proposed blueprints to be approved by the Department prior to accepting applications. Blue prints must include the required construction requirements pursuant to §2306.514 of the Texas Government Code.

(s) Work Write-up. The NOHP must submit a work write-up for all rehabilitation projects. At a minimum, NOHP must ensure that the home will meet Colonia Housing Standard or Housing Quality Standards. Work write-ups must be reviewed and approved by the Department, before rehabilitation is started. The NOHP must also adopt a set of general specifications that provide detailed guidance to Owner-Builders and contractors on how to complete specific items in a work write-up.

(t) Loan Program requirements. The Department may purchase or originate loans that conform to the lending parameters and the specific loan Program requirements as follows:

(1) Maximum Loan amount not to exceed \$45,000. If it is not possible for the Owner-Builder to purchase necessary real property and build adequate housing for \$45,000, the NOHP must obtain additional funding from other sources of funds;

(2) Minimum Loan amount is \$1,000;

(3) The total amount of all Amortized repayable loans under the Program may not exceed \$90,000. Deferred forgivable loans are not included in these total loan calculations;

(4) May not exceed a term of thirty (30) years;

(5) Minimum loan term of five (5) years;

(6) Zero percent (0%) non-interest loans;

(7) When refinancing a contract for deed, the Department will not disburse any portion of the Department's loan until the Owner-Builder receives a deed to the property;

(8) Owner-builder(s) must have resided in this state for the preceding six (6) months prior to the date of application;

(9) Total Debt-to-Income Ratio: Maximum of 45% (unless otherwise dictated by the mortgage insurer, if any);

(10) Credit Qualifications: Owner-Builder applicants must have a credit history that indicates reasonable ability and willingness to meet debt obligations. In order for the Department to make a reasonable determination, the Department will obtain a tri-merge credit report on all Owner-Builder applicants submitted to the Department for approval.

(11) Indicators of unacceptable credit include:

(A) Payments on any consumer, retail and/or installment account (i.e. auto loans, signature loans, payday loans, credit cards or any other type of retail and/or installment loan) which has been delinquent for more than thirty (30) days on three (3) or more occasions within the last twelve (12) months prior to the date of application. For purposes of this subparagraph, the credit history of an Owner-Builder who is a domestic farm laborer and receives a substantial portion of his/her income as a laborer on a farm will not apply. However, Owner-Builder must still demonstrate the ability and willingness to meet debt obligations.

(B) A foreclosure which has been completed within the last twelve (12) months prior to the date of application.

(C) An outstanding Internal Revenue Service tax lien or any other outstanding tax liens where Owner-Builder applicant has made no satisfactory payment arrangements.

(D) A court-created or court-affirmed obligation or judgment caused by nonpayment that is currently outstanding or has been outstanding within the last twelve (12) months and Owner-Builder applicant has made no satisfactory payment arrangements.

(E) Any account that has been placed for collection or profit or loss within the last twelve (12) months prior to the date of application.

(F) Any delinquency on any government debt.

(G) A bankruptcy that has been filed within the past twelve (12) months prior to the date of application.

(12) The following will not be considered indicators of unacceptable credit:

(A) A bankruptcy in which debts were discharged more than twenty-four (24) months prior to the date of application or where an applicant successfully completed a bankruptcy debt restructuring plan and has demonstrated a willingness to meet obligations when due for the twelve (12) months prior to the date of application.

(B) A judgment satisfied more than twelve (12) months before the date of application.

(C) Medical accounts that are delinquent or that have been placed for collection.

(13) Liabilities: The Owner-Builder applicant's liabilities include all revolving charge accounts, real estate loans, alimony, child support, installment loans, and all other debts of a continuing nature with more than ten (10) monthly payments remaining. Debts for which the Owner-Builder applicant is a co-signer will be included in the total monthly obligations unless the other party to the debt provides evidence showing that the Owner-Builder applicant has not been making payments on the co-signed loans for the previous twelve (12) months. There may be no late payments within the past twelve (12) months or the debt will be included. Payments on installment debts which are paid off prior to funding are not included for qualification purposes. Payments on all revolving debts (i.e. credit cards, payday loans, lines of credit, unsecured loans) and certain types of installment loans that appear to be recurring in nature will be included in debt ratio calculation, even if the Owner-Builder applicant intends to pay off the accounts, since the Owner-Builder applicant can reuse those credit sources, unless the account is paid off and closed. Any bankruptcy must have been discharged or dismissed in addition the Department will require that the Owner-Builder applicant to submit a letter of explanation regarding the circumstances that led to the bankruptcy.

(14) Must be a detached single-family residence or property located within the State of Texas. Manufactured homes are not eligible. All property taxes must be current prior to closing.

(15) The residence must be occupied as the principal residence of the Owner-Builder within thirty (30) days of the later of the end of the construction period or the closing of the loan. Any additional habitable structures must be removed from the property prior to closing. Portion of the former structure may be utilized as storage upon the Department's written approval prior to closing.

(16) Escrow Account--An account to which the borrower contributes monthly payments to cover the anticipated costs of real estate taxes, hazard and flood insurance premiums, and other related costs. The Department will require that up to two (2) months of reserves for hazard and/or flood insurance and property taxes to be collected at the time of closing and these funds must be deposited with the mortgage loan servicer. In addition, the Department will also require that the property taxes be prorated at the time of closing and those funds be deposited with the mortgage loan servicer. The Owner-Builders will be required to deposit monthly funds to an escrow account with the mortgage loan servicer in order to pay the taxes and insurance. This will ensure that funds are available to pay for the cost of real estate taxes, insurance premiums, and other assessments when they come due.

These funds are included in the Owner-Builder's monthly payment to the mortgage loan servicer. The mortgage loan servicer will establish and administer the escrow accounts in accordance with the Real Estate Settlement and Procedures Act of 1974 (RESPA).

(17) Non-Purchasing Spouse--An Owner-Builder applicant's spouse who does not apply for the loan will be required to execute the information disclosure form, the deed of trust as a "non-purchasing" spouse and will not be required to execute the note. For credit underwriting purposes the non-purchasing spouse's debts and obligations will be considered in the Owner-Builder total debt-to-income ratio. The Owner-Builder applicant will be qualified using obligations for which the Owner-Builder applicant and non-purchase spouse are personally or jointly liable. Only the income of the Owner-Builder applicant will be used in determining the total debt to income ratio. For Program eligibility purposes, the income of a non-applicant spouse must be included in the calculation of family income. Tax Returns, W2's and recent pay check stubs, or Verification of Employment must be submitted to document household income.

(u) Loan Assumption--A Program loan is assumable if the Department determines that the Owner-Builder applicant complies with all Program restrictions in effect at the time of the assumption.

§2.10. Owner-Builder Qualifications.

The Owner-Builder must:

(1) Own and be refinancing or be purchasing a piece of real property through a warranty deed or Contract for Deed;

(2) Not have an annual household income that exceeds 60% of the greater of the state or local area median family income as determined by United States Department of Housing and Urban Development (HUD) income guidelines;

(3) Demonstrate the willingness and ability to repay the loan;

(4) Execute a Self-Help Agreement committing to provide through personal labor at least 65% of the labor necessary to build or rehabilitate the proposed housing working through a state-certified Non-profit Owner-Builder Housing Program (NOHP); or provide an amount of labor equivalent to 65% in connection with building or rehabilitating housing for others through a state certified NOHP; provide through the noncontract labor of friends, family, or volunteers and through personal labor at least 65% of the labor necessary to build or rehabilitate the proposed housing by working through a state certified NOHP or if due to a documented disability or other limiting circumstances the owner-builder cannot provide the amount of personal labor otherwise required, provide through the noncontract labor of friends, family or volunteers at least 65% of the labor necessary to build or rehabilitate the proposed housing by working through a state certified NOHP.

(5) Not have liquid assets in excess of \$25,000 (excluding retirement and/or 401K accounts);

(6) Successfully complete an Owner-Builder homeowner-ship education class prior to loan funding;

(7) Be given priority for loans if the Owner-Builder has an income of less than \$17,500 annually;

(8) Not be currently in delinquency or in default with child support and/or government loans;

(9) Not have any outstanding judgments and/or liens on the property.

§2.11. Types of Funding Transactions.

All mortgage loans will be evidenced by a promissory note and will be secured by a lien on the subject property. The following transaction types are permitted by the Department under the Program.

(1) Purchase Money. In a purchase money transaction, all proceeds are used to finance the purchase of a single-family dwelling unit and/or a piece of real property which will be the Owner-Builder's primary residence within thirty (30) days of closing the loan. In this instance, a permanent loan is made and the Owner-Builder's repayment obligation begins immediately. In certain situations, eligible closing costs may be financed by the loan proceeds.

(2) Residential Construction (One Time Closing with Owner-Builder). An interim construction loan, also known as a residential construction loan, this transaction is treated as a purchase, because it is a one time closing with the Owner-Builder. Construction period is for twelve (12) months at which time payments will begin on the 13th month after closing.

(3) Interim Construction (Closing with NOHP). Interim construction is a commercial transaction between the NOHP and the Department. The construction period is for twelve (12) months; once the construction of the home is completed the closing with the Owner-Builder will take place as a purchase money transaction.

(4) Purchase of Mortgage Loans. The Department may purchase and take assignments from mortgage lenders of notes and other obligations evidencing loans or interest in loans for purchase money transactions as described in paragraph (1) of this section or for residential construction transactions as described in paragraph (2) of this section.

§2.12. Property Guidelines and Related Issues.

(a) If the Nonprofit Owner-Builder Housing Program (NOHP) is utilizing Program funds to construct the home they must conform to §2306.514 of the Texas Government Code.

(b) If the property is located within an incorporated area where certain building codes must be met, the Department will require a copy of the certificate of occupancy. If no certificate of occupancy is available the NOHP must obtain a document showing that the home has passed all required codes from the local governing entity must be submitted to the Department upon completion of construction. If the property is located outside an incorporated area at a minimum, inspections will be required. Inspections will be required for all housing rehabilitation (initial and final), reconstruction (initial and final) and new construction (final only) activities and must be inspected by a professional inspector licensed by the Texas Real Estate Commission.

(1) The final inspections for housing rehabilitation must ensure that the construction on the house is complete, that the home is safe, sound and sanitary. A copy of the final inspection report must be given to the homeowner.

(2) The final inspections for reconstruction and new construction must ensure that the construction on the home is complete, that the home is safe, and that it meets, at a minimum, International Residential Code (IRC). IRC is a comprehensive residential code which establishes minimum construction requirements with plumbing, mechanical, energy, and electrical provisions. A copy of the final inspection report must be given to the homeowner.

(3) The Contractor must ensure and verify that each construction contractor performing activities in the amount of \$10,000.00 or more under the Contract is registered and maintains good standing with the Texas Residential Construction Commission.

(4) The Contractor must ensure and verify that each housing unit being rehabilitated in the amount of \$10,000.00 or more un-

der the Contract is registered with the Texas Residential Construction Commission.

(5) All final inspections must ensure that the construction on the house is complete and that the home is safe. In both instances any deficiencies noted on the certificate of occupancy or the third party inspector's report must be corrected prior to closing. Cosmetic issues such as paint, wall texture, etc. will not be required to be corrected since this is a self-help construction Program. If the Texas Residential Construction Commission registrations required in the Chapter are no longer required by operation of law, such registrations must be obtained from the entity that succeeds to the applicable registration functions of the Texas Residential Construction Commission, if any.

(c) Appraisals are required by the Department on each property prior to funding.

(d) Maximum loan to value ratio may not exceed 95%, the lien amounts of forgivable loans and/or grants will not be included in the loan-to-value calculation.

(e) Improvement Surveys are required on each property.

(f) Insurance requirements:

(1) Title Insurance. The title insurance must be written by a title insurer licensed to do business in the jurisdiction where the mortgaged property is located.

(A) Title Commitment. A copy of the preliminary title report including complete legal description, and copies of covenants, conditions and restrictions, easements, and any supplements thereto is required. The preliminary title report should not be more than thirty (30) days old at the time the submission package (Submission or Funding Package) is sent to the Department.

(B) Mortgagee's Policy. The Department requires a Mortgagee's policy of title insurance in the amount of the loan. The Mortgagee named shall be: "Texas Department of Housing and Community Affairs." Required endorsements include T-36 Environmental Endorsement for all loans made by the Department.

(2) Property Insurance.

(A) Builder's Risk is required where construction of the residence is being financed by the Department. At the end of the construction period, the binder must be endorsed to remove the "pending disbursements" clause.

(B) Hazard Insurance. The Department requires property insurance for protection against loss or damage from the following perils: fire, windstorm, hail, explosion, riot, and civil commotion, damage by aircraft, vehicles or smoke. Homeowner's policies or package policies that provide property and liability coverage are acceptable. All risk policies are acceptable. The amount of hazard insurance coverage at the time the loan is funded must be no less than 100% of the current insurable value of improvements. The Department will require that the premium for a twelve (12) month homeowner's policy and up to two (2) months of reserve be collected at closing and name the Department as loss payee.

(C) Flood insurance is required for all structures located in special flood hazard areas where the U.S. Federal Emergency Management Agency (FEMA) has mandated flood insurance coverage. In addition the Department requires a Life of Loan Flood Certification on all loans. The flood certification must be part of the Funding Package. Flood insurance is not required if the NOHP or Owner-Builder applicant obtains a Letter of Map Amendment from FEMA stating that the area is no longer classified as a special flood hazard area. The letter must include a map illustrating the amended flood hazard area.

An Owner-Builder applicant may elect to obtain flood insurance even though flood insurance is not required. However, the Owner-Builder applicant may not be coerced into obtaining flood insurance unless it is required in accordance with this section. Evidence of insurance must be obtained prior to loan funding. Insurance premiums for at least twelve (12) months and up to two (2) months of reserves will be collected at closing. The Department must be named as loss payee on the policy.

§2.13. Nonprofit Owner-Builder Housing Program (NOHP) Certification.

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

(1) Applicant--A nonprofit organization that has submitted a request for certification as a NOHP to the Department. An Applicant for the Texas Bootstrap Loan Program must be a NOHP certified by the Department.

(2) Articles of Incorporation--A document that sets forth the basic terms of a corporation's existence and is the official recognition of the corporation's existence. The documents must evidence that they have been filed with the Secretary of State.

(3) Bylaws--A rule or administrative provision adopted by a corporation for its internal governance. Bylaws are enacted apart from the articles of incorporation. Bylaws and amendments to bylaws must be formally adopted in the manner prescribed by the organization's articles or current bylaws by either the organization's board of directors or the organization's members, whoever has the authority to adopt and amend bylaws.

(4) Resolutions--Formal action by a corporate board of directors or other corporate body authorizing a particular act, transaction, or appointment. Resolutions must be in writing and state the specific action that was approved and adopted, the date the action was approved and adopted, and the signature of person or persons authorized to sign resolutions. Resolutions must be approved and adopted in accordance with the corporate bylaws.

(b) Application Procedures for Certification of NOHP. An Applicant requesting certification as a NOHP must submit an application for NOHP certification in a form prescribed by the Department. The NOHP application must be submitted prior to submitting an application for Texas Bootstrap Loan Program Reservation System, and must be recertified every three (3) years. The application must include documentation evidencing the requirements of this subsection.

(1) Applicant must have the following legal status at the time of application to apply for certification as a NOHP:

(A) The Applicant must be organized as a nonprofit organization under the Texas Nonprofit Corporation Act or other state not-for-profit/nonprofit statute as evidenced by Charter or Articles of Incorporation.

(B) The Applicant must be registered and in good standing with the Secretary of State, State Comptroller's Office and the Texas Residential Construction Commission to do business in the State of Texas.

(C) No part of the nonprofit organization's net earnings may inure to the benefit of any member, founder, contributor, or individual, as evidenced by Charter or Articles of Incorporation.

(D) The Applicant must have the following tax status:

(i) A current tax exemption ruling from the Internal Revenue Service (IRS) under §501(c)(3), a charitable, nonprofit corporation, of the Internal Revenue Code of 1986, as evidenced by a cer-

tificate from the IRS that is dated 1986 or later. The exemption ruling must be effective on the date of the application and must continue to be effective while certified as a NOHP; or

(ii) Classification as a subordinate of a central organization non-profit under the Internal Revenue Code §501(c)(3), as evidenced by a current group exemption letter, that is dated 1986 or later, from the IRS that includes the Applicant. The group exemption letter must specifically list the Applicant.

(iii) A nonprofit organization's pending application for §501(c)(3) status cannot be used to comply with the tax status requirement under this subparagraph.

(E) The Applicant must have among its purposes the provision of decent housing that is affordable to low and moderate income people as evidenced by a statement in the organization's Charter, Articles of Incorporation, Resolutions or Bylaws:

(2) An Applicant must have the following capacity and experience listed in subparagraphs (A) and (B) of this paragraph.

(A) Conforms to the financial accountability standards of 24 CFR §84.21, "Standards of Financial Management Systems" as evidenced by:

(i) notarized statement by the executive director or chief financial officer of the organization in a form prescribed by the Department; or

(ii) certification from a Certified Public Accountant.

(B) Has a demonstrated capacity of at least one (1) year for carrying out mortgage loan origination and self-housing construction activities, as evidenced by resumes and/or statements that describe the experience of key staff members who have successfully completed projects similar to those to be assisted with Texas Bootstrap Loan Program funds; or contract(s) with consultant firms or individuals who have housing experience similar to projects to be assisted with Texas Bootstrap Loan Program funds, to train appropriate key staff of the organization.

(3) An Applicant must submit a current roster of all Board of Directors, including names and mailing addresses.

(4) A local or state government and/or public agency cannot qualify as a NOHP, but may sponsor the creation of a NOHP.

(5) Religious or Faith-based Organizations may sponsor a NOHP if the NOHP meets all the requirements of this section. While the governing board of a NOHP sponsored by a religious or a faith-based organization remains subject to all other requirements in this section, the faith-based organization may retain control over appointments to the board. If a NOHP is sponsored by a religious organization, the following restrictions also apply:

(A) Housing developed must be made available exclusively for the residential use of Program beneficiaries and must be made available to all persons regardless of religious affiliations or beliefs;

(B) A religious organization that participates in the Texas Bootstrap Loan Program may not use Texas Bootstrap Loan Program funds to support any inherently religious activities such as worship, religious instruction, or proselytizing; and

(C) Texas Bootstrap Loan Program funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. Sanctuaries, chapels, or other rooms which a faith-based NOHP uses as its principal place of worship are always ineligible.

(D) Compliance with subparagraphs (A) - (C) of this paragraph may be evidenced by the Organizations By-laws, Charter or Articles of Incorporation.

(6) A Colonia Self-Help Center as defined under Subchapter Z, Chapter 2306 of the Texas Government Code is not required to complete the NOHP Certification process as long as it provides a letter from the appropriate funding entity demonstrating a good standing performance and/or certification standing.

(c) Program Design. Organizations must provide written evidence on how the Owner-Builder will meet the 65% sweat equity requirement.

(d) Applicant must provide details, such as number of houses they are proposing to build, type of proposed financing structure and construction timeliness in order to show evidence of its ability to carry out the Texas Bootstrap Loan Program.

(e) Applicant must provide copies of Program guidelines used to qualify Owner-Builders and homebuyer course curriculum in order to show evidence of its experience in qualifying potential Owner-Builders; providing education classes, counseling and training.

(f) Applicant must submit any past due audit to the Department in a satisfactory format on or before the Application deadline.

(g) Applicants must be in compliance in any existing or prior contracts awarded by the Department.

(h) The Department may certify NOHPs meeting all of the above criteria operated by a tax-exempt organization listed under §501(c)(3), Internal Revenue Code of 1986 to:

(1) qualify potential Owner-Builders for loans under this chapter;

(2) provide Owner-Builder education classes;

(3) assist Owner-Builders in building or rehabilitating housing; and

(4) originate and/or service loans.

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

Filed with the Office of the Secretary of State on July 27, 2009.

TRD-200903172

Michael Gerber

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: September 6, 2009

For further information, please call: (512) 475-3916



TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

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

SUBCHAPTER B. TRANSFER OF CREDIT, CORE CURRICULUM AND FIELD OF STUDY CURRICULA

19 TAC §4.36

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §4.36, concerning Transfer of Credit, Core Curriculum and Field of Study Curricula. This new section establishes undergraduate academic certificates at any public junior college or general academic teaching institution, for completion of the institution's approved core curriculum, or the completion of either a Board-approved Field of Study Curriculum or Statewide Articulated Transfer Curriculum. Undergraduate academic certificates created under the new section would require Coordinating Board notification. Approval would be automatic, but subject to review upon request. The new academic certificate would allow students to receive an academic credential signifying the completion of a significant component of an associate's or bachelor's degree; would provide assurance of that completion to a receiving institution in the case of a student transferring to another institution; and would provide for the reporting of certificates as success measures for colleges and universities.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that for each year of the first five years the new section is in effect, there will be no fiscal implications to 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 new section is in effect, the proposed change would benefit students by providing them with a pre-degree-completion credential demonstrating a certain level of academic attainment, and to institutions by providing a success measure. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the new section as proposed. There is no impact on local employment.

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

The new section is proposed under the Texas Education Code, Chapter 61 which gives the Coordinating Board the authority to regulate the awarding or offering of degrees, credit towards degrees, and the use of certain terms.

The new section affects implementation of Texas Education Code, §61.051(g).

§4.36. Undergraduate Academic Certificate.

(a) Institutions of higher education are encouraged to develop undergraduate academic certificate programs of less than degree length. These rules are intended to provide a streamlined process for approval of these certificates.

(b) Undergraduate academic certificates may be awarded upon the completion of:

(1) the Board-approved approved core curriculum of the institution;

(2) a Board-approved field of study curriculum; or

(3) a Board-approved statewide articulated transfer curriculum of less than degree length.

(c) Undergraduate academic certificates which meet one of the criteria in subsection (b) of this section require Board notification and are automatically approved.

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 July 24, 2009.

TRD-200903080

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: October 29, 2009

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



SUBCHAPTER G. EARLY COLLEGE HIGH SCHOOLS AND MIDDLE COLLEGES

19 TAC §§4.151, 4.153, 4.155, 4.161

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §§4.151, 4.153, 4.155, and 4.161, concerning Early College High Schools and Middle Colleges. Specifically, these amendments will clarify the distinctions between Early College High Schools and Middle Colleges, clarify student eligibility, and clarify that for Early College High Schools the exemption from dual credit restrictions is dependent upon designation by the Texas Education Agency, in accordance with Texas Administrative Code, Title 19, §102.1091.

Dr. Judith Loredo, Assistant Commissioner, P-16 Initiatives, 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.

Dr. Judith Loredo 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 these sections will be a greater assurance of quality of the programs and services offered by these entities and a greater coordination between the Texas Education Agency and the Texas Higher Education Coordinating Board, resulting in more seamless application procedures for participating entities. 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 Dr. Kristen Kramer, Senior Program Director, College Readiness, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711, or kristen.kramer@thehb.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, §§29.908, 61.076, 130.001(b)(3), and 130.090, which provide the Coordinating Board with the authority to regulate courses and programs offered by public institutions of higher education in cooperation with secondary schools.

The amendments affect Texas Education Code, §29.908.

§4.151. Purpose.

The purpose of this subchapter is to provide [appropriate] oversight by the Board of [for] public colleges or universities engaged [to engage] in partnerships establishing early college high schools or middle colleges. The rules and regulations for public colleges or universities to engage in dual credit partnerships with secondary schools as provided for in this subchapter pertain only to Early College High Schools and Middle Colleges in accordance with §4.153 of this title (relating to Definitions).

§4.153. 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) Early College High School [~~or Middle College,~~] or ECHS[MC]--The institution or entity designated by the Texas Education Agency as an Early College High School in accordance with §102.1091 of this title (relating to Commissioner's Rules Concerning Early College Education Program), that provides the outreach, curricula, and student learning and support programs that enable the participating student to combine high school courses and college-level courses during grade levels 9 through 12 and to [~~for students who~~] attain the Recommended or Advanced High School Program diploma and earn up to 60 semester credit hours toward an associate or baccalaureate degree by the fifth anniversary of the student's first day of high school [~~two years of college credit simultaneously~~].

(6) Middle College or MC--The institution or entity that provides the outreach, a course of study, and student learning and support programs that enable a participating student to combine high school courses and college-level courses during grade levels 11 through 12 and to attain the Recommended or Advanced High School Program diploma and a significant number of semester credit hours toward an associate or baccalaureate degree.

(7) [~~(6)~~] Recommended or Advanced High School Program--The curriculum specified in the Texas Education Code, §28.025, and the rules promulgated there under by the State Board of Education.

§4.155. Student Eligibility.

(a) Students participating in an ECHS or MC must meet eligibility requirements governing dual credit in accordance with §§4.81 - 4.85 of this title (relating to Dual Credit Partnerships Between Secondary Schools and Texas Public Colleges).

(b) [~~(a)~~] An ECHS/MC shall assess each student for readiness to engage in any college-level curriculum offered for college credit prior to the student's enrollment in such curriculum.

(c) [~~(b)~~] For this assessment, an ECHS/MC may use any instrument otherwise approved by the Board for Texas Success Initiative purposes in accordance with §4.54 (relating to Exemptions/Exceptions), [~~and~~] §4.56 (relating to Assessment Instrument), and §4.57 (relating to Minimum Passing Standards) of this title [~~including, but not limited to, Texas Assessment of Knowledge and Skills (TAKS) scores, ACT scores, and SAT scores~~].

(d) [~~(c)~~] After assessment, the ECHS/MC, using guidelines established by the C/U, shall determine what forms of assistance and remediation, if any, are necessary prior to a student's enrollment in any college-level curriculum based on the results of the assessment and other indicators of student readiness.

§4.161. Exemption from Certain Dual Credit Restrictions.

(a) Rules governing dual credit in accordance with §§4.81 - 4.85 of this title (relating to Dual Credit Partnerships Between Secondary Schools and Texas Public Colleges) pertain to an MC or an

ECHS and its participating students. [A student enrolled in ECHS/MC may enroll in more than two dual credit courses per semester, and may enroll in dual credit coursework with freshman, sophomore, junior, or senior high school standing.]

(b) An MC or an ECHS that has notified the Commissioner in accordance with §4.154 of this title (relating to Notification of Institutional Intent to Develop an Early College High School/Middle College Entity) may allow its eligible students to enroll in more than two dual credit courses per semester. An ECHS may allow its eligible students to enroll in dual credit coursework with freshman, sophomore, junior, or senior high school standing.

(c) If the Commissioner of Education denies the application for designation as an ECHS, denies the renewal of designation, or revokes the authorization of an ECHS program in accordance with §102.1091 of this title (relating to Commissioner's Rules Concerning Early College Education Program), the exemption outlined in subsection (b) of this section is simultaneously revoked.

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 July 21, 2009.

TRD-200902995

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: October 29, 2009

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



SUBCHAPTER N. PUBLIC ACCESS TO COURSE INFORMATION

19 TAC §§4.225 - 4.229

The Texas Higher Education Coordinating Board proposes new §§4.225 - 4.229, concerning Public Access to Course Information. The purpose of these new sections is to require each institution of higher education, other than a medical and dental unit, to make available to the public on the institution's Internet website certain course information and information about available work-study opportunities as required by Senate Bill 305 and House Bill 2504, 81st Texas Legislature.

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 sections will be to better inform students as they make choices about which courses to take. It will also assist potential students to make good financial decisions related to their education, and will better inform students about work-study opportunities that may make their higher education more affordable. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the new sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dr. MacGregor M. Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or macgregor.stephenson@thehb.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, §51.974 and §56.080.

The new sections affect implementation of Texas Education Code, §51.974 and §56.080.

§4.225. Purpose.

Each institution of higher education, other than a medical and dental unit, shall make available to the public on the institution's Internet website certain course information, estimates of the cost of attendance for full-time students, and information about available work-study opportunities.

§4.226. Authority.

Texas Education Code; Subchapter Z, Chapter 51, §51.974(g) authorizes the Texas Higher Education Coordinating Board to adopt rules necessary to administer this subchapter. The Texas Education Code, §61.051, describes the Board's role in the Texas system of higher education.

§4.227. Definitions.

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

(1) Commissioner--"The Commissioner of Higher Education" means the agency acting through its executive, and his or her designees, staff, or agents.

(2) Curriculum Vitae--A document that summarizes the career and qualifications of the regular instructor, including at least the following:

(A) all institutions of higher education attended, with the dates of attendance and degree(s) earned;

(B) all previous teaching and administrative positions relevant to higher education, including the names of the institutions, the position, beginning and ending dates, and brief description of the position's responsibilities; and

(C) a list of significant professional publications relevant to the academic positions held, including full publication data for each entry.

(D) The curriculum vitae may include the instructor's professional contact information, such as office telephone number, work address, and institutional email address. It may not include personal information about the instructor, such as the home address or personal telephone number.

(3) Departmental Budget Report--If a course is offered through a unit other than a department - such as a program, college, or institute - substitute the budget for that unit as appropriate. The budget report shall include:

(A) detail for the most recent academic year for which data are available;

(B) income from all sources; and

(C) a summary by functional categories such as salaries and wages, travel, etc. (as defined by the National Association of College and University Business Officers).

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

(5) Instructor(s) of Record--The primary instructor or co-instructors of a course who are responsible for the course content and the assignment of final grades. This includes tenured and tenure-track faculty, lecturers, adjuncts, and graduate assistants. It does not include guest lecturers or others who may be brought in to teach less than fifty percent of the class sessions.

(6) Internet Website Home Page--The primary Internet web page that serves as the opening portal to the public for all of the other public web pages and Internet services hosted by the institution. It is commonly the web page with the uniform resource locator (URL) address that ends with the domain suffix ".edu".

(7) Medical or Dental Unit--"Medical and dental unit" means Texas A&M University System Health Science Center, Texas Tech University Health Sciences Center, The University of Texas Health Science Center at Houston, The University of Texas Health Science Center at San Antonio, The University of Texas Health Science Center at Tyler, The University of Texas M.D. Anderson Cancer Center, The University of Texas Medical Branch at Galveston, The University of Texas Southwestern Medical Center at Dallas, University of North Texas Health Science Center at Fort Worth, and the Paul L. Foster School of Medicine at Texas Tech University Health Sciences Center at El Paso, and such other medical or dental schools as may be established by statute or as provided in Chapter 61 of the Texas Education Code.

(8) Significant Professional Publications--Discipline-related refereed papers/publications, books/book chapters, juried creative performance accomplishments, and notices of discoveries filed/patents.

(9) Syllabus--A document describing the course that satisfies any standards for syllabi adopted by the institution. The document shall include, at a minimum, the following:

(A) a brief description of each major course requirement, including each major assignment and examination;

(B) the learning objectives for the course;

(C) a general description of the subject matter of each lecture or discussion; and

(D) lists of any required or recommended readings.

(10) Undergraduate Classroom Course--Any lower- or upper-division credit course offered to more than one student. This includes on-campus, off-campus, distance education, and dual-credit courses (including those taught on high school campuses). It excludes courses with highly variable subject content that are tailored specifically to individual students, such as Independent Study and Directed Reading courses. It excludes laboratory, practicum, or discussion sections that are intrinsic and required parts of larger lecture courses and are directly supervised by the same instructor(s) of record for those large courses.

(11) Work-study employment opportunity--Includes all of the programs and opportunities included as part of the Federal College Work-Study Program, the State of Texas Work-Study Program, and any additional programs sponsored by the institution. For the purposes of this subchapter, work-study applies only to resident undergraduate students. It does not include teaching assistantships or work done in exchange for competitive fellowships, grants, scholarships, or any other

type of financial award that is substantially greater than the fair market wage of the work performed.

§4.228. Internet Access to Course Information.

(a) Each public institution of higher education, other than a medical and dental unit, shall make available to the public on the institution's Internet website the following information for each undergraduate classroom course offered for credit by the institution: a syllabus, a curriculum vitae for the regular instructor(s), and (if available) a departmental operating budget from the most recent semester or other academic term during which the institution offered the course.

(b) If multiple sections of a course use an identical syllabus with identical assignments and readings, only one syllabus shall be posted. The curriculum vitae of each instructor(s) of each section shall be posted.

(c) All course information described in subsection (a) of this section must be:

(1) accessible from the institution's Internet website home page by use of not more than three links;

(2) searchable by keywords and phrases;

(3) accessible to the public without requiring registration or use of a user name, a password, or another user identification;

(4) available not later than the seventh day after the first day of classes for the semester or other academic term during which the course is offered; and

(5) updated as soon as practicable after the information changes.

(d) The institution shall continue to make the information available on the institution's Internet website until at least the second anniversary of the date on which the institution initially posted the information.

(e) Institutions shall conduct end-of-course student evaluations of faculty and develop a plan to make evaluations publicly available on the institution's website. These evaluations shall be for all undergraduate courses, including on-campus, off-campus, distance education, and dual-credit courses (including those taught on high school campuses).

(f) The governing body of the institution shall designate an administrator to be responsible for ensuring implementation of this section. Not later than January 1 of each odd-numbered year, each institution of higher education shall submit a written report regarding the institution's compliance with this section to the governor, the lieutenant governor, the speaker of the house of representatives, and the presiding officer of each legislative standing committee with primary jurisdiction over higher education.

(g) Institutions must begin compliance with these rules no later than January 1, 2010.

§4.229. Internet Access to Work-Study Information.

(a) Each institution of higher education shall establish and maintain an online list of work-study employment opportunities available to students on the institution's campus, sorted by department as appropriate.

(b) Each institution of higher education shall ensure that the list is easily accessible to the public through a clearly identifiable link that appears in a prominent place on the financial aid page of the institution's Internet website.

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 July 24, 2009.

TRD-200903082

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: October 29, 2009

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



SUBCHAPTER O. UNIFORM RECRUITMENT AND RETENTION STRATEGY

19 TAC §§4.240 - 4.245

The Texas Higher Education Coordinating Board proposes new §§4.240 - 4.245, concerning Uniform Recruitment and Retention Strategy (URRS). Specifically the new sections will implement the Uniform Recruitment and Retention Strategy for Texas public institutions of higher education. The URRS will improve programs to ensure the success of students in higher education and meet the goals of Closing the Gaps by 2015.

Dr. Judith Loredo, Assistant Commissioner for P-16 Initiatives 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. Loredo 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 increased student success and graduation from institutions of higher education. 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 Natalie Coffey, Director, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or natalie.coffey@thehb.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 Texas Education Code; §61.086, the Board is authorized to establish guidelines and reporting requirements, as well as adopt rules to enforce the requirements, conditions, and limitations of §61.086 for the Uniform Recruitment and Retention Strategy.

The new sections affect Texas Education Code, §61.086.

§4.240. Purpose.

The purpose of this subchapter is to implement the Uniform Recruitment and Retention Strategy for Texas public institutions of higher education. It is the intent of the Texas Higher Education Coordinating Board that Texas public institutions of higher education use the flexibility and responsibility granted under these rules to improve programs to ensure the success of students in higher education and meet the goals of Closing the Gaps by 2015.

§4.241. Authority.

Under Texas Education Code, §61.027, the Board is authorized to adopt rules to implement Texas Education Code, §61.086.

§4.242. 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) Commissioner--The Commissioner of Higher Education.

(3) Closing the Gaps by 2015--The state's master plan for higher education in Texas, adopted in October 2000 by the Texas Higher Education Coordinating Board, directed at closing educational gaps within Texas, as well as between Texas and other states, and which has four goals: to close the gaps in student participation, student success, excellence, and research.

(4) Coordinating Board Grant and Program Evaluation Fidelity Scale--

(A) 1 = serious departure from the requirements of the program;

(B) 2 = minor departures from requirements noted; and

(C) 3 = in complete accordance.

(5) Degree program--Any grouping of subject matter courses which, when satisfactorily completed by a student, entitles the student to a degree from an institution of higher education.

(6) 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.

(7) Student Recruitment--Identification and enrollment of students that represent the population of Texas.

(8) Student Retention or Persistence Rate--The rate at which students persist in higher education, often as measured by the percentage of students who continue in higher education from one year to the succeeding year.

§4.243. Evaluation.

(a) The Board shall evaluate the effectiveness of the Uniform Recruitment and Retention Strategy plans on a statewide basis and with respect to each institution based on how the Uniform Recruitment and Retention Strategy plan will address Closing the Gaps by 2015.

(b) The Board shall incorporate the Uniform Recruitment and Retention Strategy into:

(1) standards for new Baccalaureate and Master's Degree Programs;

(2) the review of low-producing degree programs;

(3) the approval process for doctoral and health-related degree programs;

(4) the evaluation methodology for Tuition Revenue Bond Projects; and

(5) the review and evaluation of request for proposals and request for applications from institutions of higher education.

§4.244. Reporting.

(a) The Coordinating Board shall establish reporting requirements and forms to be completed by all public institutions of higher education.

(b) As required by Texas Education Code, §51.4032, not later than December 1 of each year, each institution shall report to the Coordinating Board on the progress made by students as well as the institution's evaluation of the Uniform Recruitment and Retention Strategy. An institution is considered in compliance if the Uniform Recruitment and Retention Strategy report is approved by Coordinating Board staff. Coordinating Board staff may require an institution to resubmit a report that was not approved. The report must be resubmitted within ten business days after the request is made by Coordinating Board staff. The report shall include at a minimum:

(1) Student performance/success data;

(2) Student participation data;

(3) Information relating to the costs of the program and funding source, and number of students served;

(4) The academic progress made by students as well as other outcomes related to Closing the Gaps by 2015; and

(5) Institutions shall collect data and evaluate success based on the following elements and connect them to the accelerated targets for Closing the Gaps by 2015:

(A) Partnership with high-need, low-college going rate public schools;

(B) Pre-college academic outreach;

(C) Application assistance;

(D) Financial aid assistance;

(E) Academic support programs;

(F) Tutoring/mentoring programs;

(G) Academic advising; and

(H) Early Alert Systems that include academic support for at-risk students.

(c) At the discretion of the Coordinating Board, the Uniform Recruitment and Retention Strategy reports may be reviewed by external peer reviewers.

(d) The Coordinating Board reserves the right to audit any program reported as a part of the Uniform Recruitment and Retention Strategy.

§4.245. Noncompliance; Sanctions.

(a) The following constitutes noncompliance:

(1) A Coordinating Board Evaluation Fidelity Score of 1;

(2) A report that has not been submitted by the December 1 deadline; or

(3) A resubmitted report that has not been submitted within ten business days.

(b) For noncompliance with any Closing the Gaps by 2015 reporting requirements, including the Uniform Recruitment and Retention Strategy, the Coordinating Board shall withhold program approvals as outlined in Chapter 5, Subchapter C of this title (relating to Approval of New Academic Programs and Administrative Changes at Public Universities, Health-Related Institutions, and/or Selected Public Colleges), all Coordinating Board grant funding, and up to 22 points in the Tuition Revenue Bond approval process.

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

Filed with the Office of the Secretary of State on July 24, 2009.

TRD-200903083

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: October 29, 2009

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



SUBCHAPTER P. APPROVAL OF DISTANCE EDUCATION COURSES AND PROGRAMS FOR PUBLIC INSTITUTIONS

19 TAC §§4.255 - 4.264

The Texas Higher Education Coordinating Board proposes new §§4.255 - 4.264, concerning Approval of Distance Education Courses and Programs for Public Institutions. Specifically, the new sections will allow Board staff to clarify requirements Texas institutions of higher education must meet in order to deliver distance education courses and programs, and to develop rules relating to the Approval of Distance Education Courses and Programs for Public Institutions.

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 sections will be negligible. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There will be no impact on local employment.

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

The new sections are proposed under the Texas Education Code, Chapter 61, Subchapter C, §61.051, which provides the Coordinating Board with the authority to coordinate institutions of higher education.

The new sections affect the Texas Education Code, Subchapter C, §61.051(j).

§4.255. Purpose.

This subchapter establishes rules for all public institutions of higher education in Texas regarding the delivery of distance education courses and programs. The rules are designed to provide Texas residents with access to courses and programs that meet their needs, to ensure course and program quality, and to prevent the unnecessary duplication of these courses and programs.

§4.256. Authority.

Authority for these provisions is provided by Texas Education Code, §61.051(j), which provides the Board with the authority to approve courses for credit and distance education programs.

§4.257. Definitions.

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

(1) Academic credit course--A college-level course that, if successfully completed, can be applied toward the number of courses required for achieving a degree, diploma, certificate, or other formal award.

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

(3) Commissioner--The Commissioner of Higher Education; as used in this subchapter, "Commissioner" means the agency acting through its executive, and his or her designees, staff, or agents.

(4) Community College--Any public community college as defined in Texas Education Code, §61.003 and §130.005, and whose role, mission, and purpose is outlined in Texas Education Code, §130.0011 and §130.003.

(5) Continuing Education Course--A Coordinating Board-approved higher education technical course offered for continuing education units and conducted in a competency-based format. Such a course has specific occupational and/or apprenticeship training objectives.

(6) Continuing Education Unit or CEU--Ten contact hours of participation in an organized educational experience under responsible sponsorship, capable direction, and qualified instruction and not offered for academic credit.

(7) Degree--Any title or designation, mark, abbreviation, appellation, or series of letters or words, including "associate", "bachelor's", "master's", and "doctor's" and their equivalents and foreign cognates, which signifies satisfactory completion of the requirements of a program of study which is generally regarded and accepted as an academic degree-level program by accrediting agencies recognized by the Board.

(8) Distance Education--The formal educational process that occurs when students and instructors are not in the same physical setting for the majority (more than 50 percent) of instruction.

(9) Distance Education Course--A course in which a majority (more than 50 percent) of the instruction occurs when the students and instructor(s) are not in the same place. Two categories of distance education courses are defined:

(A) Fully Distance Education Course--A course which may have mandatory face-to-face sessions totaling no more than 15 percent of the instructional time. Examples of face-to-face sessions include orientation, laboratory, exam review, or an in-person test.

(B) Hybrid/Blended Course--A course in which a majority (more than 50 percent but less than 85 percent), of the planned instruction occurs when the students and instructor(s) are not in the same place.

(10) Distance Education Degree or Certificate Program--A program in which a student may complete a majority (more than 50 percent) of the credit hours required for the program through distance education courses.

(11) Doctoral Degree--An academic degree beyond the level of a master's degree that typically represents the highest level of formal study or research in a given field.

(12) First-Professional Degree--An award that requires completion of a program that meets all of the following criteria:

(A) completion of the academic requirements to begin practice in the profession;

(B) at least two years of college work prior to entering the program; and

(C) a total of at least six academic years of college work to complete the degree program, including prior required college work plus the length of the professional program itself. First-Professional degrees are discipline-specific, including, but not limited to, degrees such as: Dentistry (D.D.S. or D.M.D.); Medicine (M.D.); Veterinary Medicine (D.V.M.); Law (L.L.B, J.D.); and Pharmacy (Pharm.D).

(13) Formula Funding--The method used to allocate appropriated sources of funds among institutions of higher education.

(14) Formula-funded Course--An academic credit course delivered face-to-face or by distance education whose semester credit hours are submitted for formula funding.

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

(16) Institutional Plan for Distance Education--A plan that must be submitted for Coordinating Board approval prior to an institution offering distance education courses or programs for the first time.

(17) Non-credit Course--A course that results in the award of continuing education units (CEU) as specified by Southern Association of Colleges and Schools (SACS) criteria. Only courses that result in the award of CEUs may be submitted for state funding.

(18) Non-Resident Student--A student who is not a Texas resident and/or does not qualify for Texas resident tuition.

(19) Out-of-state/Out-of-country Courses and Programs--Academic credit courses and programs delivered outside Texas/United States to individuals or groups who are not regularly enrolled, on-campus students. Out-of-state and out-of-country courses do not receive formula funding.

(20) Program or Program of Study--Any grouping of courses which are represented as entitling a student to a degree or certificate.

(21) Public Health-Related Institution or Health-Related Institution--A medical or dental unit as defined by Texas Education Code, §61.003(5).

(22) Public University or University--A general academic teaching institution as defined by Texas Education Code, §61.003(3).

(23) Regular On-Campus Student--A student who is admitted to an institution, the majority of whose semester credit hours are reported for formula funding and whose coursework is primarily taken at an institution's main campus or on one or more of the campuses within a multi-campus community college system.

(24) Self-Supporting Courses and Programs--Academic credit courses and programs (formerly defined as extension courses or programs) whose semester credit hours are not submitted for formula funding.

(25) Semester Credit Hour--A unit of measure of instruction consisting of 60 minutes, of which 50 minutes must be direct instruction over a 15-week period in a semester system.

(26) Workforce Continuing Education Course--A course of ten contact hours of participation in an organized continuing education

experience under responsible sponsorship, capable direction, and qualified instruction, as outlined in the Guidelines for Instructional Programs in Workforce Education with an occupationally specific objective and supported by state appropriations. Workforce continuing education courses are offered by community and technical colleges and differ from a community service course which is not eligible for state reimbursement and is offered for recreational or avocational purposes.

§4.258. General Provisions.

(a) This subchapter governs the following types of instruction offered by institutions of higher education:

(1) Academic credit courses, degree and certificate programs, and self-supporting courses and programs provided by all public institutions of higher education; and

(2) Formula-funded workforce continuing education provided by a public community college, Lamar State College, or public technical college.

(b) This subchapter does not apply to the following types of instruction provided through distance education:

(1) Non-credit adult and continuing education courses provided by a senior college or university or health-related institution.

(2) Non-formula-funded continuing education provided by a public community college, Lamar State College, or public technical college.

§4.259. Institutional Plan for Distance Education

(a) Prior to offering any distance education courses or programs for the first time, institutions of higher education shall submit an Institutional Plan for Distance Education to the Board for approval. The Commissioner shall provide guidelines for development of the report and a schedule for any periodic submission of updated reports.

(b) Institutional academic and administrative policies shall reflect a commitment to maintain the quality of distance education courses and programs in accordance with the provisions of this subchapter. An Institutional Plan for Distance Education shall conform to Board guidelines and criteria of the Commission on Colleges of the Southern Association of Colleges and Schools in effect at the time of the Report's approval. These criteria shall include provisions relating to:

(1) Institutional Issues;

(2) Educational Programs;

(3) Faculty;

(4) Student Support Services; and

(5) Distance Education Facilities and Support.

§4.260. Standards and Criteria for Institutions.

The following provisions apply to all institutions covered under this subchapter, unless otherwise specified:

(1) Institutions shall comply with the standards and criteria of the Commission on Colleges of the Southern Association of Colleges and Schools.

(2) Institutions shall adhere to criteria outlined in Principles of Good Practice for Degree and Certificate Programs and Courses Offered Through Distance Education.

(3) The Commissioner shall establish procedures governing the quality, review, and approval of distance education programs

and courses. The Commissioner may also require institutions to provide reports on distance education programs and courses.

(4) Students shall be provided academic support services appropriate for distance education, such as advising, career counseling, library, and other learning resources.

(5) Institutions shall report enrollments, courses, and graduates associated with self-supporting offerings as required by the Commissioner.

§4.261. Standards and Criteria for Distance Education Programs.

The following provisions apply to all programs covered under this subchapter, unless otherwise specified:

(1) Each program shall be within the role and mission of the institution responsible for offering the instruction and shall be on its inventory of approved programs.

(2) Prior Board approval may be required before an institution may offer programs in certain subject area disciplines or under other conditions specified by the Board or Commissioner.

(3) An institution shall not offer doctoral or first-professional degree programs by distance education without specific prior approval by the Board. The Commissioner may approve for delivery by other delivery modes doctoral and special professional degree programs that have previously been approved by the Board for electronic or off-campus delivery.

(4) An institution offering a degree or certificate program shall comply with the standards and criteria of any specialized accrediting agency or professional certification board.

(5) Each degree program offered via distance education shall be approved by an institution's governing board or the governing board's institutional designee. Certification of approval shall be submitted to the Board upon request.

(6) Institutions shall require that students (except for students in out-of-country programs) enrolled in a distance education degree program satisfy the same requirements for admission to the institution and the program as required of regular on-campus students. Students in degree programs to be offered collaboratively shall meet the admission standards of their home institution.

(7) Out-of-country students shall meet equivalent standards for admission into programs and shall be assessed for academic guidance purposes in a manner determined by the admitting institution.

§4.262. Standards and Criteria for Distance Education Courses.

The following provisions apply to all courses covered under this subchapter, unless otherwise specified:

(1) Each course shall be within the role and mission of the institution responsible for offering the instruction and shall be on its inventory of approved programs.

(2) All courses covered under this subchapter shall meet the quality standards applicable to on-campus courses.

(3) Institutions shall report to the Coordinating Board, in accordance with Board policy and procedures, all distance education courses and programs.

(4) Except for students in out-of-country courses, students shall satisfy the same requirements for enrollment in an academic credit course as required of on-campus students.

(5) Out-of-country students shall meet equivalent standards for enrollment in an academic credit course and shall be assessed

for academic guidance purposes in a manner determined by the admitting institution.

(6) The instructor of record shall bear responsibility for the delivery of instruction and for evaluation of student progress.

§4.263. Standards and Criteria for Distance Education Faculty.

The following provisions apply to faculty teaching in programs covered under this subchapter, unless otherwise specified:

(1) Faculty shall be selected and evaluated by equivalent standards, review, and approval procedures used by the institution to select and evaluate faculty responsible for on-campus courses.

(2) Institutions shall provide training and support to enhance the added skills required of faculty teaching courses through electronic means.

(3) The supervision, monitoring, and evaluation processes for faculty shall be equivalent to those for on-campus courses.

§4.264. Formula Funding General Provisions.

(a) Institutions shall report distance education courses submitted for formula funding in accordance with the Board's uniform reporting system and the provisions of this subchapter.

(b) Institutions may submit for formula funding academic credit courses delivered by distance education to any student located in Texas or to Texas residents located out-of-state or out-of-country.

(c) Institutions shall not submit for formula funding distance education courses taken by non-resident students who are located out-of-state or out-of-country, courses in out-of-state or out-of-country programs taken by any student, or self-supporting courses.

(d) For courses not submitted for formula funding, institutions shall charge fees that are equal to or greater than Texas resident tuition and applicable fees and that are sufficient to cover the total cost of instruction and overhead, including administrative costs, benefits, computers and equipment, and other related costs. Institutions shall report fees received for self-supporting and out-of-state/country courses in accordance with general institutional accounting practices.

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: October 29, 2009

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



SUBCHAPTER Q. APPROVAL OF OFF-CAMPUS AND SELF-SUPPORTING COURSES AND PROGRAMS FOR PUBLIC INSTITUTIONS

19 TAC §§4.270 - 4.279

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§4.270 - 4.279, concerning Approval of Off-Campus and Self-Supporting Courses and Programs

for Public Institutions. Specifically, the new sections will allow Board staff to clarify requirements Texas institutions of higher education must meet in order to deliver off-campus and on-campus self-supporting courses and programs, and to develop rules relating to the Approval of Off-Campus and Self-Supporting Courses and Programs for Public Institutions.

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 sections will be negligible. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There will be no impact on local employment.

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

The new sections are proposed under the Texas Education Code, Chapter 61, Subchapter C, §61.051, which provides the Coordinating Board with the authority to coordinate institutions of higher education.

The new sections affect the Texas Education Code, Subchapter C, §61.051(j).

§4.270. Purpose.

This subchapter establishes rules for all public institutions of higher education in Texas regarding the delivery of off-campus and on-campus self-supporting courses and programs. The rules are designed to provide Texas residents with access to off-campus courses and self-supporting courses and programs that meet their needs, to ensure course and program quality, and to assure the adequacy of the technical and managerial infrastructure necessary to support such courses and programs.

§4.271. Authority.

Authority for these provisions is provided by Texas Education Code, §61.051(j), which provides the Board with the authority to approve courses for credit and distance education programs.

§4.272. Definitions.

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

(1) Academic credit course--A college-level course that, if successfully completed, can be applied toward the number of courses required for achieving a degree, diploma, certificate, or other formal award.

(2) Area Institution--A university, health-related institution, independent institution, or legislatively established or Board-approved higher education center which is within a 50-mile radius of a proposed off-campus instruction site.

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

(4) Commissioner--The Commissioner of Higher Education; as used in this subchapter, "Commissioner" means the agency acting through its executive, and his or her designees, staff, or agents.

(5) Community College--Any public community college as defined in Texas Education Code, §61.003 and §130.005, and whose role, mission, and purpose is outlined in Texas Education Code, §130.0011 and §130.003.

(6) Continuing Education Course--A Coordinating Board-approved higher education technical course offered for continuing education units and conducted in a competencybased format. Such a course has specific occupational and/or apprenticeship training objectives.

(7) Continuing Education Unit or CEU--Ten contact hours of participation in an organized educational experience under responsible sponsorship, capable direction, and qualified instruction and not offered for academic credit.

(8) Degree--Any title or designation, mark, abbreviation, appellation, or series of letters or words, including "associate", "bachelor's", "master's", and "doctor's" and their equivalents and foreign cognates, which signifies satisfactory completion of the requirements of a program of study which is generally regarded and accepted as an academic degree-level program by accrediting agencies recognized by the Board.

(9) Doctoral Degree--An academic degree beyond the level of a master's degree that typically represents the highest level of formal study or research in a given field.

(10) First-Professional Degree--An award that requires completion of a program that meets all of the following criteria:

(A) completion of the academic requirements to begin practice in the profession;

(B) at least two years of college work prior to entering the program; and

(C) a total of at least six academic years of college work to complete the degree program, including prior required college work plus the length of the professional program itself. First-Professional degrees are discipline-specific, including, but not limited to, degrees such as: Dentistry (D.D.S. or D.M.D.); Medicine (M.D.); Veterinary Medicine (D.V.M.); Law (L.L.B, J.D.); and Pharmacy (Pharm.D).

(11) Formula Funding--The method used to allocate appropriated sources of funds among institutions of higher education.

(12) Formula-funded Course--An academic credit course delivered face-to-face or by distance education, including correspondence, whose semester credit hours are submitted for formula funding.

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

(14) Main Campus--The primary campus or campuses of an institution of higher education supplying instruction and supported by on-site administration, also referred to as on-campus.

(15) Non-credit course--A course that results in the award of continuing education units (CEU) as specified by Southern Association of Colleges and Schools (SACS) criteria. Only courses that result in the award of CEUs may be submitted for state funding.

(16) Off-Campus Course--A course in which a majority (more than 50 percent) of the instruction occurs when the students and instructor(s) are in the same physical location and which meets one

of the following criteria: for public senior colleges and universities, Lamar state colleges, or public technical colleges, off-campus locations are locations away from the main campus; for public community colleges, off-campus locations are sites outside the service area.

(17) Off-Campus Degree or Certificate Program--A program in which a student may complete a majority (more than 50 percent) of the credit hours required for the program through off-campus courses.

(18) Off-Campus Instruction--The formal educational process in which a majority (more than 50 percent) of the instruction occurs when the students and instructor(s) are in the same physical location and which meets one of the following criteria: for public senior colleges and universities, Lamar state colleges, or public technical colleges, off-campus locations are locations away from the main campus; for public community colleges, off-campus locations are sites outside the service area.

(19) Out-of-State/Out-of-Country Courses and Programs--Academic credit courses and programs delivered outside Texas/United States to individuals or groups who are not regularly enrolled on-campus students. Out-of-state and out-of-country courses do not receive formula funding.

(20) Public Health-Related Institution or Health-Related Institution--A medical or dental unit as defined by Texas Education Code, §61.003(5).

(21) Public Technical Institute or College--The Lamar Institute of Technology or any campus of the Texas State Technical College System.

(22) Public University or University--A general academic teaching institution as defined by Texas Education Code, §61.003(3).

(23) Regional Council--A cooperative arrangement among representatives of all public, private or independent institutions of higher education within a Uniform State Service Region, as established under Texas Education Code, §51.662.

(24) Regular On-Campus Student--A student who is admitted to an institution, the majority of whose semester credit hours are reported for formula funding and whose coursework is primarily taken at an institution's main campus or on one or more of the campuses within a multi-campus community college system.

(25) Self-Supporting Courses and Programs--Academic credit courses and programs whose semester credit hours are not submitted for formula funding.

(26) Semester Credit Hour--A unit of measure of instruction consisting of sixty (60) minutes, of which fifty (50) minutes must be direct instruction, over a fifteen-week period in a semester system.

(27) Service Area--The territory served by a community college district as defined in Texas Education Code, §130.161.

(28) Study-in-America Courses--Off-campus, academic credit instruction which is delivered outside Texas but in the United States primarily to regular on-campus students.

(29) Study-Abroad Courses--Off-campus, academic credit instruction which is delivered outside the United States primarily to regular on-campus students.

(30) Workforce Continuing Education Course--A course of ten contact hours of participation in an organized continuing education experience under responsible sponsorship, capable direction, and qualified instruction, as outlined in the Guidelines for Instructional Programs in Workforce Education with an occupationally specific objec-

ive and supported by state appropriations. Workforce continuing education courses are offered by community and technical colleges and differ from a community service course which is not eligible for state reimbursement and is offered for recreational or avocational purposes.

§4.273. General Provisions.

(a) This subchapter governs the following types of instruction offered by institutions of higher education:

(1) Academic credit courses, degree and certificate programs, and formula-funded workforce continuing education provided by a community college outside the boundaries of its service area through off-campus instruction;

(2) Academic credit courses, and degree and certificate programs provided by a public technical college, Lamar State College, public senior college or university, or public health-related institution through off-campus instruction;

(3) Formula-funded workforce continuing education provided by a public technical college or Lamar State College through off-campus instruction;

(4) Academic credit courses and programs offered by any public institution of higher education outside of Texas, including Study-Abroad, Study-in-America, out-of-state, and out-of-country courses; and

(5) Self-supporting courses and programs that are offered through off-campus instruction.

(b) This subchapter does not apply to the following types of instruction:

(1) Non-credit adult and continuing education courses provided through off-campus delivery or as on-campus self-supporting courses or programs by a senior college or university or health-related institution.

(2) Continuing education, except formula-funded workforce continuing education, provided by public two-year colleges.

§4.274. Standards and Criteria for Institutions.

The following provisions apply to all institutions covered under this subchapter, unless otherwise specified:

(1) Institutions shall comply with the standards and criteria of the Commission on Colleges of the Southern Association of Colleges and Schools.

(2) The Commissioner shall establish procedures governing the quality, review, and approval of off-campus and self-supporting programs and courses. The Commissioner may also require institutions to provide reports on off-campus, out-of-state/country, and self-supporting programs and courses.

(3) For off-campus programs and self-supporting programs, the parent institution shall notify all potentially affected area institutions in accordance with Board policy and procedures.

(4) The Commissioner shall develop procedures and standards for offering out-of-state/country programs and courses and for Study-in-America and Study-Abroad offerings.

(5) Institutions shall report enrollments, courses and graduates associated with self-supporting offerings as required by the Commissioner.

(6) Institutions shall report fees received for self-supporting and out-of-state/country courses in accordance with general institutional accounting practices.

(7) Students shall be provided academic support services appropriate for off-campus instruction such as academic advising, career counseling, library, and other learning resources.

(8) Off-campus instruction sites shall be of sufficient quality for the delivery methods and courses offered.

§4.275. Standards and Criteria for Off-Campus and Self-Supporting Programs.

The following provisions apply to all programs covered under this subchapter, unless otherwise specified:

(1) Each program shall be within the role and mission of the institution responsible for offering the instruction and shall be on its inventory of approved programs.

(2) Prior Board approval may be required before an institution may offer programs in certain subject area disciplines or under other conditions specified by the Board or Commissioner.

(3) An institution shall not offer doctoral or first-professional degree programs off-campus or as a self-supporting program without specific prior approval by the Board. The Commissioner may approve for delivery by other modes doctoral and special professional degree programs that have previously been approved by the Board for delivery through off-campus instruction or as a self-supporting program.

(4) An institution offering an off-campus degree or certificate program shall comply with the standards and criteria of any specialized accrediting agency or professional certification board.

(5) Each degree program offered off-campus shall be approved by an institution's governing board or the governing board's institutional designee. Certification of approval shall be submitted to the Board upon request.

(6) Institutions shall require that students (except for students in out-of-country programs) enrolled in an off-campus or self-supporting degree program satisfy the same requirements for admission to the institution and the program as required of regular on-campus students. Students in degree programs to be offered collaboratively shall meet the admission standards of their home institution. Out-of-country students shall meet equivalent standards for admission into programs.

§4.276. Standards and Criteria for Off-Campus and Self-Supporting Courses.

The following provisions apply to all courses covered under this subchapter, unless otherwise specified:

(1) Each course shall be within the role and mission of the institution responsible for offering the instruction and shall be on its inventory of approved courses.

(2) Prior Board approval may be required before an institution may offer courses in certain subject area disciplines or under other conditions specified by the Board or Commissioner.

(3) Study-in-America and Study-Abroad courses offered by institutions of higher education, or by an approved consortium composed of Texas public institutions, must be reported to the Board in the manner prescribed by the Commissioner in order for the semester credit hours or contact hours generated in those courses to receive formula funding.

(4) All courses shall meet the quality standards applicable to on-campus courses.

(5) Institutions shall report to the Coordinating Board and notify all potentially affected area institutions all off-campus courses

and programs in accordance with Coordinating Board policy and procedures.

(6) Except for students in out-of-country courses, students shall satisfy the same requirements for enrollment in an academic credit course as required of on-campus students. Out-of-country students shall be assessed for academic guidance purposes.

(7) The instructor of record shall bear responsibility for the delivery of instruction and for evaluation of student progress.

§4.277. Standards and Criteria for Off-Campus and Self-Supporting Courses Faculty.

The following provisions apply to faculty teaching in programs covered under this subchapter, unless otherwise specified:

(1) Faculty shall be selected and evaluated by equivalent standards, review, and approval procedures used by the institution to select and evaluate faculty responsible for on-campus courses.

(2) Institutions shall provide training and support to enhance the added skills required of faculty teaching off-campus or self-supporting courses.

(3) The supervision, monitoring, and evaluation processes for faculty shall be equivalent to those for on-campus courses.

§4.278. 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) 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) 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 dual credit 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) With the exception of subsection (a) of this section, for any dispute arising from off-campus 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 then the Board.

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

§4.279. Formula Funding General Provisions.

(a) Institutions shall report off-campus courses submitted for formula funding in accordance with the Board's uniform reporting system and the provisions of this subchapter.

(b) Institutions shall not submit for formula funding courses in out-of-state or out-of-country programs.

(c) Institutions shall not submit self-supporting courses for formula funding.

(d) Institutions shall not submit non-state funded lower-division credit courses to Regional Councils.

(e) Institutions shall not jeopardize or diminish the status of formula-funded on-campus courses and programs in order to offer self-supporting courses. Self-supporting courses shall not be a substitute for offering a sufficient number of formula-funded on-campus courses.

(f) For courses not submitted for formula funding, institutions shall charge fees that are equal to or greater than Texas resident tuition and applicable fees, and that are sufficient to cover the total cost of instruction and overhead, including administrative costs, benefits, computers and equipment, and other related costs. Institutions shall report fees received for self-supporting and out-of-state/country courses in accordance with general institutional accounting practices.

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



CHAPTER 5. RULES APPLYING TO
PUBLIC UNIVERSITIES, HEALTH-RELATED
INSTITUTIONS, AND/OR SELECTED PUBLIC
COLLEGES OF HIGHER EDUCATION IN

TEXAS

SUBCHAPTER C. APPROVAL OF
NEW ACADEMIC PROGRAMS AND
ADMINISTRATIVE CHANGES AT PUBLIC
UNIVERSITIES, HEALTH-RELATED
INSTITUTIONS, AND/OR SELECTED PUBLIC
COLLEGES

19 TAC §5.48

The Texas Higher Education Coordinating Board proposes an amendment to §5.48, concerning Approval of New Academic Programs and Administrative Changes at Public Universities, Health-Related Institutions, and/or Selected Public Colleges.

This amendment clarifies terminology used in the section regarding lower-division career/technical and workforce education certificate programs. The amendment changes the term "workforce" to the more current "career technical/workforce," which is the terminology used in the proposed amendments to Chapter 9, Program Development in Public Two-Year Colleges.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that for each year of the first five years the section is in effect, there will be no fiscal implications to 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 section is in effect, the proposed change would benefit students by providing them with a pre-degree-completion credential demonstrating a certain level of academic attainment, and to institutions by providing a success measure.

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 would be no impact on local employment.

Comments on the proposal may be submitted to Dr. MacGregor M. 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 amendment is proposed under the Texas Education Code, Chapter 61.

The amendment affects implementation of Texas Education Code, Chapter 61.051(g).

§5.48. Criteria for Certificate Programs at Universities and Health-Related Institutions.

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

(f) Lower-division certificate programs.

(1) One and two-year, post-secondary career technical/workforce education programs should be delivered primarily by community, state, and technical colleges. These institutions are uniquely suited by virtue of their specialized mission, local governance, and student support services to provide such opportunities in an efficient and economical manner. For that reason, new lower-division career technical/workforce certificate [~~certification~~] programs shall not generally be approved at public universities and health-related institutions.

(2) (No change.)

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

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Bill Franz

General Counsel

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SUBCHAPTER G. STRATEGIC PLANNING AND GRANT PROGRAMS RELATED TO EMERGING RESEARCH AND/OR RESEARCH UNIVERSITIES

19 TAC §§5.120 - 5.122

The Texas Higher Education Coordinating Board proposes new §§5.120 - 5.122, concerning Strategic Planning and Grant Programs Related to Emerging Research and/or Research Universities. The purpose of these new sections is to require each institution of higher education designated as a research university or emerging research university as designated in the Coordinating Board's accountability system to have a long-term strategic plan for achieving recognition as a research university as required by House Bill 51, 81st Texas Legislature.

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 benefit anticipated as a result of administering the section will be to inform the public about institutions' progress toward research-university status.

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 would be no impact on local employment.

Comments on the proposal may be submitted to Dr. MacGregor M. Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or macgregor.stephenson@thehb.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, Chapter 51, §51.358.

The new sections affect implementation of Texas Education Code, Chapter 51, §51.358.

§5.120. *Purpose and Authority.*

(a) The purpose of this subchapter is to require each institution of higher education designated as a research university or emerging research university as designated in the Board's accountability system to have a long-term strategic plan for achieving recognition as a research university or enhancing the institution's reputation as a research university.

(b) This rule is adopted under the authority of Texas Education Code §51.358.

§5.121. *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) Commissioner of Higher Education or Commissioner--The Commissioner of Higher Education; as used in this subchapter,

"Commissioner" means the agency acting through its executive, and his or her designees, staff, or agents.

(3) Strategic Plan--A document to be prepared by the institution which provides a detailed, long-term plan to show how the institution will achieve or enhance its recognition as a research university. The form, length, manner, standards, and minimum required content for the report will be prescribed by the Board.

(4) Research University--A public institution of higher education designated as a research university under the Board's accountability system.

(5) Emerging Research Universities--A public institution of higher education designated as an emerging research university under the Board's accountability system.

(6) Governing board--The Board of Regents of a research or emerging research university.

(7) Statutory four-year review--The periodic review of the role and mission statements, the table of programs, and all degree and certificate programs offered by the public institutions of higher education, as described in the Texas Education Code §61.051(e).

§5.122. *Submission of a Strategic Plan for Achieving Recognition as a Research University.*

The governing board of each research or emerging research university shall submit the strategic plan to the Coordinating Board by April 1, 2010, and subsequent updated reports will be included as part of each institution's statutory four-year review.

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



SUBCHAPTER H. UNIVERSITY FUNDING FOR EXCELLENCE IN SPECIFIC PROGRAMS AND FIELDS INCENTIVE GRANTS AND AWARDS

19 TAC §§5.130 - 5.134

The Texas Higher Education Coordinating Board proposes new §§5.130 - 5.134, concerning the University Funding for Excellence in Specific Programs and Fields, Incentive Benchmark Grants, and the University Funding for Excellence in Specific Programs and Fields Incentive Awards. The purpose of these new sections is to lay out the rules governing application to and awards from the University Funding for Excellence in Specific Programs and Fields, Incentive Benchmark Grants, and the University Funding for Excellence in Specific Programs and Fields Incentive Awards as required by Senate Bill 175, 81st Legislature.

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 fiscal implications to state or local government as a result of administering the rules; however, the costs cannot be determined at this time.

Dr. Stephenson has also determined that for each year of the first five years the new sections are in effect, the benefit anticipated as a result of administering the section will be increased funding to institutions as an incentive for elevating programs to national recognition as well as increased funding to institutions as an award for possessing programs that are already nationally recognized.

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 would be no impact on local employment.

Comments on the proposal may be submitted to Dr. MacGregor M. 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, Chapter 61, §61.0596(a).

The new sections affect implementation of Texas Education Code, Chapter 61, §61.0596(a).

§5.130. Purpose.

This subchapter provides guidance to all general academic teaching institutions, other than public state colleges, that are not research universities or emerging research universities according to the institutional groupings under the Board's higher education accountability system regarding application for the University Funding for Excellence in Specific Programs and Fields Incentive Grants and Awards Program.

§5.131. Authority.

Authority for these provisions is provided by Texas Education Code, §61.0596(a), which provides the Board with the authority to administer this program.

§5.132. Definitions.

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

(1) Benchmark(s)--Point(s) of reference that designate movement towards the achievement of national recognition developed for each designated program by an external, out-of-state consultant and approved by the Board.

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

(3) Commissioner of Higher Education or Commissioner--The Agency acting through its executive, and his other designees, staff, or agents.

(4) Designated program or designated degree program--The degree program designated by an institution and approved by the Board for consideration of benchmark awards under the grant program described in this subchapter.

(5) Emerging research university--A public institution of higher education designated as an emerging research university under the Board's accountability system.

(6) Endowed faculty position--A person who is employed full-time by an institution of higher education as a member of the faculty whose primary duties include teaching, research, academic service, or administration and holds a professorship paid for with the revenue from an endowment fund specifically set up for that purpose. The term does not include a person holding faculty rank who spends a majority of the person's time for the institution engaged in managerial or supervisory activities, including a chancellor, vice chancellor, president, vice president, provost, associate or assistant provost, or dean.

(7) Field(s) of study--A set of courses that leads to a baccalaureate, master's or doctoral degree. Within the context of this subchapter, field(s) of study is synonymous with degree program(s).

(8) General academic teaching institution--A public institution of higher education as designated by Texas Education Code, §61.003(3).

(9) Highest national ranking or recognition--A program that is determined to be of national excellence based upon review by out-of-state consultants with relevant expertise in the field.

(10) Medical and/or dental unit--A public institution of higher education as designated by Texas Education Code §61.003(5).

(11) Programs--Designated program or designated degree program as defined in this section.

(12) Public state college--A public institution of higher education as designated by Texas Education Code §61.003(16).

(13) Research university--A public institution of higher education designated as a research university under the Board's accountability system.

§5.133. University Funding for Excellence in Specific Programs and Fields Incentive Benchmark Grants.

(a) General Information. The program, as it applies to this section:

(1) Eligible institutions--Public institutions of higher education that are general academic teaching institutions, other than public state colleges, that are not research universities or emerging research universities.

(2) Application requirements--Eligible institutions shall submit one (1) program to the Coordinating Board for consideration. Applications shall be submitted to the Board in the format and at the time specified by the Commissioner. The Board shall approve programs based, in part, upon its determination that institutions have demonstrated the greatest commitment to success in developing or improving, consistent with the mission of the institution, the quality of an existing degree program.

(3) General Selection Criteria. The Program is designed to award grants each time a degree program reaches a benchmark developed, approved, and published by the Board. Benchmarks will be developed by one or more persons who have relevant expertise and do not reside in this state.

(b) Review Criteria.

(1) The Board shall establish a set of benchmarks applicable to each degree program designated by an institution under this grant program.

(2) The Commissioner shall select one or more qualified individuals to serve as benchmark developers. Benchmark developers must have relevant expertise and reside outside of the state of Texas.

(3) The Board shall approve three benchmarks for each designated degree program unless it determines that a different number of benchmarks is appropriate.

(4) The Board shall also approve the associated funding levels for each type of degree program designated by an institution for this grant program.

(c) Application and Review Process.

(1) The Commissioner may solicit recommendations from eligible institutions each year for the designation of an eligible program. An institution may change its designated program only with the approval of the Board.

(2) Each institution with designated benchmarks for a program is responsible for providing to the Commissioner the necessary data or documentation to support attainment of each benchmark in the manner prescribed by the Commissioner.

(3) Board staff shall review the provided data or supporting documentation to determine whether or not the institution has met applicable benchmark(s) and is eligible for funding.

(d) Funding Decisions.

(1) The Board shall approve grants upon the recommendation of the staff's assessment of programs meeting applicable benchmarks. The Commissioner shall report approved grants to the Board for each annual grant period.

(2) Institutions may use awards under this grant program only for faculty recruitment or other faculty support with respect to the designated degree program for which the grant is awarded, including establishment of endowed faculty positions or enhancement of faculty compensation as considered appropriate by the institution.

(3) Institutions participating in this grant program shall reimburse the Board for the costs incurred by the Board in the administration of this program. The Commissioner shall outline the process and deadline for institutional reimbursement(s) to the Board.

§5.134. University Funding in Excellence for Specific Program and Fields Incentive Awards.

(a) General Information. The program, as it applies to this section:

(1) Eligible institutions--Public institutions of higher education that are general academic teaching institutions, other than public state colleges, that are not research universities or emerging research universities.

(2) Application requirements--Eligible institutions shall submit one (1) program to the Coordinating Board for consideration. Applications shall be submitted to the Board in the format and at the time specified by the Commissioner.

(3) General Selection Criteria. The Program is designed to distribute a one-time award for programs that have achieved the highest national ranking or recognition for that type of program. Standards for determining highest national ranking or recognition shall be developed and approved by the Board utilizing the services of out-of-state consultants with relevant expertise.

(b) Review Criteria.

(1) The Board shall establish a set of criteria for determining highest national ranking or recognition for programs based upon the recommendations of out-of-state consultants with relevant expertise.

(2) The Board shall also approve the associated funding levels for each type of degree program designated by an institution for this award program.

(c) Application and Review Process.

(1) The Commissioner may solicit recommendations from eligible institutions each year for which there is funding for the designation of an eligible program.

(2) Board staff shall use peer and Board staff reviewers to evaluate the quality of applications.

(3) The Commissioner shall select qualified individuals to serve as reviewers. Reviewers shall demonstrate appropriate credentials to evaluate award applications in the nominated program(s). Reviewers shall not evaluate any applications for which they have a conflict of interest.

(4) The Board staff shall provide written instructions and training for reviewers.

(d) Funding Decisions. The Board shall approve one-time awards based upon the recommendation of the staff's and reviewers' assessment of programs meeting applicable standards. The Commissioner shall report approved awards to the Board for each annual award period.

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 7. DEGREE GRANTING
COLLEGES AND UNIVERSITIES OTHER THAN
TEXAS PUBLIC INSTITUTIONS
SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §§7.1 - 7.17

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas 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 §§7.1 - 7.17, concerning Degree Granting Colleges and Universities Other than Texas Public Institutions. The Texas Higher Education Coordinating Board proposes the repeal of these sections which is more clearly organized and provides more explicit information to institutions seeking to operate in Texas while keeping the current functional processes intact. The intent of the re-write is to provide greater transparency of the rules regarding the operation of out-of-state public institutions of higher education or private institutions of higher education in Texas, while leaving the manner in which these institutions are overseen unchanged. To that end, the re-write has incorporated

sections of the previous version of Chapter 7 into revised sections of the new version.

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

Dr. Stephenson has also determined that for each year of the first five years the repeal is in effect, the public benefit will provide greater transparency in the operation and oversight of private institutions of higher education while maintaining the necessary oversight and review of these institutions. There will be no anticipated effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There will be no impact on local employment.

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

The repeal is proposed under the provisions of Texas Education Code, Chapter 61, Subchapters G and H, which describes the Board's role in Regulation of Private Postsecondary Educational Institutions and Out of State Public Institutions, as well as Chapter 132 which provides the Coordinating Board's Role in the regulation of Career Schools and Colleges.

The repeal affects Texas Education Code, Chapter 61, Subchapters G and H, and Chapter 132.

§7.1. *Purpose.*

§7.2. *Authority.*

§7.3. *Definitions.*

§7.4. *Obtaining a Certificate of Authorization or a Certificate of Authority to Operate in Texas.*

§7.5. *Standards for Operation of Institutions.*

§7.6. *Recognition of Accrediting Agencies.*

§7.7. *Certificate of Authority.*

§7.8. *Alternative Certificate of Authority.*

§7.9. *Certificate of Authority for Career Schools and Colleges.*

§7.10. *Operation of Branch Campuses, Extension Centers or other Off-Campus Units, Occasional Courses and Changes in Level.*

§7.11. *Registration of Agents.*

§7.12. *Changes of Ownership and Other Substantive Changes.*

§7.13. *Revocation of Certificates of Nonexempt Institutions and Agents.*

§7.14. *Review and Use of Degrees from Institutions Not Eligible for Certificates of Authority.*

§7.15. *Data Reporting.*

§7.16. *Use of Fictitious, Fraudulent, or Substandard Degrees.*

§7.17. *Prohibitions, Administrative Penalties, and Injunctions.*

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 §§7.1 - 7.13

The Texas Higher Education Coordinating Board proposes new §§7.1 - 7.13, concerning Degree Granting Colleges and Universities Other than Texas Public Institutions. The Texas Higher Education Coordinating Board proposes these new sections which is more clearly organized and provides more explicit information to institutions seeking to operate in Texas while keeping the current functional processes intact. The intent of the re-write is to provide greater transparency of the rules regarding the operation of out-of-state public institutions of higher education or private institutions of higher education in Texas, while leaving the manner in which these institutions are overseen unchanged. To that end, the re-write has incorporated sections of the previous version of Chapter 7 into revised sections of the new version.

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 for 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 will provide greater transparency in the operation and oversight of private institutions of higher education while maintaining the necessary oversight and review of these institutions. There will be no anticipated economic costs to persons who are required to comply with the sections as proposed. There will be no impact on local employment.

Comments on the proposed new sections may be submitted to Dr. MacGregor M. Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas, 78711 or macgregor.stephenson@thehb.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 provisions of Texas Education Code, Chapter 61, Subchapters G and H, which describes the Board's role in Regulation of Private Postsecondary Educational Institutions and Out of State Public Institutions, as well as Chapter 132 which provides the Coordinating Board's Role in the regulation of Career Schools and Colleges.

The new sections affect Texas Education Code, Chapter 61, Subchapters G and H, and Chapter 132.

§7.1. Purpose.

This chapter clarifies the standards and details the process by which private postsecondary educational institutions and public out-of-state postsecondary educational institutions may be authorized to offer degrees, to offer credits toward degrees, to employ agents, to use certain academic terms within the state, and to limit the use of certain academic degrees by individuals and institutions. The chapter proscribes certain behavior, and specifies the sanctions that may be imposed for violations of the applicable rules and statutes.

§7.2. Authority.

These sections relate to Texas Education Code, Chapter 61, Subchapter G, §§61.301 - 61.321 and Subchapter H, §§61.401 - 61.405, which regulate the awarding or offering of degrees, awarding or offering credit toward degrees, and use of certain academic terms by private postsecondary educational institutions and out-of-state public postsecondary educational institutions, and Chapter 132, relating to career schools and colleges.

§7.3. Definitions.

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

(1) Academic Associate Degree Program--A grouping of courses designed to transfer to an upper-level baccalaureate program. This specifically refers to the associate of arts and the associate of science degrees.

(2) Accreditation--The status of public recognition that an accrediting agency grants to an educational institution.

(3) Accrediting Agency--A legal entity that conducts accreditation activities through voluntary peer review and makes decisions concerning the accreditation status of institutions.

(4) Agent--A person employed by or representing a postsecondary educational institution within or without Texas who:

(A) solicits any Texas student for enrollment in the institution;

(B) solicits or accepts payment from any Texas student for any service offered by the institution; or

(C) while having a physical presence in Texas, solicits students or accepts payment from students who do not reside in Texas.

(5) Alternative Certificate of Authority--A type of certificate of authority for approval of postsecondary institutions, with operations in the State of Texas, to confer degrees or courses applicable to degrees, or to solicit students for enrollment in institutions that confer degrees or courses applicable to degrees that is governed by flexible, streamlined procedures, emphasizing the importance of innovation, consumer choice, and measurable outcomes in the delivery of educational services.

(6) Applied Associate Degree Program--A grouping of courses designed to lead the individual directly to employment in a specific career and that includes at least fifteen (15) semester credit hours or twenty-three (23) quarter credit hours of general education courses. This specifically refers to the associate of applied arts and the associate of applied science degrees.

(7) Associate Degree Program--A grouping of courses designed to lead the individual directly to employment in a specific career, or to transfer to an upper-level baccalaureate program. This specifically refers to the associate of arts, the associate of science, the associate of applied arts and the associate of applied science.

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

(9) Board Staff--The staff of the Texas Higher Education Coordinating Board including the Commissioner of Higher Education and all employees who report to the Commissioner.

(10) Career School or College--Any business enterprise operated for a profit, or on a nonprofit basis, that maintains a place of business in the State of Texas or solicits business within the State of Texas, and that is not specifically exempted by Texas Education Code, §132.002 or §7.4 of this chapter (relating to Standards for Operations of Institutions), and:

(A) That offers or maintains a course or courses of instruction or study; or

(B) At which place of business such a course or courses of instruction or study is available through classroom instruction, by electronic media, by correspondence, or by some or all, to a person for the purpose of training or preparing the person for a field of endeavor in a business, trade, technical, or industrial occupation, or for career or personal improvement.

(11) Certificate of Approval--The Texas Workforce Commission's approval of career schools or colleges with operations in Texas to maintain, advertise, solicit for, or conduct any program of instruction in this state.

(12) Certificate of Authority--The Board's approval of postsecondary institutions, (other than exempt institutions) with operations in the State of Texas, to confer degrees or courses applicable to degrees, or to solicit students for enrollment in institutions that confer degrees or courses applicable to degrees.

(13) Certificate of Authorization--The Board's acknowledgment that an institution is qualified for an exemption from the regulations herein.

(14) Certification Advisory Council--

(A) Council to advise the Board on standards and procedures related to certification of private, nonexempt postsecondary educational institutions, and to assist the Commissioner in the examination of individual applications for certificates of authority, and to perform other duties related to certification that the Board finds to be appropriate.

(B) The council shall consist of six members with experience in higher education, three of whom must be drawn from exempt private postsecondary institutions in Texas.

(C) The members shall be appointed for two year fixed and staggered terms.

(15) Change of Ownership or Control--Any change in ownership or control of a career school or college or an agreement to transfer control of such institution.

(A) The ownership or control of a career school or college is considered to have changed:

(i) In the case of ownership by an individual, when more than fifty (50) percent of the institution has been sold or transferred;

(ii) In the case of ownership by a partnership or a corporation, when more than fifty (50) percent of the institution or of the owning partnership or corporation has been sold or transferred; or

(iii) When the board of directors, officers, shareholders, or similar governing body has been changed to such an extent as to significantly alter the management and control of the institution.

(B) A change of ownership or control does not include a transfer that occurs as a result of the retirement or death of the owner if transfer is to a member of the owner's family who has been directly and constantly involved in the management of the institution for a minimum of two years preceding the transfer. For the purposes of this section, a member of the owner's family is a parent, sibling, spouse, or child; spouse's parent or sibling; or sibling's or child's spouse.

(16) Cited--Any reference to an institution in a negative finding or action by an accrediting agency.

(17) Classification of Instructional Programs (CIP) Code--The four (4)- or six (6)-digit code assigned to an approved degree program in accordance with the CIP manual published by the U.S. Department of Education, National Center for Education Statistics. CIP codes define the authorized teaching field of the specified degree program, based upon the occupation(s) for which the program is designed to prepare its graduates.

(18) Commissioner--The Commissioner of Higher Education.

(19) Concurrent Instruction--Students enrolled in different classes, courses, and/or subjects being taught, monitored, or supervised simultaneously by a single faculty member.

(20) Degree--Any title or designation, mark, abbreviation, appellation, or series of letters or words, including "associate", "bachelor's", "master's", "doctor's" and their equivalents and foreign cognates, which signify, purport to signify, or are generally taken to signify satisfactory completion of the requirements of all or part of a program of study which is generally regarded and accepted as an academic degree-level program by accrediting agencies recognized by the Board.

(21) Educational or Training Establishment--An enterprise offering a course of instruction, education, or training that is not represented as being applicable to a degree.

(22) Exempt Institution--An institution that is accredited by an agency recognized by the Board under §7.6 of this chapter (relating to Recognition of Accrediting Agencies) or a career school or college that applies for and is declared exempt under this chapter, by the Texas Workforce Commission as described in Texas Education Code, §61.003(8), or Texas Education Code, Chapter 132, respectively. Exempt institutions may still have to comply with certain Board rules.

(23) Fictitious Degree--A counterfeit or forged degree or a degree that has been revoked.

(24) Fraudulent or Substandard Degree--A degree conferred by a person who, at the time the degree was conferred, was:

(A) operating in this state in violation of this subchapter;

(B) not eligible to receive a certificate of authority under this subchapter and was operating in another state in violation of a law regulating the conferral of degrees in that state or in the state in which the degree recipient was residing or without accreditation by a recognized accrediting agency, if the degree is not approved through the review process described by §7.12 of this chapter (relating to Review and Use of Degrees from Institutions Not Eligible for Certificates of Authority); or

(C) not eligible to receive a certificate of authority under this subchapter and was operating outside the United States, and whose degree the Board, through the review process described by §7.12 of this chapter, determines is not the equivalent of an accredited or authorized degree.

(25) Occasional Courses--Courses offered not more than twice at any given location in the state.

(26) Out-of-State Public Postsecondary Institution--Any senior college, university, technical institute, junior or community college, or the equivalent which is controlled by a public body organized outside the boundaries of the State of Texas.

(27) Person--Any individual, firm, partnership, association, corporation, enterprise, or other private entity or any combination thereof.

(28) Postsecondary Educational Institution--An educational institution which:

(A) is not a public community college, public technical college, public senior college or university, medical or dental unit or other agency as defined in Texas Education Code, §61.003;

(B) is incorporated under the laws of this state, or maintains a place of business in this state, or has an agent or representative present in this state, or solicits business in this state; and

(C) furnishes or offers to furnish courses of instruction in person, by electronic media, by correspondence, or by some means or all leading to a degree; provides or offers to provide credits alleged to be applicable to a degree; or represents that credits earned or granted are collegiate in nature, including describing them as "college-level," or at the level of any protected academic term.

(29) Private Postsecondary Educational Institution--An institution which:

(A) is not an institution of higher education as defined by Texas Education Code, §61.003;

(B) is incorporated under the laws of this state, maintains a place of business in this state, has a representative presence in this state, or solicits business in this state; and

(C) furnishes or offers to furnish courses of instruction in person, by electronic media, or by correspondence leading to a degree or providing credits alleged to be applied to a degree.

(30) Program or Program of Study--Any course or grouping of courses which are represented as entitling a student to a degree or to credits applicable to a degree.

(31) Protected Term--The terms "college," "university," "school of medicine," "medical school," "health science center," "school of law," "law school," or "law center," its abbreviation, foreign cognate or equivalents.

(32) Recognized Accrediting Agency--Any accrediting agency the standards of accreditation or membership for which have been found by the Board to be sufficiently comprehensive and rigorous to qualify its institutional members for an exemption from the operation of this chapter.

(33) Representative--A person who acts on behalf of an institution regulated under this subchapter. The term includes, without limitation, recruiters, agents, tutors, counselors, business agents, instructors, and any other instructional or support personnel.

(34) Required State or National Licensure--The requirement for graduates of certain professional programs to obtain a license from state or national entities for entry-level practice.

(35) Substantive Change--Any change in principal location, ownership, or governance.

§7.4. Standards for Operation of Institutions.

All institutions that operate within the State of Texas are expected to meet the following standards. These standards will be enforced through the certificate of authority process or the alternative certificate of authority process. Standards addressing the same principles will be enforced by recognized accrediting agencies. Particular attention will be paid to the institution's commitment to education, responsiveness to recommendations and suggestions for improvement, and, in the case of a renewal of a certificate of authority, record of improvement and progress. These standards represent generally accepted administrative and academic practices and principles of accredited postsecondary institutions in Texas. Such practices and principles are generally set forth by institutional and specialized accrediting bodies and the academic and professional organizations.

(1) Legal Compliance. The institution shall be maintained and operated in compliance with all applicable ordinances and laws, including the rules and regulations adopted to administer those ordinances and laws. Career Schools and Colleges also shall demonstrate compliance with Texas Education Code, Chapter 132 by supplying a copy of a certificate of approval to operate a career school or college or a letter of exemption from the Texas Workforce Commission.

(2) Qualifications of Institutional Officers.

(A) The character, education, and experience in higher education of governing board administrators, supervisors, counselors, agents, and other institutional officers shall reasonably ensure that the institution can maintain the standards of the Board and progress to accreditation within the time limits set by the Board.

(B) The chief academic officer shall hold an earned advanced degree appropriate for the mission of the institution, preferably, an earned doctorate awarded by an institution accredited by a recognized accrediting agency, and shall demonstrate sound aptitude for and experience with curriculum development and assessment; accreditation standards and processes as well as all relevant state regulations; leadership and development of faculty, including the promotion of scholarship, research, service, academic freedom and responsibility, and tenure (where applicable); and the promotion of student success.

(C) In the case of a renewal of a certificate of authority, the institutional officers also shall demonstrate a record of effective leadership in administering the institution.

(3) Governance. The institution shall have a system of governance that facilitates the accomplishment of the institution's mission and purposes, supports institutional effectiveness and integrity, and protects the interests of its constituents, including students, faculty and staff. If the institution has a governing board consisting of at least three (3) members, and that board focuses on the accomplishment of the institution's mission and purposes, supports institutional effectiveness and integrity, and protects the interests of its constituents, this standard will be considered as met. In the absence of such a governing board, the burden to establish appropriate safeguards within its system of governance and to demonstrate their effectiveness falls upon the institution.

(4) Distinction of Roles. The institution shall define the powers, duties and responsibilities of the governing body and the executive officers. There shall be a clear distinction in the roles and personnel of the chief business officer and the chief academic officer.

(5) Financial Resources and Stability. The institution shall have adequate financial resources and financial stability to provide education of good quality and to be able to fulfill its commitments to students. The institution shall have sufficient reserves, line of credit, or surety instrument so that, together with tuition and fees, it would be

able to complete its educational obligations to currently enrolled students if it were unable to admit any new students.

(6) Financial Records. Financial records and reports of the institution shall be kept and made separate and distinct from those of any affiliated or sponsoring person or entity. Financial records and reports at a not-for-profit institution shall be kept in accordance with the guidelines of the National Association of College and University Business Officers as set forth in College and University Business Administration (Sixth Edition), or such later editions as may be published. An annual independent audit of all fiscal accounts of the educational institution shall be authorized by the governing board and shall be performed by a properly authorized certified public accountant.

(7) Institutional Assessment. Continual and effective assessment, planning, and evaluation of all aspects of the institution shall be conducted to advance and improve the institution. These aspects include, but are not limited to, the academic program of teaching, research, and public service; administration; financial planning and control; student services; facilities and equipment, and auxiliary enterprises.

(8) Institutional Evaluation.

(A) The institution shall establish adequate procedures for planning and evaluation, define in measurable terms its expected educational results, and describe how those results will be achieved.

(B) For applied associate degree programs, the evaluation criteria shall include the following: mission, labor market need, curriculum, enrollment, graduates, student placement, follow-up results, ability to finance each program of study, facilities and equipment, instructional practices, student services, public and private linkages, qualifications of faculty and administrative personnel, and success of its students.

(C) For applied associate degree programs relating to occupations where state or national licensure is required, graduates must pass the licensing examination at a rate acceptable to the related licensing agency.

(9) Administrative Resources. The institution has the administrative capacity to meet the daily needs of the administration, faculty and students, including facilities, laboratories, equipment, technology and learning resources that support the institution's mission and programs.

(10) Student Admission and Remediation.

(A) Upon the admission of a student to any undergraduate program, the institution shall document the student's level of preparation to undertake college level work by obtaining proof of the student's high school graduation or General Educational Development (GED) certification. If a GED is presented, to be valid, the score must be at or above the passing level set by the Texas Education Agency. The academic skills of each entering student may be assessed with an instrument of the institution's choice. The institution may provide an effective program of remediation for students diagnosed with deficiencies in their preparation for collegiate study.

(B) Upon the admission of a student to any graduate program, the institution shall document that the student is prepared to undertake graduate-level work by obtaining proof that the student holds a baccalaureate degree from an institution accredited by a recognized accrediting agency, or an institution holding a certificate of authority to offer baccalaureate degrees under the provisions of this chapter, or a degree from a foreign institution equivalent to a baccalaureate degree from an accredited institution. The procedures used by the institution for establishing the equivalency of a foreign degree shall be consistent

with the guidelines of the National Council on the Evaluation of Foreign Education Credentials or its successor.

(11) Faculty Qualifications. The character, education, and experience in higher education of the faculty shall be such as may reasonably ensure that the students will receive an education consistent with the objectives of the course or program of study.

(A) Each faculty member, except as provided by subparagraph (E) of this paragraph, teaching in an academic associate, applied associate leading to required state or national licensure, or baccalaureate level degree program shall have at least a master's degree from an institution accredited by a recognized agency with at least eighteen (18) graduate semester credit hours in the discipline, or closely related discipline, being taught.

(B) Each faculty member except, as provided by subparagraph (E) of this paragraph, teaching career and technical courses in an applied associate degree program, or career and technical courses that academic associate or baccalaureate students may choose to take, shall have at least an associate degree in the discipline being taught from an institution accredited by a recognized agency and or at least three (3) years of full-time direct or closely related experience in the discipline being taught.

(C) Each faculty member, except as provided by subparagraph (E) of this paragraph, teaching general education courses in an applied associate degree program shall have at least a baccalaureate degree from an institution accredited by a recognized accrediting agency with at least eighteen (18) graduate semester credit hours in the discipline, or closely related discipline, being taught.

(D) Except as provided by subparagraph (E) of this paragraph, graduate-level degree programs shall be taught by faculty holding doctorates, or other degrees generally recognized as the highest attainable in the discipline, or closely related discipline, awarded by institutions accredited by an agency recognized by the Board.

(E) With the approval of a majority of the institution's governing board, an individual with exceptional experience in the field of appointment, which may include direct and relevant work experience, professional licensure and certification, honors and awards, continuous documented excellence in teaching, or other demonstrated competencies and achievements, may serve as a faculty member without the degree credentials specified in subparagraphs (A) - (D) of this paragraph. Such appointments shall be limited and the justification for each such appointment shall be fully documented. The Board may review the qualifications of the full complement of faculty providing instruction at the institution to verify that such appointments are justified.

(12) Faculty Size. There shall be a sufficient number of faculty holding full-time teaching appointments that are accessible to the students to ensure continuity and stability of the education program, adequate educational association between students and faculty and among the faculty members, and adequate opportunity for proper preparation for instruction and professional growth by faculty members. At the associate and baccalaureate levels, there shall be at least one (1) full-time faculty member in each program. At the graduate level, there shall be at least two (2) full-time faculty members in each program.

(13) Academic Freedom and Faculty Security. The institution shall adopt, adhere to, and distribute to all members of the faculty a statement of academic freedom assuring freedom in teaching, research, and publication. All policies and procedures concerning promotion, tenure, and non-renewal or termination of appointments, including for cause, shall be clearly stated and published in a faculty handbook, ad-

hered to by the institution, and supplied to all faculty. The specific terms and conditions of employment of each faculty member shall be clearly described in a written document to be given to that faculty member, with a copy to be retained by the institution.

(14) Curriculum.

(A) The quality, content, and sequence of each course, curriculum, or program of instruction, training, or study shall be appropriate to the purpose of the institution and shall be such that the institution may reasonably and adequately achieve the stated objectives of the course or program. Each program shall adequately cover the breadth of knowledge of the discipline taught and coursework must build on the knowledge of previous courses to increase the rigor of instruction and the learning of students in the discipline. A majority of the courses in the areas of specialization required for each degree program shall be offered in organized classes by the institution. An institution may offer for-credit coursework that does not directly relate to approved programs, provided that it does not exceed twenty-five (25) percent of all courses.

(B) Academic associate degrees must consist of at least sixty (60) semester credit hours and not more than sixty-six (66) semester credit hours or ninety (90) quarter credit hours and not more than ninety-nine (99) quarter credit hours. Applied associate degrees must consist of at least sixty (60) semester credit hours and not more than seventy-two (72) semester credit hours or ninety (90) quarter credit hours and not more than one hundred eight (108) quarter hours. A baccalaureate degree must consist of at least one hundred twenty (120) semester credit hours or one hundred eighty (180) quarter credit hours. A master's degree must consist of at least thirty (30) semester credit hours and not more than thirty-six (36) semester credit hours or forty-five (45) quarter credit hours and not more than fifty-four (54) quarter credit hours of graduate level work past the baccalaureate degree.

(C) Courses designed to correct deficiencies, remedial courses for associate and baccalaureate programs, and leveling courses for graduate programs, shall not count toward requirements for completion of the degree.

(D) The degree level, degree designation, and the designation of the major course of study shall be appropriate to the curriculum offered and shall be accurately listed on the student's diploma and transcript.

(15) General Education.

(A) Each academic associate degree program shall contain a general education component consisting of at least twenty (20) semester credit hours or thirty (30) quarter credit hours. Each applied associate degree program shall contain a general education component of at least fifteen (15) semester credit hours or twenty-three (23) quarter credit hours. Each baccalaureate degree program shall contain a general education component consisting of at least twenty-five (25) percent of the total hours required for graduation from the program.

(B) This component shall be drawn from each of the following areas: Humanities and Fine Arts, Social and Behavioral Sciences, and Natural Sciences and Mathematics. It shall include courses to develop skills in written and oral communication and basic computer instruction.

(C) The applicant institution may arrange to have all or part of the general education component taught by another institution, provided that:

(i) the applicant institution's faculty shall design the general education requirement;

(ii) there shall be a written agreement between the institutions specifying the applicant institution's general education requirements and the manner in which they will be met by the providing institution; and

(iii) the providing institution shall be accredited by a recognized accrediting agency or hold a certificate of authority.

(16) Credit for Work Completed Outside a Collegiate Setting.

(A) An institution awarding collegiate credit for work completed outside a collegiate setting (outside a degree-granting institution accredited by a recognized agency) shall establish and adhere to a systematic method for evaluating that work, shall award credit only in course content which falls within the authorized degree programs of the institution or, if by evaluative examination, falls within the standards for awarding credit by exam used by public universities in Texas, in an appropriate manner shall relate the credit to the student's current educational goals, and shall subject the institution's process and procedures for evaluating work completed outside a collegiate setting to ongoing review and evaluation by the institution's teaching faculty. To these ends, recognized evaluative examinations such as the Advanced Placement program (AP) or the College Level Examination Program (CLEP) may be used.

(B) No more than one half of the credit applied toward a student's associate or baccalaureate degree program may be based on work completed outside a collegiate setting. Those credits must be validated in the manner set forth in subparagraph (A) of this paragraph. No more than fifteen (15) semester credit hours or twenty-three (23) quarter credit hours of that credit may be awarded by means other than recognized evaluative examinations. No graduate credit for work completed outside a collegiate setting may be awarded. In no instance may credit be awarded for life experience per se or merely for years of service in a position or job.

(17) Learning Resources. The institution shall maintain and ensure that students have access to learning resources with a collection of books, educational material and publications, on-line materials and other resources and with staff, services, equipment, and facilities that are adequate and appropriate for the purposes and enrollment of the institution. Learning resources shall be current, well distributed among fields in which the institution offers instructions, cataloged, logically organized, and readily located. The institution shall maintain a continuous plan for learning resources development and support, including objectives and selections of materials. Current and formal written agreements with other institutions or with other entities may be used. Institutions offering graduate work shall provide access to learning resources that include basic reference and bibliographic works and major journals in each discipline in which the graduate program is offered. Applied associate degree programs shall provide adequate and appropriate resources for completion of course work.

(18) Facilities. The institution shall have adequate space, equipment, and instructional materials to provide education of good quality. Student housing owned, maintained, or approved by the institution, if any, shall be appropriate, safe, adequate, and in compliance with applicable state and local requirements.

(19) Academic Records. Adequate records of each student's academic performance shall be securely and permanently maintained by the institution.

(A) The records for each student shall contain:

(i) student contact and identification information, including address and telephone number;

(ii) records of admission documents, such as high school diploma or GED (if undergraduate) or undergraduate degree (if graduate);

(iii) records of all courses attempted, including grade; completion status of the student, including the diploma, degree or award conferred to the student; and

(iv) any other information typically contained in academic records.

(B) Two copies of said records shall be maintained in separate secure places.

(C) Transcripts shall be provided upon request by a student, subject to the institution's obligation, if any, to cooperate with the rules and regulations governing state and federally guaranteed student loans.

(20) Accurate and Fair Representation in Publications, Advertising, and Promotion.

(A) Neither the institution nor its agents or other representatives shall engage in advertising, recruiting, sales, collection, financial credit, or other practices of any type which are false, deceptive, misleading, or unfair. Likewise, all publications, by any medium, shall accurately and fairly represent the institution, its programs, available resources, tuition and fees, and requirements.

(B) The institution shall provide students, prospective students prior to enrollment, and other interested persons with a printed or electronically published catalog. Institutions relying on electronic catalogs must ensure the availability of archived editions in order to serve the needs of alumni and returning students. The catalog must contain, at minimum, the following information:

(i) the institution's mission;

(ii) a statement of admissions policies;

(iii) information describing the purpose, length, and objectives of the program or programs offered by the institution;

(iv) the schedule of tuition, fees, and all other charges and expenses necessary for completion of the course of study;

(v) cancellation and refund policies;

(vi) a definition of the unit of credit as it applies at the institution;

(vii) an explanation of satisfactory progress as it applies at the institution, including an explanation of the grading or marking system;

(viii) the institution's calendar, including the beginning and ending dates for each instructional term, holidays, and registration dates;

(ix) a complete listing of each regularly employed faculty member showing name, area of assignment, rank, and each earned degree held, including degree level, degree designation, and institution that awarded the degree;

(x) a complete listing of each administrator showing name, title, area of assignment, and each earned degree held, including degree level, degree designation, and institution that awarded the degree;

(xi) a statement of legal control with the names of the trustees, directors, and officers of the corporation;

(xii) a complete listing of all scholarships offered, if any;

(xiii) a statement describing the nature and extent of available student services;

(xiv) complete and clearly stated information about the transferability of credit to other postsecondary institutions including two-year and four-year colleges and universities;

(xv) any such other material facts concerning the institution and the program or course of instruction as are reasonably likely to affect the decision of the student to enroll therein; and

(xvi) any disclosures specified by the Board or defined in Board rules.

(C) The institution shall adopt, publish, and adhere to a fair and equitable cancellation and refund policy.

(D) The institution shall provide to each prospective student, newly-enrolled student, and returning student, complete and clearly presented information indicating the institution's current graduation rate by program and, if required by the Board, job placement rate by program for applied associate degree programs.

(E) Any special requirements or limitations of program offerings for the students at the Texas location must be made explicit in writing. This may be accomplished by either a separate section in the catalog or a brochure separate from the catalog. However, if a brochure is produced, the student must also be given the regular catalog.

(F) Upon satisfactory completion of the program of study, the student shall be given appropriate educational credentials indicating the degree level, degree designation, and the designation of the major course of study, and a transcript accurately listing the information typically found on such a document, subject to the institution's obligation, if any, to enforce with the rules and regulations governing state, and federally guaranteed student loans by temporarily withholding such credentials.

(21) Academic Advising and Counseling. The institution shall provide an effective program of academic advising for all students enrolled. The program shall include orientation to the academic program, academic counseling, career information and planning, placement assistance, and testing services.

(22) Student Rights and Responsibilities. The institution shall establish and adhere to a clear and fair policy regarding due process in disciplinary matters; outline the established grievance process of the institution, which shall indicate that students should follow this process and may contact the Board and/or Attorney General to file a complaint about the institution if all other avenues have been exhausted, and publish these policies in a handbook, which shall include other rights and responsibilities of the students. This handbook shall be supplied in print or electronically to each student upon enrollment in the institution.

(23) Health and Safety. The institution shall provide an effective program of health and safety education reflecting the needs of the students. The program shall include information on emergency and safety procedures at the institution, including appropriate responses to illness, accident, fire, and crime.

(24) Learning Outcomes. An institution may deviate from Standard (11) relating to Faculty Qualifications, Standard (12) relating to Faculty Size, Standard (16) relating to Credit for Work Completed Outside a Collegiate Setting, and Standard (17) relating to Learning Resources, if there is an objective system of assessing learning outcomes in place for each part of the curriculum and the institution can demonstrate that appropriate learning outcomes are being achieved.

§7.5. Administrative Penalties and Injunctions.

(a) A person or institution may not:

(1) Granting of Degrees--Grant, award, or offer to award a degree on behalf of a nonexempt institution unless the institution has been issued a certificate of authority, including an alternative certificate of authority, to grant the degree by the Board;

(2) Transferability of Credit--Represent that credits earned or granted by that person or institution are applicable for credit toward a degree to be granted by some other person or institution except under conditions and in a manner specified under §7.7 of this chapter (relating to Institutions Accredited by Board Recognized Accreditors) and approved by the Board, or represent that credits earned or granted are collegiate in nature, including describing them as "college-level," or at the level of any protected academic term;

(3) Honorary Degrees--Award or offer to award an honorary degree on behalf of a private postsecondary institution subject to the provisions of the subchapter, unless the institution has been awarded a certificate of authority to award such a degree, or solicits another person to seek or accept an honorary degree and, further, unless the degree shall plainly state on its face that it is honorary;

(4) Protected Terms--Use a protected term in the official name or title of a nonexempt private postsecondary institution, an educational or training establishment, or describe an institution using any of these terms or a term having a similar meaning, except as authorized by the Board, or solicit another person to seek a degree or to earn a credit that is offered by an institution or establishment that is using a term in violation of this section;

(5) Agent--Act as an agent who solicits students for enrollment in a private postsecondary institution subject to the provisions of the subchapter without a certificate of registration, if required by this chapter;

(6) Fraudulent Degree--Use or claim to hold a degree that the person knows is a fraudulent, substandard, frivolous degree or is a fictitious degree:

(A) in a written or oral advertisement or other promotion of a business; or

(B) with the intent to:

(i) obtain employment;

(ii) obtain a license or certificate to practice a trade, profession, or occupation;

(iii) obtain a promotion, compensation or other benefit, or an increase in compensation or other benefit, in employment or in the practice of a trade, profession, or occupation;

(iv) obtain admission to an educational program in this state; or

(v) gain a position in government with authority over another person, regardless of whether the actor receives compensation for the position.

(C) The use of fictitious, fraudulent, or substandard degrees--The Board shall provide the following information through the Board's Internet website:

(i) the accreditation status or the status regarding authorization or approval under this subchapter, to the extent known by the Board, of each exempt institution operating in the state, each postsecondary educational institution or other person that is regulated under §§7.7 - 7.11 of this chapter or for which a determination is made under §7.12 of this chapter (relating to Review and Use of Degrees from In-

stitutions Not Eligible for Certificates of Authority), and any institution offering fraudulent, substandard, or fictitious degrees, including:

(I) the name of each educational institution accredited, authorized, or approved to offer or grant degrees in this state;

(II) the name of each educational institution whose degrees the Board has determined may not be legally used in this state;

(III) the name of each educational institution that the Board has determined to be operating in this state in violation of this chapter; and

(IV) any other information considered by the Commissioner to be useful to protect the public from fraudulent, substandard, or fictitious degrees.

(ii) the Board shall utilize such usual and customary sources for determining the accreditation status of institutions, such as: guides to international education; the Board's knowledge of legal actions taken against institutions, either by an agency of the State of Texas or agencies of other states or nations; or civil actions against institutions brought by governmental agencies or individuals.

(D) In determining the legitimacy of institutions headquartered or operating outside of Texas, the Board may determine if the state or nation in which the person or institution is headquartered, operates, or holds legal authorization to operate has standards and practices that are as rigorous as those of the Board's. A determination that a particular state or nation's standards or practices are not appropriately rigorous shall be sufficient reason to disapprove the use of the degrees of a person or institution.

(b) Institutions Located on Federal Land in Texas--An institution that is operating on land in Texas over which the federal government has exclusive jurisdiction shall limit the recruitment of students and advertising of the institution or its programs or courses to the confines of the federal land and to the military or civilian employees and their dependents who work or live on that land. The institution shall not enlist any agent, representative, or institution to recruit or to advertise by any medium, the institution or its programs or courses except on the federal land.

(c) Offenses--A violation of this subsection may constitute a violation of the Texas Penal Code, §32.52, or Texas Education Code, §61.312 and §61.313. An offense under subsection (a)(1) - (5) of this section may be a Class A misdemeanor and an offense under subsection (a)(6) of this section may be a Class B misdemeanor.

(d) Transfer of Records--In the event any institution now or hereafter operating in this state proposes to discontinue its operation, the chief administrative officer, by whatever title designated, of said institution shall cause to be filed with the Board the original or legible true copies of all such academic records of said institution as may be specified by the Commissioner. Such records shall include, without limitation:

(1) such academic information as is customarily required by colleges when considering students for transfer or advanced study; and

(2) the academic records of each former student.

(e) Record Protection--In the event it appears to the Commissioner that any records of an institution that is discontinuing its operations are in danger of being destroyed, secreted, mislaid, or otherwise made unavailable to the Board, the Commissioner may seek, on the Board's behalf, court authority to take possession of such records.

(f) Maintenance of Records--The Board shall maintain or cause to be maintained a permanent file of such records coming into its possession.

(g) Administrative Penalties--If a person or institution violates a provision of this subchapter, the Commissioner may assess an administrative penalty against the person or institution as provided in this section.

(h) Notice of Violation--The Commissioner shall send written notice by certified mail to the person or institution charged with the violation. The notice shall state the facts on which the penalty is based, the amount of the penalty assessed, and the right of the person or institution to request a hearing.

(i) Appeal of Assessment--The Commissioner's assessment shall become final and binding unless, within forty-five (45) days of receipt of the notice of assessment, the person or institution invokes the administrative remedies contained in Chapter 1, Subchapter B of this title (relating to Dispute Resolution).

(j) Collection of Assessment--If the person or institution does not pay the amount of the penalty within thirty (30) days of the date on which the assessment becomes final, the Commissioner may refer the matter to the attorney general for collection of the penalty, plus court costs and attorney fees.

(k) Specific Administrative Penalty--Any person or institution that is neither exempt nor the holder of a certificate of authority, including an alternative certificate of authority, to grant degrees, shall be assessed an administrative penalty of not less than \$1,000 or more than \$5,000 for, either individually or through an agent or representative:

(1) conferring or offering to confer a degree;

(2) awarding or offering to award credits purported to be applicable toward a degree to be awarded by another person or institution (except under conditions and in a manner specified and approved by the Board);

(3) representing that any credits offered are collegiate in nature subject to the provisions of this subchapter; or

(4) each degree conferred without authority, and each person enrolled in a course or courses at the institution whose decision to enroll was influenced by the misrepresentations, constitutes a separate offense.

(l) Other Administrative Penalties--Any person or institution that violates subsection (a)(4) of this section shall be assessed an administrative penalty of not less than \$1,000 or more than \$3,000.

(m) Specific Administrative Penalties for Agents--Any agent who solicits students for enrollment in an institution subject to the provisions of the subchapter without a certificate of registration shall be assessed an administrative penalty of not less than \$500 or more than \$1,000. Each student solicited without authority constitutes a separate offense.

(n) Termination of Operation--Any operations which are found to be in violation of the law shall be terminated.

(o) Report to Attorney General--The Commissioner may report possible violations of this subchapter to the attorney general. The attorney general, after investigation and consultation with the Board, shall bring suit to enjoin further violations.

(p) Venue--An action for an injunction under this section shall be brought in a district court in Travis County.

(q) Civil Penalties--A person who violates this subchapter or a rule adopted under this subchapter is liable for a civil penalty in ad-

dition to any injunctive relief or any other remedy allowed by law. A civil penalty may not exceed \$1,000 a day for each violation.

(r) Civil Litigation--The attorney general, at the request of the Board, shall bring a civil action to collect a civil penalty under this section.

(s) Deceptive Trade Practice Act--A person who violates this subchapter commits a false, misleading, or deceptive act or practice within the meaning of the Texas Business and Commerce Code, §17.46.

(t) Applicability of Other Law--A public or private right or remedy under the Texas Business and Commerce Code, Chapter 17, may be used to enforce this section.

(u) Associate of Occupational Studies (AOS) Degree--Texas has three career schools or colleges awarding the AOS degree: Universal Technical Institute, Southwest Institute of Technology, and Western Technical College. The AOS degree shall be awarded in only the following fields: automotive mechanics, diesel mechanics, refrigeration, electronics, and business. Each of the three Institutions may continue to award the AOS degree for those fields listed in this subsection and shall be restricted to those fields. The Board shall not consider new AOS degree programs from any other career schools or colleges. A career school or college authorized to grant the AOS degree shall not represent such degree by using the terms "associate" or "associate's" without including the words "occupational studies." An institution authorized to grant the AOS degree shall not represent such degree as being the equivalent of the AAS or AAA degrees.

§7.6. Recognition of Accrediting Agencies.

(a) Eligibility Criteria--The Texas Higher Education Coordinating Board may recognize accrediting agencies with a commitment to academic quality and student achievement that demonstrate, through an application process, compliance with the following criteria:

(1) Eligibility. The accrediting agency's application for recognition must demonstrate that the entity:

(A) Is recognized by the Secretary of Education of the United States Department of Education as an accrediting agency authorized to accredit educational institutions that offer the associate degree or higher. Demonstration of authorization shall include clear description of the scope of recognized accreditation.

(B) Is applying for the same scope of recognition as that for which it is recognized by the Secretary of Education of the United States Department of Education:

(i) Using the U.S. Department of Education classification of instructional programs (CIP) code at the two-digit level, the applicant shall identify all fields of study in which institutions it accredits may offer degree programs.

(ii) Accrediting agencies shall, for each field of study in which an accredited institution may offer degree programs, specify the levels of degrees that may be awarded. Levels must be differentiated at least to the following, as defined in §7.3 of this chapter (relating to Definitions): applied associate degree, academic associate degree, baccalaureate degree, master's degree, first professional degree and doctoral degree.

(iii) Only institutions that qualify as eligible for United States Department of Education Title IV programs as a result of accreditation by the applicant agency will be considered exempt under §7.7 of this chapter (relating to Institutions Accredited by Board Recognized Accreditors).

(C) Accredits institutions that have legal authority to confer postsecondary degrees as its primary activity:

(i) Accrediting agencies must show by listing all institutions accredited by the agency that either the majority of the accredited institutions have the legal authority to award postsecondary degrees or that it accredits at least fifty (50) institutions that have the legal authority to award postsecondary degrees.

(ii) An accrediting agency that accredits programs as well as institutions shall demonstrate that either it accredits more institutions than programs or that it has policies, procedures and staff sufficient to address institutional standards of quality in addition to program standards of quality.

(iii) Accrediting agencies must have standards that require all accredited institutions to comply with all applicable laws in the state and local jurisdiction in which they operate and that require accredited institutions to clearly and accurately communicate their accreditation status to the public.

(D) Requires an on-site review by a visiting team as part of initial and continuing accreditation of educational institutions:

(i) Each accrediting agency shall demonstrate, through its documented practices and/or its official policies, that it requires no fewer than three (3) members on a team when conducting initial and continuing accreditation visits, that none have a monetary or personal interest in the findings of the on-site review, and that all have professional experience that qualifies them to review the institution's compliance with the standards of the agency.

(ii) Accrediting agencies may conduct site visits for reasons other than initial and continuing accreditation with fewer team members.

(iii) Accrediting agencies shall provide a list of the visiting team members for the five (5) most recently completed on-site reviews. The list shall show name, employer, title of positions held with that employer and the standards for which the individual was responsible in that on-site review.

(E) Has policies or procedures that ensure the entity will promptly respond to requests for information from the Board:

(i) Each accrediting agency shall provide the Board its official policy regarding disclosure of information about institutions that are or have been candidates for accreditation and are or have been accredited. Agencies shall provide to the Board, within ten (10) working days, any new information and any requested information about a Texas institution that would be available to the public under that official policy.

(ii) Each accrediting agency shall include in its standards for accreditation of Texas institutions that the institutions disclose publicly and to the Board the number of degrees awarded at each level each year and the number of students enrolled in the fall of each year.

(F) Has sufficient resources to carry out its functions:

(i) Accrediting agencies shall identify the number of on-site reviews conducted during the most recent twelve (12) month period, the number of staff members who participated in those on-site reviews and the maximum number of on-site reviews conducted by any individual staff member. If that maximum number exceeds thirty (30), the agency shall explain how it expects to carry out its function of enforcing its standards on Texas institutions.

(ii) Each accrediting agency shall provide evidence that its ratio of current assets to current liabilities equals or exceeds 1.2.

(iii) Each accrediting agency shall demonstrate that its fees are reasonable for the accreditation services provided.

(2) Recognition--To receive and maintain recognition from the Board, the accrediting agency must, in addition to the items listed in paragraph (1) of this subsection:

(A) Provide the Board with current standards used by the entity in initial and ongoing accreditation reviews of educational institutions and invite the Board to participate in such reviews:

(i) Accrediting agencies must have publicly disclosed standards that address at a minimum the following issues: student achievement in relation to the institution's mission; curricula; faculty; facilities, equipment and supplies; fiscal and administrative capacity; student support services; recruiting and admissions practices, academic calendars, catalogs, grading, etc.; measures of program length and objectives of the degrees or credentials offered; record of student complaints received by, or available to the agency; management and financial control.

(ii) In the application process, the accrediting agency must indicate how its standards address each of the quality assessment categories outlined in clause (i) of this subparagraph which represent the underlying principles described in the institutional standards of §7.4 of this chapter (relating to Standards for Operation of Institutions). Comparison of its standards with those of previously recognized accrediting agencies and with the standards in §7.4 of this chapter is encouraged as a means of indicating how its standards meet those principles.

(iii) Each accrediting agency shall provide its policy for periodic reviews. At a minimum, the accrediting agency must conduct on-site reviews at least every ten (10) years.

(iv) At least ten (10) working days before each scheduled periodic on-site review of a Texas institution, accrediting agencies shall invite the Board staff to participate in the review. Such participation shall be at no expense to the institution or the accrediting agency.

(v) Within ten (10) working days of an official change in standards, the agency shall notify the Board of those changes.

(vi) By providing a copy of its publicly disclosed policies and procedures, each accrediting agency shall demonstrate that its initial and ongoing reviews and the resultant accreditation decisions are fair and consistent with the available evidence.

(vii) Accrediting agencies that use an advisory body, similar to the Certification Advisory Council described in §7.8 of this chapter (relating to Institutions Not Accredited by a Board Recognized Accrerator), shall describe the advisory body's composition and authority. Accrediting agencies that do not use such a body shall describe the process used to ensure that the evidence obtained from reviews results in appropriate accreditation decisions.

(viii) The initial and ongoing reviews shall include an institutional self-evaluation process or a documented alternative process to promote continuous quality improvement.

(ix) Each accrediting agency shall have and publicly disclose its processes for appealing accreditation decisions.

(B) Provide the Board with written evidence of continuing recognition by the Secretary of Education of the United States Department of Education. Loss of recognition from the Secretary automatically results in loss of Board recognition at the same time. Written evidence may consist of a letter from the chief executive officer of

the accrediting agency. Accrediting agencies shall submit the evidence annually prior to the anniversary date of the initial Board recognition:

(C) Provide a list of Texas educational institutions accredited by it; notify the Board in writing of any change to its list of Texas accredited institutions within ten (10) days of the change;

(D) Notify the Board of any investigated complaints concerning a Texas institution where the accrediting agency took official action on issues of non-compliance and the disposition of those complaints;

(E) Seek Board approval for any expansion of its recognized scope of accreditation authority; and

(F) Demonstrate that the ownership and control of the accrediting agency is sufficiently independent to ensure that the accreditation process is conducted in the public interest.

(b) Other Information, Denial or Withdrawal of Recognition and Appeals.

(1) Once recognized, an accrediting agency retains that recognition unless and until the Board withdraws the recognition. Failure to comply with any of the requirements in this chapter will be grounds for the Board to consider withdrawing recognition.

(2) The Board may use information provided by parties other than the accrediting agency to assess the accrediting agency's commitment to academic quality and student achievement. The Board will consider any such information in an open, public meeting during which the accrediting agency may challenge the information.

(3) The Board will make any decision to deny recognition of an accrediting agency or to withdraw recognition from an accrediting agency in a public meeting.

(4) An institution operating in Texas as an exempt institution pursuant to §7.7 of this chapter when its recognized accrediting agency loses or voluntarily relinquishes its recognition will have ninety (90) days to apply for a Certificate of Authority or to reach agreement with the Board on a schedule for ceasing its operations in Texas.

(5) An accrediting agency or institution affected by any final decision under this subchapter may appeal that decision as provided in Chapter 1, Subchapter B of this title (relating to Dispute Resolution).

§7.7. Institutions Accredited by Board Recognized Accreditors.

An institution which does not meet the definition in Texas Education Code, §61.003, is accredited by a Board recognized accreditor, and is interested in offering degrees or courses leading to degrees in the State of Texas must follow the requirements in paragraphs (1) - (4) of this section.

(1) Authorization to Offer Degrees or Courses Leading to Degrees in Texas.

(A) Each institution and/or campus location must submit a letter of intent to offer degree(s) or courses leading to degrees in Texas containing the following information:

(i) Name of the institution;

(ii) Physical location of campus;

(iii) Name and contact information of the Chief Administrative Officer of the campus;

(iv) Name of accreditor;

(v) Level of degree and degrees authorized by CIP code;

(vi) Acknowledgement of substantive change notification and data reporting requirements contained in §7.11 of this chapter (relating to Changes of Ownership and Other Substantive Changes) and §7.13 of this chapter (relating to Data Reporting), respectively;

(vii) Texas Workforce Commission Certificate of Approval or a Texas Workforce Commission exemption from Texas Education Code, Chapter 132.

(B) Coordinating Board staff will verify information and accreditation status and upon confirmation, will provide a Certificate of Authorization to offer in Texas those degrees or courses leading to degrees for which it is accredited.

(2) Grounds for Revocation of Certificate of Authorization.

(A) Institution loses accreditation from Board recognized accreditor.

(B) Institution's Accreditor is removed from the U.S. Department of Education or the Coordinating Board's list of approved accreditors.

(C) Institution fails to comply with data reporting or substantive change notification requirements.

(D) Institution offers degrees for which it does not have accreditor approval.

(3) Process for Removal of Authorization.

(A) Commissioner notifies institution of grounds for revocation as outlined in paragraph (2) of this section.

(B) Upon receipt of the notice of revocation, the institution must cease granting or awarding degrees in Texas until it has either been granted a certificate of authority or alternate certificate of authority to grant degrees, or has received a determination that it did not lose its qualification for a certificate of authorization.

(C) Within ten (10) days of its receipt of the Commissioner's notice, the institution must respond and offer proof of its continued qualification for the exemption, or submit data as required by §7.13 of this chapter.

(D) After reviewing the evidence, the Commissioner will issue a notice of determination, which in the case of an adverse determination, shall contain information regarding the reasons for the denial, and the institution's right to a hearing.

(E) If a determination under this section is adverse to an institution, it shall become final and binding unless, within forty-five (45) days of its receipt of the adverse determination, the institution invokes the administrative remedies contained in Chapter 1, Subchapter B of this title (relating to Dispute Resolution).

(4) Closure of an Institution.

(A) The governing board, owner, or chief executive officer of an institution that plans to cease operation shall provide the Board with written notification of intent to close at least ninety (90) days prior to the planned closing date.

(B) If an institution closes unexpectedly, the governing board, owner, or chief executive officer of the school shall provide the Board with written notification immediately.

(C) If an institution closes or intends to close before all currently enrolled students have completed all requirements for graduation, the institution shall assure the continuity of students' education by entering into a teach-out agreement with another institution authorized by the Board to hold a Certificate of Authority, with an institution operating under a Certificate of Authorization, with a public two-year

college, or with a public four-year university. The agreement shall be in writing, shall be subject to Board approval, shall contain provisions for student transfer, and shall specify the conditions for completion of degree requirements at the teach-out institution. The agreement shall also contain provisions for awarding degrees.

(D) The Certificate of Authorization for an institution is automatically withdrawn when the institution closes. The Commissioner may grant to an institution that has a degree-granting authority temporary approval to award a degree(s) in a program for which the institution does not have approval in order to facilitate a formal agreement as outlined under this section.

(E) The curriculum and delivery shall be appropriate to accommodate the remaining students.

(F) No new students shall be allowed to enter the transferred degree program unless the new entity seeks and receives permanent approval for the program(s) from the Board.

(G) The institution shall transfer all academic records pursuant to §7.5(d) of this chapter (relating to Administrative Penalties and Injunctions).

§7.8. Institutions Not Accredited by a Board Recognized Accreditor.

An institution which is not accredited by a board recognized accreditor and which does not meet the definition of institution of higher education contained in Texas Education Code, §61.003, must follow either the Certificate of Authority process or Alternative Certificate of Authority process in paragraphs (1) - (14) of this section in order to offer degrees or courses leading to degrees in the State of Texas. Institutions are encouraged to contact the Coordinating Board staff before filing a formal application.

(1) Certificate of Authority.

(A) Eligibility--The Board will accept applications for a certificate of authority only from those institutions:

(i) proposing to offer a degree or credit courses alleged to be applicable to a degree; and

(ii) which meet one of the following conditions:

(I) Has been legally operating, enrolling students, and conducting classes in Texas and has complied with state law as a non degree-granting institution for a minimum of two (2) years;

(II) Has been legally operating, enrolling students, and conducting classes in Texas and has complied with state law as a degree-granting institution and wishes to open a new campus; or

(III) Has been legally operating as a degree-granting institution in another state for a minimum of four (4) years and can verify compliance with all applicable laws and rules in that state; or

(IV) Held an alternative certificate of authority for one year.

(B) To be considered by the Board to be operating, means to have assembled a governing board, developed policies, materials, and resources sufficient to satisfy the requirements for a certificate of authority, and either have enrolled students and conducted classes or accumulated sufficient financing to do so for at least one year upon certification based on reasonable estimates of projected enrollment and costs. Sufficient financing may be demonstrated by proof of an adequate surety bond, assignment of account, certificate of deposit, irrevocable letter of credit, or a properly executed participation contract with a private association, partnership, corporation, or other

entity whose membership is comprised of postsecondary institutions, which is:

(i) In a form acceptable to the Board; and

(ii) Conditioned to provide indemnification to any student or enrollee of the school or his/her parent or guardian determined by the Board to have suffered loss of prepaid tuition or any fees as a result of violation of any minimum standard or as a result of a holder of a certificate of authority ceasing operation, and provides evidence satisfactory to the Board of its financial ability to provide such indemnification and lists the amount of surety liability the guaranteeing entity will assume.

(2) Application for Certificate of Authority.

(A) Applications must be submitted with an original and four (4) copies and accompanied by the fee described in paragraph (9) of this section.

(B) The application form for the certificate of authority may be found on the Coordinating Board's website.

(C) Documentary evidence of compliance with paragraph (1)(A)(ii) of this section must be filed with the application.

(D) Information regarding each degree or course leading to a degree which the institution proposes to offer.

(3) Authorization Process.

(A) An institution must submit an application to the Coordinating Board to be considered for a Certificate of Authority to offer specific degree(s), and courses which may be applicable toward a degree, in Texas.

(B) Each institution must have either a letter of exemption or Certificate of Approval from the Texas Workforce Commission pursuant to Texas Education Code, Chapter 132.

(C) An institution must submit detailed information describing the manner in which the institution complies with each of the Standards of Operations of Institutions contained in §7.4 of this chapter (relating to Standards for Operations of Institutions).

(D) Institutions accredited by entities which are not recognized by the board must submit all accrediting agency reports and any findings and institutional responses to such reports and findings.

(E) Each institution must provide the required fee set by the Commissioner on a biennial basis which is necessary to cover the costs of the application review, site review team, and travel, meals, lodging and consulting fees for the review.

(F) Based upon the information contained in the application, the Commissioner or his/her designee shall determine whether a site review team is necessary.

(G) If a site review team is required, the Commissioner or his/her designee shall identify a site review team of no less than three individuals, all of whom have experience and knowledge in post-secondary education.

(H) An institution must be fully operational as of the date of the on-site evaluation; i.e., it must have in-hand or under contract all the human, physical, administrative, and financial resources necessary to demonstrate its capability to meet the standards for nonexempt institutions. The conditions found at the institution as of the date of the on-site evaluation visit will provide the basis for the visiting team's evaluation and report, the certification advisory council's recommendation, the Commissioner's recommendation, and the Board's

determination of the institution's qualifications for a certificate of authority.

(I) The site review team shall conduct an onsite review of the institution and prepare a report regarding the institution's ability to meet the Standards of Operation.

(J) The institution shall have thirty (30) days in which to respond to the report.

(K) The Certification Advisory Council shall review the report and the institution's response and make a recommendation regarding disposition to the Commissioner.

(L) Upon receipt of the Council's recommendation, the Commissioner shall make his/her recommendation regarding the application to the Coordinating Board.

(M) After review of the Commissioner's and Council's recommendations, if the Coordinating Board approves the application, the Commissioner shall immediately have prepared a Certificate of Authority containing the issue date, a list of the approved degree(s) or courses leading to degrees, and the period for which the Certificate is valid.

(N) After review of the Commissioner's and Council's recommendations, if the Coordinating Board does not approve the application, the Commissioner shall immediately notify the institution of the denial and the reasons for the denial.

(O) Upon denial, the institution may not reapply for a period of one hundred eighty (180) days.

(4) Terms and Limitations of a Certificate of Authority.

(A) The certificate of authority to grant degrees is valid for a period of two (2) years from the date of issuance.

(B) Certification by the State of Texas is not accreditation, but merely a protection of the public interest while the institution pursues accreditation from a recognized agency, within the time limitations expressed in subparagraph (C) of this paragraph. Therefore, the institution awarded a certificate of authority shall not use terms to interpret the significance of the certificate which specify, imply, or connote greater approval than simple permission to operate and grant certain specified degrees in Texas. Terms which may not be used include, but are not limited to, "accredited," "supervised," "endorsed," and "recommended" by the State of Texas or agency thereof. Specific language prescribed by the Commissioner which explains the significance of the certificate of authority shall be included in all publications, advertisements, and other documents where certification and the accreditation status of the institution are mentioned.

(C) An institution may be granted consecutive certificates of authority for no longer than eight (8) years. Absent sufficient cause, at the end of the eight (8) years, the institution must be accredited by a board recognized accrediting agency.

(5) Institutions Holding a Certificate of Authority will be Required to:

(A) furnish a list of their agents to the Board;

(B) maintain records of students enrolled, credits awarded, and degrees awarded, in a manner specified by the Board; and

(C) report any substantive change.

(6) Grounds for Revocation of Certificate of Authorization.

(A) Institution fails to comply with substantive change notification and data reporting requirements as outlined in §7.11 of

this chapter (relating to Changes of Ownership and Other Substantive Changes) and §7.13 of this chapter (relating to Data Reporting), respectively.

(B) Institution offers degrees for which it does not have Board approval.

(C) Institution fails to maintain the Standards of Operation as defined in §7.4 of this chapter.

(D) Failure to comply with paragraph (3)(D) of this section.

(7) Revocation of Certificate of Authority to Offer Degrees in Texas.

(A) Board notifies institution of grounds for revocation as outlined in paragraph (6) of this section.

(B) Within ten (10) days of its receipt of the Commissioner's notice, the institution must respond and offer proof of its continued qualification for the exemption, and/or submit data as required by §7.13 of this chapter.

(C) After reviewing the evidence, the Commissioner will issue a notice of determination, which in the case of an adverse determination, shall contain information regarding the reasons for the denial, and the institution's right to a hearing.

(D) If a determination under this section is adverse to an institution, it shall become final and binding unless, within forty-five (45) days of its receipt of the adverse determination, the institution invokes the administrative remedies contained in Chapter 1, Subchapter B of this title (relating to Dispute Resolution).

(E) Until the certificate of authority is reinstated, the institution may not grant degrees or receive payments from students for courses which may be applicable toward a degree.

(8) Reapplication after Revocation of Certificate of Authority.

(A) The institution will not be eligible to reapply for a period of one hundred eighty (180) days.

(B) The subsequent application must show, in addition to all other requirements described herein, correction of the deficiencies which led to the denial.

(C) The period of time during which the institution does not hold a certificate of authority shall not be counted against the eight (8) year period within which the institution must achieve accreditation from a recognized accrediting agency absent sufficient cause, as described in paragraph (4)(C) of this section; the time period begins to run again upon reinstatement.

(9) Fees Related to Certificates of Authority.

(A) Certificates of Authority. Each biennium the Commissioner shall set the fee for initial and renewal applications for certificates of authority, which shall be equal to the average cost of evaluating the applications. The fee shall include the costs of travel, meals, and lodging of the visiting team and the Commissioner, or the Commissioner's designated representatives, and consulting fees for the visiting team members, if an onsite review is conducted.

(B) Each biennium, the Commissioner shall also set the fees for amendments to certificates of authority and certificates of registration of agents.

(C) The Commissioner shall report changes in the fees to the Board at a quarterly meeting.

(10) Renewal of Certificate of Authority.

(A) At least one hundred eighty (180) days, but no more than two hundred ten (210) days, prior to the expiration of the current certificate of authority, an institution, if it desires renewal, shall make application to the Board on forms provided upon request. Reports not previously submitted to the Board, related to the application for or renewal of accreditation by national or regional accrediting agencies shall be included. The renewal application shall be accompanied by the fee described in paragraph (9) of this section.

(B) The application for renewal of the certificate of authority will be evaluated in the same manner as that prescribed for evaluation of an initial application, except that the evaluation will include the institution's record of improvement and progress toward accreditation.

(C) An institution may be granted consecutive certificates of authority for no longer than eight (8) years. Absent sufficient cause, at the end of the eight (8) years, the institution must be accredited by a recognized accrediting agency.

(D) Subject to the restrictions of paragraph (3) of this section, the Board shall renew the certificate if it finds that the institution has maintained all requisite standards.

(11) Amendments to a Certificate of Authority.

(A) An institution which wishes to amend an existing program of study to award a new or different degree during the period of time covered by its current certificate may file an application for amendment, on forms provided by the Board upon request. An institution may begin operating such a program upon filing the application, and the application shall be deemed to be granted if not rejected by the Board within one hundred twenty (120) days.

(B) Applications for amendments shall be accompanied by the fee described in paragraph (9) of this section.

(C) Unless the Board finds that the new program of study does not meet the required standards, the Board shall amend the institution's certificate accordingly.

(D) A change of degree level would require an amended Certificate of Authority prior to beginning the program.

(12) Authority to Represent Transferability of Course Credit. Any institution as defined in §7.3 of this chapter (relating to Definitions), whether it offers degrees or not, may solicit students for and enroll them in courses on the basis that such courses will be credited to a degree program offered by another institution, provided that:

(A) the other institution is named in such representation, and is accredited by a recognized accrediting agency or has a certificate of authority;

(B) the courses are identified for which credit is claimed to be applicable to the degree programs at the other institution; and

(C) the written agreement between the institution subject to these rules and the accredited institution is approved by both institutions' boards of trustees in writing, and is filed with the Board.

(13) Closure of an Institution.

(A) The governing board, owner, or chief executive officer of an institution that plans to cease operation shall provide the Board with written notification of intent to close at least ninety (90) days prior to the planned closing date.

(B) If an institution closes unexpectedly, the governing board, owner, or chief executive officer of the school shall provide the Board with written notification immediately.

(C) If an institution closes or intends to close before all currently enrolled students have completed all requirements for graduation, the institution shall assure the continuity of students' education by entering into a teach-out agreement with another institution authorized by the Board to hold a Certificate of Authority, with an institution operating under a Certificate of Authorization, or with a public two-year college. The agreement shall be in writing, shall be subject to Board approval, shall contain provisions for student transfer, and shall specify the conditions for completion of degree requirements at the teach-out institution. The agreement shall also contain provisions for awarding degrees.

(D) The Certificate of Authorization for an institution is automatically withdrawn when the institution closes. The Commissioner may grant to an institution that has a degree-granting authority temporary approval to award a degree(s) in a program for which the institution does not have approval in order to facilitate a formal agreement as outlined under this section.

(i) The curriculum and delivery shall be appropriate to accommodate the remaining students.

(ii) No new students shall be allowed to enter the transferred degree program unless the new entity seeks and receives permanent approval for the program(s) from the Board.

(14) Alternative Certificate of Authority. In lieu of the standard certificate of authority requirements for institutions and their agents described in paragraphs (1) - (13) of this section, an institution may obtain an alternative certificate of authority to issue degrees as provided by this subsection. Alternative certificates of authority shall be issued by the Commissioner and are temporary, being valid for twelve (12) months, after which a regular certificate of authority shall be required. A site visit shall be conducted by Board staff during the initial twelve month period.

(A) Surety Instrument Requirement. At the time application is made for an alternative certificate of authority, or when new programs, stand-alone courses or continuing education courses are added, the applicant shall file with the Board a surety bond or surety alternative which meets the requirements set forth in these sections. Schools located in Texas each shall file one bond or surety alternative covering the school and its agents.

(i) The amount of the bond or other allowable surety instrument submitted to the Board with an application for an alternative certificate of authority shall be equal to or greater than the cost of providing a refund, including administrative costs associated with processing claims, for the maximum prepaid, unearned tuition and fees of the school for a period or term during the applicable school year for which programs of instruction are offered, including, but not limited to, on a semester, quarter, monthly, or class basis; except that the period or term of greatest duration and expense shall be utilized for this computation where a school's year consists of one or more such periods or terms.

(ii) A school, whose surety value is found by the Board to be insufficient to fund the unearned, prepaid tuition of enrolled students, shall be noncompliant with these sections, and, if, after ten (10) working days from the issuance of a notice of noncompliance, the school has not increased its surety to an acceptable level, it shall be subject to revocation or suspension of its alternative certificate of authority.

(iii) Following the initial filing of the surety bond with the Board, the amount of the bond shall be recalculated annually based upon a reasonable estimate of the maximum prepaid, unearned tuition and fees received by the school for such period or term. In no case shall the amount of the bond be less than twenty-five thousand dollars (\$25,000).

(iv) The institution shall include a proposal in the form of a letter signed by an authorized representative of the school showing in detail the calculations made pursuant to this section and explaining the method used for computing the amount of the bond or surety alternative.

(v) In order to be approved by the Board, a surety bond must be:

(I) An original bond;

(II) Executed by the applicant and by a surety company authorized to do business in Texas;

(III) In a form acceptable to the Board; and

(IV) Conditioned to provide indemnification to any student or enrollee of an in-state or out-of-state school or his/her parent or guardian determined by the Board to have suffered a loss of tuition or any fees as a result of violation of any minimum standard or as a result of a holder of an Alternative Certificate of Authority ceasing operation.

(vi) In lieu of a surety bond, an applicant may file with the Board an assignment of savings account that:

(I) Is in a form acceptable to the Board;

(II) Is executed by the applicant; and

(III) Is executed by a state or federal savings and loan association, state bank or national bank whose accounts are insured by a federal depositor's corporation.

(vii) In lieu of a surety bond, an applicant may file with the Board a certificate of deposit that:

(I) Is issued by a state or federal savings and loan association, state bank or national bank whose accounts are insured by a federal depositor's corporation;

(II) Is either:

(-a-) Payable to the Board;

(-b-) In the case of a negotiable certificate of deposit, is properly assigned without restriction to the Board; or

(-c-) In the case of a non-negotiable certificate of deposit, is assigned to the Board by assignment in a form satisfactory to the Board.

(viii) In lieu of a surety bond, an applicant may file with the Board an irrevocable letter of credit that:

(I) Is in a form acceptable to the Board; and

(II) Conditioned to provide indemnification to any student or enrollee of the school or his/her parent or guardian determined by the Board to have suffered loss of tuition or any fees as a result of violation of any minimum standard or as a result of a holder of an alternative certificate of authority ceasing operation.

(ix) In lieu of a surety bond, an applicant may file with the Board a properly executed participation contract with a private association, partnership, corporation or other entity whose membership is comprised of postsecondary institutions, which:

(I) Is in a form acceptable to the Board; and

(II) Conditioned to provide indemnification to any student or enrollee of the school or his/her parent or guardian determined by the Board to have suffered loss of prepaid tuition or any fees as a result of violation of any minimum standard or as a result of a holder of an alternative certificate of authority ceasing operation, and provides evidence satisfactory to the Board of its financial ability to provide such indemnification and lists the amount of surety liability the alternative entity will assume.

(x) Whenever these sections require a document to be executed by an applicant the following shall prevail:

(I) If the applicant is a corporation, the document must be executed by the president of the corporation or persons designated by the corporate board.

(II) If the applicant is a limited liability corporation the document must be executed by the members.

(III) If the applicant is a partnership, the document must be executed by all general partners.

(IV) If the applicant is an individual, the document must be signed by the individual.

(V) If the applicant is a state agency, the document must be signed by the Director of that Department.

(VI) If the applicant is a local government, the document must be signed by the mayor or board president.

(xi) Any bonding alternative entity must have independent financial resources necessary to meet the contractual obligation to the students of a failed member institution and resources equal to or exceeding the maximum bonds required of all single schools.

(xii) A school applying for an alternative certificate of authority shall be exempt from the surety instrument requirement if it can demonstrate a United States Department of Education composite financial responsibility score of 1.5 or greater on its current financial statement; or if it can demonstrate a composite score between 1.1 and 1.4 on its current financial statement and has scored at least 1.5 on a financial statement in either of the prior two (2) years.

(B) Application and Statement. Institutions seeking an alternative certificate of authority are urged to obtain informal guidance from Board staff before filing a formal application. The Board will accept applications for an alternative certificate of authority only from those institutions proposing to offer a degree or credit courses alleged to be applicable to a degree.

(C) An institution seeking an alternative certificate of authority shall submit to the Board a completed application, which must demonstrate it meets, or has the ability to meet, depending on circumstances, the standards set out in §7.4 of this chapter; a signed and dated affirmation statement, acknowledging compliance with certification criteria set forth in this section; and a notarized attestation statement signed by the chief executive officer or equivalent. The application form shall contain:

(i) The name and address of the institution and its purpose;

(ii) The names of the sponsors or owners of the institution;

(iii) The regulations, rules, constitutions, bylaws, or other regulations established for the government and operation of the institution;

(iv) The names and addresses of the chief administrative officer, the principal administrators, and each member of the board of trustees or other governing board;

(v) The names of faculty who have been retained, their area(s) of teaching, and their degrees held;

(vi) The types of degrees to be awarded and a list of courses that may be included in each degree program; and

(vii) The location of any facilities maintained or being constructed and a list of potentially hazardous equipment which requires a federal or state government license to operate, if any has been acquired, that is to be used by students in the teaching process.

(D) Institutions shall certify that they maintain a list of their agents as defined in §7.3 of this chapter and have policies to ensure that their agents are of good character and provide accurate information to prospective students and their families, but such agents are not required to register with the Board or submit a fee.

(E) Applications must be submitted with an original and four copies and accompanied by the required fee. Alternative certificate of authority fees shall be five hundred dollars (\$500) more than the fee for a regular certificate of authority, as established in paragraph (9) of this section.

(F) Board's Review of Applications.

(i) Within ninety (90) days of receipt of a complete application, Board staff will review said application and recommend to the Commissioner either approval or denial of the application.

(ii) Within one hundred twenty (120) days of receipt of a complete application, the Commissioner shall either award a one-year alternative certificate of authority or deny the application.

(iii) If a determination under this section is adverse to an institution, it shall become final and binding unless, within forty-five (45) days of its receipt of the adverse determination, the institution invokes the administrative remedies contained in Chapter 1, Subchapter B of this title.

(G) Terms and Limitations of an Alternative Certificate of Authority.

(i) The alternative certificate of authority to grant degrees is valid for one (1) year from the date of issuance.

(ii) The institution shall notify the Board at least ten (10) working days prior to the start of the first class of its first year schedule. Board staff shall visit the institution and interview both staff and students at least once during the first year.

(iii) Certification by the State of Texas is not accreditation, but merely a protection of the public interest while the institution pursues accreditation from a recognized agency, within the time limitations expressed in paragraph (10)(C) of this section. An institution awarded an alternative certificate of authority shall not use terms to interpret the significance of the certificate which specify, imply, or connote greater approval than simple permission to operate and grant degrees in Texas. Terms which may not be used include, but are not limited to, "accredited," "supervised," "endorsed," and "recommended" by the State of Texas or agency thereof. Specific language prescribed by the Commissioner which explains the significance of the alternative certificate of authority shall be included in all publications, advertisements, and other documents where certification and the accreditation status of the institution are usually mentioned, including the institution's catalog and the home page of the institution's Internet website.

(iv) Approval of the application grants the institution the authority to award degrees or to enroll students for courses that may be applicable toward a degree only for those programs approved by the Alternative Certificate of Authority. Separate program approval shall be required for each associate degree program in accordance with this chapter.

(v) The Commissioner may revoke an institution's alternative certificate of authority to grant degrees at any time if the Commissioner finds that:

(I) Any statement contained in an application for the certificate is untrue;

(II) The institution has failed to maintain the standards of the Board, as described herein, on the basis of which the certificate was granted;

(III) Advertising or representations made on behalf of the institution is deceptive or misleading;

(IV) The institution has offered degrees or courses leading to degrees for which they have not been approved in an Alternative Certificate of Authority; or

(V) The institution has violated any provision of this subchapter.

(H) Continuing Operations after One Year.

(i) At least one hundred eighty (180) days, but no more than two hundred ten (210) days, prior to the expiration of the current alternative certificate of authority, an institution, if it desires to continue operations, shall make application to the Board following the process in paragraph (10) of this section.

(ii) The application will be evaluated in the same manner as that prescribed for evaluation of an initial application.

§7.9. Religious Institutions Offering Degrees in Religious Disciplines.

The Texas Higher Education Coordinating Board does not regulate Religious Institutions of Higher Education which offer degrees only in religious disciplines.

(1) A religious institution which would like to offer a degree program or courses leading to a degree in a religious discipline may request a letter from the Coordinating Board indicating that no approval from the Coordinating Board is required.

(2) A religious institution which would like to offer a degree program or courses leading to degree in a non-religious discipline must follow the requirements in Coordinating Board Rules §7.7 of this chapter (relating to Institutions Accredited by Board Recognized Accreditors) or §7.8 of this chapter (relating to Institutions Not Accredited by a Board Recognized Accreditor).

§7.10. Registration of Agents.

(a) Application for Registration--An agent as defined in §7.3(4) of this chapter (relating to Definitions) shall submit an application to the Texas Higher Education Coordinating Board in the following manner:

(1) The application shall be accompanied by the fee described in §7.8(9) of this chapter (relating to Institutions Not Accredited by a Board Recognized Accreditor).

(2) Upon request of the Commissioner or the Commissioner's designee, the agent shall provide sufficient evidence of good character.

(3) The agent's certificate of registration shall be issued for a five-year period.

(4) If the Commissioner denies the application for a certificate of registration, or a renewal of the certificate of registration, the applicant shall be notified in writing, and shall be given the reasons for the denial. Additionally, the Commissioner shall notify the institution or institutions which the agent represented or proposed to represent, according to the records of the Board, in the same manner.

(5) At least sixty (60), but no more than one hundred twenty (120), days prior to the expiration of an agent's certificate, the agent shall complete and file with the Board an application for renewal, accompanied by the registration fee described in §7.8(9) of this chapter.

(6) If a determination under this section is adverse to a person or institution, it shall become final and binding unless, within forty-five (45) days of the receipt of the adverse determination, the person or institution invokes the administrative remedies contained in Chapter 1, Subchapter B of this title (relating to Dispute Resolution).

(b) Revocation of Registration--The Commissioner may revoke an agent's certificate of registration at any time if the Commissioner finds that:

(1) Any statement contained in the application is untrue;

(2) The institution represented has had its certificate of authority revoked;

(3) The agent has made false, deceptive, or misleading statements while attempting to solicit residents of this state as students; or

(4) The agent has violated any provision of this subchapter.

(c) Notice of Revocation--Notice under subsection (b) of this section shall be given to the agent and to the institution that the agent represented or purported to represent. Immediately upon receipt of actual knowledge of the agent's violation, or upon receipt of the Commissioner's notice, whichever is earlier, the institution shall make every effort to:

(1) divest the agent of the authority and of the apparent authority to represent the institution;

(2) notify the media through which the agent made the misrepresentations of the actual facts; and

(3) notify all students whose decision to enroll in the institution was affected by the agent's misrepresentation, of the actual facts.

(d) Administrative Remedies--A revocation made pursuant to this section shall become final and binding unless, within forty-five (45) days of its receipt of the notice of revocation, the institution or agent invokes the administrative remedies contained in Chapter 1, Subchapter B of this title.

§7.11. Changes of Ownership and Other Substantive Changes.

(a) Change of Ownership or Control for Career Schools and Colleges. In the event of a change in ownership or control of a career school or college, the certificate of authority is automatically withdrawn unless the institution meets the requirements of this section.

(b) The Commissioner may authorize the institution to retain the certificate of authority during and after a change of ownership or control, provided that the institution notifies Board staff of the impending transfer in time for staff to receive, review, and approve the documents listed in paragraphs (1) - (3) of this subsection and provided that the following conditions are met:

(1) The institution must submit acceptable evidence that the new owner is complying with all Texas Workforce Commission requirements regarding the purchase or transfer of ownership of a career school or college;

(2) The institution must submit an acceptable written statement of assurance that the new owner understands and undertakes to fully comply with all applicable Board rules, regulations, and/or policies; and

(3) The institution must submit satisfactory evidence of financial ability to adequately support and conduct all approved programs. Documentation shall include but may not be limited to independently audited financial statements and auditor's reports.

(c) If the institution does not meet the conditions outlined under this section prior to completion of transfer of ownership or control and the institution loses its certificate of authority, the new owner(s) shall submit a new application for a certificate of authority as outlined under §7.8 of this chapter (relating to Institutions Not Accredited by a Board Recognized Accreditor).

(d) Any modification of an approved associate degree program that results from a change of ownership or control constitutes a program revision. Requests for approval of program revisions shall conform to the procedures and requirements contained in §7.8(11) of this chapter.

(e) If the ownership or control of a career school or college is transferred within, among, or between different subsidiaries, branches, divisions, or other components of a corporation and if said transfer in no way diminishes the career school or college's administrative capability or educational program quality, the Commissioner may permit the school to retain its certificate of authority during the transfer period. In such cases, the career school or college shall fully comply with all provisions outlined in this section.

§7.12. Review and Use of Degrees from Institutions Not Eligible for Certificates of Authority.

(a) A person holding a degree from an institution that is not eligible to receive a certificate of authority may request a letter from the Board confirming that the institution is not eligible for a certificate of authority and providing the procedures for review and approval of the degree for use in Texas. The Board shall send a copy of the letter to the institution.

(b) Procedures for Review and Approval.

(1) An institution that confers a degree described in §7.3(24)(B) or (C) of this chapter (relating to Definitions), may request that the Board review and approve for use in Texas that degree, as provided in those sections. The person or institution shall submit the request on a form created by the Board.

(2) The Commissioner shall apply the standards provided in §7.5 of this chapter (relating to Administrative Penalties and Injunctions) to determine if the degrees awarded by a person or institution are equivalent to degrees granted by a private postsecondary educational institution or other person holding a certificate of authority from the Board.

(3) The Commissioner, or the Commissioner's designated representatives, and an ad hoc team of independent consultants, if the Commissioner finds that such a team would provide a benefit to the Board or to the institution, shall visit the institution and conduct an on-site survey to evaluate the application for review and approval. The visiting team shall be composed of people who have experience on the faculties or staffs of accredited institutions and who possess knowledge of accreditation standards.

(4) The Board shall charge the person or institution petitioning for review and approval a fee equal to the application fee for a certificate of authority or the actual cost of conducting the review, including travel expenses and cost of consultant fees, whichever is greater.

§7.13. Data Reporting.

The institutions shall provide to the Board annually, in a form established by the Board, student records of the type specified in §7.4(19) of this chapter (relating to Standards for Operation of Institutions).

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



CHAPTER 9. PROGRAM DEVELOPMENT IN PUBLIC TWO-YEAR COLLEGES

SUBCHAPTER A. DEFINITIONS

19 TAC §9.1

The Texas Higher Education Coordinating Board proposes amendments to §9.1, concerning Definitions. These amendments would add definitions for the following terms pertaining to Coordinating Board approval of new academic and career technical/workforce associate degree and certificate programs: academic associate degree; applied associate degree; career technical/workforce program; and statewide articulated transfer curriculum.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that there would be no fiscal implications for state or local government as a result of amending the rules listed above.

Dr. Stephenson has also determined that for each year of the first five years the section is in effect establishment of conditions under which the approval of new academic and career technical/workforce associate degree programs, as well as approval of revision of existing academic and career technical/workforce associate degree programs is automatic, would permit public two-year colleges and the five public universities that are authorized to grant the associate degree to implement new degree programs much more quickly than is possible under the provisions of the current version of Chapter 9. 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 would be no impact on local employment.

Comments on the proposed amendment may be submitted to Dr. MacGregor M. Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at macgregor.stephenson@thexb.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 provisions of Texas Education Code, Chapter 61, §61.051, which describes the Board's role in coordinating higher education in Texas.

The proposed amendment would affect Texas Education Code, Chapter 61, §61.051(e).

§9.1. *Definitions.*

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

(1) Academic associate degree--An associate degree that will satisfy the lower-division requirements for a baccalaureate degree in a specific discipline.

(2) [(4)] Academic courses--Semester credit courses included or allowed under the provisions of the Lower-Division Academic Course Guide Manual designed for college transfer to institutions of higher education in completion of associate and baccalaureate degree programs.

(3) Applied associate degree--An associate degree intended to lead directly to employment following graduation and may satisfy the lower-division requirements for a baccalaureate degree in a specific discipline.

(4) [(2)] Associate degree program--A grouping of courses designed to lead the individual directly to employment in a specific career or to transfer to an upper-level baccalaureate program. This specifically refers to the associate of arts, associate of science, associate of applied arts, associate of applied science, and the associate of occupational studies degrees. The term "applied" in an associate degree name indicates a program designed to qualify students for immediate employment.

(5) Career Technical/Workforce program--An applied associate degree program or a certificate program for which semester credit hours, quarter credit hours, or continuing education units are awarded and which is intended to prepare students for immediate employment or a job upgrade in a specific occupation.

(6) [(3)] Board or Coordinating Board--The Texas Higher Education Coordinating Board.

(7) [(4)] Certificate program--Workforce programs designed for entry-level employment or for upgrading skills and knowledge within an occupation. Certificate programs serve as building blocks and exit points for AAS degree programs.

(8) [(5)] Commissioner of Higher Education or Commissioner--The chief executive officer of the Texas Higher Education Coordinating Board.

(9) [(6)] Concurrent course credit--See "Dual credit."

(10) [(7)] Continuing education unit or CEU--Ten (10) contact hours of participation in an organized continuing education experience under responsible sponsorship, capable direction, and qualified instruction, as outlined in the Guidelines for Instructional Programs in Workforce Education.

(11) [(8)] Contractual agreements--Agreements or contracts between public two-year colleges and one of the following:

(A) a non-SACS/COC-accredited organization, for postsecondary instructional services that could not be offered otherwise;

(B) a public secondary school, for instructional services that could not be offered otherwise; or

(C) another SACS/COC-accredited institution of higher education, whether public or independent.

(12) [(9)] Contract instruction--Postsecondary workforce education and training in which specific instruction is provided by a public two-year college or a non-SACS/COC-accredited organization to a contracting entity. This arrangement is utilized when conventional methodology or instructional systems are difficult or impossible to obtain.

(13) [(40)] Developmental courses--Courses designed to correct academic deficiencies and bring students' skills to an appropriate level for entry into college.

(14) [(11)] Distance education--Classes in which the majority of the instruction occurs when the student and instructor are not in the same physical setting. A class is considered a distance education class if students receive more than one-half of the instruction at a distance. Distance education can be delivered synchronously or asynchronously to any single or multiple location(s):

(A) other than the "main campus of a senior institution (or "on campus"), where the primary office of the chief executive officer of the campus is located;

(B) outside the boundaries of the taxing authority of a community college district; or

(C) via instructional telecommunications to any other distance location, including electronic delivery of all types.

(15) [(12)] Dual credit--A process by which a high school student enrolls in a college course and receives simultaneous academic credit for the course from both the college and the high school. While dual credit courses are often taught on the secondary school campus to high school students only, §4.84 of this title (relating to Institutional Agreements) and §4.85 of this title (relating to Dual Credit Requirements), also apply when a high school student takes a course on the college campus and receives both high school and college credit. Dual credit is also referred to as concurrent course credit; the terms are equivalent. However, dual (or concurrent) enrollment refers to a circumstance in which a student is enrolled in more than one educational institution (including a high school and a college).

[(13) Guidelines for Instructional Programs in Workforce Education (GIPWE)--A Coordinating Board approved publication containing policies and procedures related to the proposal and approval of workforce education courses and programs for Texas public institutions.]

(16) [(14)] Governing board--The body charged with policy direction of any public community college district, the technical college system, public state college, public senior college or university, career school or college, or other educational agency including but not limited to boards of directors, boards of regents, boards of trustees, and independent school district boards.

(17) [(15)] Governing board, Tech-Prep [Tech prep] consortium--Consists at a minimum of representatives of each educational entity that participates in a Tech-Prep consortium which determines the policies and operations of the Tech-Prep [Tech Prep] consortium in accordance with its written by-laws and fiscal agency and personnel agreements. A representative may represent multiple entities as agreed upon by the participating consortium members.

(18) [(16)] Guidelines for Instructional Programs in Workforce Education (GIPWE)--A Coordinating Board-approved publication containing policies and procedures related to the design, development, proposal, approval, operation, and evaluation of career techni-

cal/workforce education courses and programs for Texas public institutions of higher education and career schools and colleges.

(19) [(47)] Independent institution of higher education--A private or independent college or university that is:

(A) organized under the Texas Non-Profit Corporation Act;

(B) exempt from taxation under Article V, §2, of the Texas Constitution and §501(c)(3) of the Internal Revenue Code; and

(C) accredited by the Southern Association of Colleges and Schools Commission on Colleges.

(20) [(48)] Lower-Division Academic Course Guide Manual (ACGM)--A Coordinating Board-approved publication listing academic courses that public two-year colleges can teach and report for contact hour reimbursement from state appropriations without special approval from the Board.

(21) [(49)] Public community college--Any public junior college or public community college as defined in Texas Education Code, §61.003 and §130.005, and whose role, mission, and purpose is outlined in Texas Education Code, §130.0011 and §130.003.

(22) [(20)] Public two-year college--Any public junior college, public community college, public technical college, or public state college as defined in Texas Education Code, §61.003.

(23) [(21)] Related-instruction--Relates to §9.27 of this title (relating to Related-Instruction for Apprenticeship Programs), organized off-the-job classroom instruction in theoretical or technical subjects required for the completion of an apprenticeship program.

(24) [(22)] Remedial and compensatory--All courses designated as developmental or remedial in the Lower-Division Academic Course Guide Manual. These courses are designed to address academic deficiencies and may not be offered for college degree credit.

(25) [(23)] Remedial courses--Courses for high school students designed to correct academic deficiencies and bring students' skills to an appropriate level for graduation from high school.

(26) [(24)] SACS/COC--The Southern Association of Colleges and Schools Commission on Colleges.

(27) Statewide Articulated Transfer Curriculum--A set of courses, up to the level of an academic associate degree, that will satisfy the lower-division requirements of a baccalaureate degree in a specific discipline. A statewide articulated transfer curriculum must:

(A) have the same rigor and content as the equivalent course work in the baccalaureate program offered at a general academic teaching institution;

(B) minimize the time and course work required to complete a baccalaureate degree;

(C) be consistent with the common course numbering system approved by the Board and the recommendations and rules of the Board; and

(D) include only course work directly applicable to the requirements of the baccalaureate degree program(s) with which it is associated.

(28) [(25)] Technical courses or programs--Workforce education courses or programs for which semester/quarter credit hours are awarded.

(29) [(26)] Tech-Prep [Tech Prep] consortium--A collaboration of educational entities and, at local option, employer and

labor organizations, and universities defined in [under] the Carl D. Perkins Career [Vocational] and Technical Education Improvement Act of 2006, as amended, and the Texas Education Code, Chapter 61, Subchapter T, Tech-Prep [Tech Prep] Education [(hereinafter referred to as "the Code")], which work together to implement a Tech-Prep [Tech Prep] program.

(30) [(27)] Unique need academic course--An academic course created by a college to satisfy a unique need and designed to transfer into a baccalaureate program.

[(28)] ~~Vocational courses or programs--Workforce education courses or programs for which continuing education units (CEUs) are awarded.]~~

(31) [(29)] Workforce continuing education course--A course offered for continuing education units (CEUs) with an occupationally specific objective and supported by state funding. A career technical/workforce continuing education course differs from a community service course offered for recreational or avocational purposes and is not supported by state funding.

(32) [(30)] Workforce education--Career technical/workforce [Technical] courses and programs for which semester/quarter credit hours and/or [are awarded, and vocational courses and programs for which] continuing education units are awarded. Career technical/workforce [Workforce] education courses and programs prepare students for immediate employment or job upgrade within specific occupational categories.

(33) [(31)] Workforce Education Course Manual (WECM)--An online database composed of the Coordinating Board's official statewide inventory of career technical/workforce education courses available for two-year public colleges to use in certificate and associate degree 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.

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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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SUBCHAPTER B. GENERAL PROVISIONS

19 TAC §9.27, §9.28

The Texas Higher Education Coordinating Board (Board) proposes amendments to §9.27 and §9.28 relating to General Provisions. These amendments align §9.27 with changes made by the U.S. Department of Labor in re-naming the Bureau of Apprenticeship and Training to the U.S. Department of Labor Employment and Training Administration. These amendments furthermore amend §9.28 to clarify language pertaining to eligibility of career technical/workforce education courses for biennial state legislative appropriations.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that there would be no fiscal implications for state or local government as a result of amending §9.27 and §9.28.

Dr. Stephenson has also determined that for each year of the first five years the sections are in effect establishment of conditions under which the approval of new academic and career technical/workforce associate degree programs, as well as approval of revision of existing academic and career technical/workforce associate degree programs is automatic, would permit public two-year colleges and the five public universities that are authorized to grant the associate degree to implement new degree programs much more quickly than is possible under the provisions of the current version of Chapter 9. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the new section as proposed. There is no impact on local employment.

Comments on the proposed rule amendments may be submitted to Dr. MacGregor M. Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or macgregor.stephenson@thehb.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, §61.051, which describes the Board's role in coordinating higher education in Texas.

The proposed amendment would affect Texas Education Code, Chapter 61, §61.051(e).

§9.27. Related-Instruction for Apprenticeship Programs.

Related-instruction in apprenticeship programs approved by the U.S. Department of Labor Employment and Training Administration [Bureau of Apprenticeship and Training] are eligible for state appropriations. Funding for all other components of apprenticeship programs is subject to the rules and regulations of the Texas Workforce Commission as prescribed under the Texas Education Code, Chapter 133.

§9.28. Appropriations.

To be eligible to receive its proportionate share of the biennial appropriations for support, maintenance, operation, and improvement, each public community college must:

(1) (No change.)

(2) offer a minimum of 24 semester credit hours of career technical/workforce education courses;

(3) - (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.

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SUBCHAPTER C. PURPOSE, ROLE, AND MISSION

19 TAC §9.53

The Texas Higher Education Coordinating Board (Board) proposes amendments to §9.53 relating to Purpose, Role, and Mis-

sion. These amendments would replace antiquated terminology in §9.53(b) by deleting the term "vocational" and replacing it with "career technical/workforce" and update the section title.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that there would be no fiscal implications for state or local government as a result of amending §9.53.

Dr. Stephenson has also determined that for each year of the first five years the sections are in effect the establishment of conditions under which the approval of new academic and career technical/workforce associate degree programs, as well as approval of revision of existing academic and career technical/workforce associate degree programs is automatic, would permit public two-year colleges and the five public universities that are authorized to grant the associate degree to implement new degree programs much more quickly than is possible under the provisions of the current version of Chapter 9. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the proposed amendment. There is no impact on local employment.

Comments on the proposed rule amendment may be submitted to Dr. MacGregor M. Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or macgregor.stephenson@thehb.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 provisions of Texas Education Code, Chapter 61, §61.051, which describes the Board's role in coordinating higher education in Texas.

The proposed amendment would affect Texas Education Code, Chapter 61, §61.051(e).

§9.53. Role, Mission, and Purpose of Public Community/Junior and Technical [Two-Year] Colleges.

(a) (No change.)

(b) Each public community college shall include in its role and mission statement the purpose of the community college as prescribed under Texas Education Code, §130.003(e), that it shall primarily serve its local taxing district and service area, offering career [vocatinal], technical/workforce, and academic courses for certificates or associate degrees. Continuing education, remedial and compensatory education consistent with open admission policies, and a program of counseling and guidance shall also be provided.

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

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19 TAC §9.55

(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 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 §9.55, concerning Purpose, Role, and Mission. This repeal would delete this section in order to eliminate reference to the Board Review of purpose, role, and mission statements at public community colleges as a component of the institutional effectiveness evaluation review process.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that there would be no fiscal implications for state or local government as a result of amending the rules listed above.

Dr. Stephenson has also determined that for each year of the first five years the repeal of the section is in effect the establishment of conditions under which the approval of new academic and career technical/workforce associate degree programs, as well as approval of revision of existing academic and career technical/workforce associate degree programs is automatic, would permit public two-year colleges and the five public universities that are authorized to grant the associate degree to implement new degree programs much more quickly than is possible under the provisions of the current version of Chapter 9. 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 proposed repeal may be submitted to Dr. MacGregor M. Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or macgregor.stephenson@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under the provisions of Texas Education Code, Chapter 61, §61.051, which describes the Board's role in coordinating higher education in Texas.

The proposed repeal would affect Texas Education Code, Chapter 61, §61.051(e).

§9.55. Board Review of Purpose, Role, and Mission Statements.

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 E. CERTIFICATE AND ASSOCIATE DEGREE PROGRAMS

19 TAC §§9.92, 9.93, 9.95

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §§9.92, 9.93, and 9.95, concerning Certificate and Associate Degree Programs. These amendments would permit automatic Coordinating Board approval of new academic and career technical/workforce

associate degree programs, as well as automatic approval of revisions of existing academic and career technical/workforce associate degree programs provided that certain conditions are met. The amendments furthermore add the words, "career technical" to the words "workforce program(s)" in order to align the relevant terminology in Subchapter E with language contained in the Carl D. Perkins Technical Education and Improvement Act of 2006.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that there would be no fiscal implications for state or local government as a result of amending the rules listed above.

Dr. Stephenson has also determined that for each year of the first five years the sections are in effect the establishment of conditions under which the approval of new academic and career technical/workforce associate degree programs, as well as approval of revision of existing academic and career technical/workforce associate degree programs is automatic, would permit public two-year colleges and the five public universities that are authorized to grant the associate degree to implement new degree programs much more quickly than is possible under the provisions of the current version of Chapter 9. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the new section as proposed. There is no impact on local employment.

Comments on the proposed rule amendments may be submitted to Dr. MacGregor M. Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or macgregor.stephenson@thehb.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, §61.051 which describes the Board's role in coordinating higher education in Texas.

The proposed amendments would affect Texas Education Code, Chapter 61, §61.051(e).

§9.92. Authority.

The Texas Education Code, §§61.003, 61.051(e)(f), 61.0513, 61.053, 61.054, 61.055, 61.061, 61.062(c) - (d), 61.075, 130.001(b)(3) - (4), 130.003(e)(1), (2), (3) and (7) and 135.04, authorize the Coordinating Board to adopt policies, enact regulations, and establish rules for the coordination of postsecondary career technical/workforce [and vocational] certificate and associate degree programs eligible for state appropriations.

§9.93. Presentation of Requests and Steps for Implementation of New Degree and Certificate [Application, Approval, and Revision Procedures for Instructional] Programs in Career Technical/Workforce Education.

(a) Requests for new associate degree and certificate programs shall be made in accordance with the procedures stipulated in subsection (b)(1)(A) - (O) of this section. [In accordance with the Guidelines for Instructional Programs in Workforce Education as approved by the Board, each institution wishing to offer a new certificate or applied associate degree program must have completed the following procedures:]

(b) Approval of new associate degree and certificate programs is automatic if all of the following conditions are met.

[(1) Completion of the Application for the Approval of a New Technical or Continuing Education Program. Completed application forms and a statement of assurances must be approved by the

governing board and the chief executive officer of the institution, and forwarded to the Board's Community and Technical Colleges Division. The statement of assurances must certify that the following criteria have been met:]

(1) The institution shall certify that:

(A) The program has institutional and governing board approval;

(B) The institution has researched and documented current job market need for the program and/or that the program would lead to opportunities for further education;

(C) There is recent evidence of both short-term and long-term student demand for the program;

(D) Enrollment projections reflect student demand estimates to ensure the financial self-sufficiency of the program;

~~(A)~~ The institution has documented local and/or regional workforce demand for the program;

~~(E)~~ ~~[(B)]~~ Basic and career technical/workforce skills have been integrated into the curriculum;[-]

~~(F)~~ ~~[(C)]~~ The institution has an enrollment management plan for the program;[-]

~~(G)~~ ~~[(D)]~~ The institution has or will initiate a process to establish articulation agreements for the program with secondary and/or senior level institutions;[-]

~~(H)~~ ~~[(E)]~~ The program is designed to be consistent with the standards of the Commission on Colleges of the Southern Association of Colleges and Schools, and with the standards of other applicable accrediting agencies, and is in compliance with appropriate licensing authority requirements;[-]

~~(I)~~ ~~[(F)]~~ The program would not unnecessarily duplicate existing programs at other institutions;[-]

~~(J)~~ ~~[(G)]~~ Representatives from private sector business and industry have been involved in the creation of the program through participation in an advisory committee;[-]

~~(K)~~ ~~[(H)]~~ Adequate funding is available to cover all new costs to the institution over the first five years after the implementation of the program;[-]

~~(L)~~ New costs during the first five years of the program would not exceed \$2 million;

~~(M)~~ ~~[(I)]~~ The institution has an improvement plan in place for all career technical/workforce programs that do not currently meet Board standards for both graduation and placement;[-]

~~(N)~~ ~~[(J)]~~ The appropriate Higher Education Regional Council has been notified in writing of the proposal for a new program;[-]

~~(O)~~ ~~[(K)]~~ Skill standards recognized by the Texas Skill Standards Board, if they exist for the ~~[this]~~ discipline, have been reviewed and considered for inclusion in the curriculum for the program.

(2) If a proposed two-year career technical/workforce education program or a certificate program meets the conditions stipulated in subsection (b)(1)(A) - (O) of this section, the institution shall submit a request to the Assistant Commissioner for Academic Affairs and Research to add the program. If a proposed program does not meet the conditions stipulated in subsection (b)(1)(A) - (O) of this section, the institution must submit a proposal using the standard degree request form.

(A) The Coordinating Board shall post the proposed program online for public comment for a period of 30 days. If no objections are received, the Coordinating Board staff shall update the institution's program inventory accordingly.

(B) If objections to the proposed program are received by the Coordinating Board staff, the proposed program shall not be implemented until all objections are resolved. The Coordinating Board reserves the right to audit a certificate or degree program at any time to ensure compliance with any of the criteria contained in subsection (b)(1)(A) - (O) of this section.

~~[(2) Completion of Staff Review Process. The Board staff shall review the application for satisfactory fulfillment of the new program requirements and procedures as outlined in the Board-approved Guidelines for Instructional Programs in Workforce Education. The staff shall confer with the institution when additional information or clarification is needed.]~~

~~[(3) Completion of Formal Program Review. Once the program requirements have been met, the Board staff may schedule the program for formal program review. This review process shall include representatives from the institution, the Board staff, and other appropriate agencies and institutions of higher education.]~~

~~(c)~~ ~~[(4)]~~ New Program Approval. The Board delegates to the Commissioner final approval authority for all certificate programs, and for applied associate degree programs that meet Board policies for approval as outlined in the Guidelines for Instructional Programs in Workforce Education. The Commissioner may delegate this final authority to the Assistant Commissioner for Academic Affairs and Research.

~~(d)~~ ~~[(5)]~~ Each quarter, the Commissioner shall send a list of the approvals and disapprovals under this section to Board members. A list of the approvals and disapprovals shall also be attached to the minutes of the next appropriate quarterly meeting.

~~(e)~~ ~~[(6)]~~ The Commissioner shall ~~[must]~~ forward a program to the Board for consideration at an appropriate quarterly meeting if either of the following conditions is met:

(1) ~~[(A)]~~ The proposed program is the subject of an unresolved grievance or dispute between institutions; ~~or~~[-]

(2) ~~[(B)]~~ The Commissioner has disapproved ~~[of]~~ the proposed program and the institution has requested a Board review.

~~(f)~~ Revision of an existing associate degree or certificate program is automatically approved if all of the requirements in subsection (b)(1)(A) - (O) of this section are met.

~~(g)~~ To request a change of CIP code for an existing degree or certificate program, the institution shall notify the Coordinating Board staff and certify that the revised program meets the requirements in subsection (b)(1)(A) - (O) of this section.

~~(h)~~ If the revision of an existing degree or certificate program meets the conditions stipulated in subsection (b)(1)(A) - (O) of this section the institution shall submit a request to the Assistant Commissioner for Academic Affairs and Research to revise the program. The Coordinating Board staff shall update the institution's program inventory accordingly.

~~(i)~~ If a program revision does not meet the conditions stipulated in subsection (b)(1)(A) - (O) of this section, the institution shall submit a revision request using the standard revision request form.

~~(j)~~ The Coordinating Board reserves the right to audit a certificate or degree program at any time to ensure compliance with any of the requirements in subsection (b)(1)(A) - (O) of this section.

~~(b)~~ Each institution wishing to revise an existing certificate or applied associate degree program must complete the procedures as outlined in the Board-approved Guidelines for Instructional Programs in Workforce Education.]

~~(k)~~ ~~(e)~~ Administrative Officers. All programs must be under the direction of an administrator having appropriate authority to ensure that quality is maintained and that programs are conducted in compliance with all applicable laws and rules. Administrative officers must possess credentials, work experience, and/or demonstrated competence appropriate to their areas of responsibility as specified by the Southern Association of Colleges and Schools Commission on Colleges.

~~(l)~~ ~~(d)~~ Faculty and Staff. Faculty and staff must be approved by the postsecondary institution. Each individual must meet the minimum qualifications established by the Board.

~~(m)~~ ~~(e)~~ Each public two-year college may classify career technical/workforce continuing education and other courses as earning semester credit hours or continuing education units (CEUs). Contact hours reported for career technical/workforce education courses which result in either credit hours or CEUs shall be eligible for state appropriations. A course or program that meets or exceeds 360 hours in length must be approved as a career technical/workforce certificate program except by special justification and approval by Board staff. A course or program that meets or exceeds 780 hours in length must result in the award of appropriate semester credit hours and be applicable to a certificate and an applied associate degree program.

§9.95. Reporting to the Board.

(a) Contact hours for courses in approved career technical/workforce education certificate and applied associate degree programs from public two-year colleges and other public institutions providing certificate or associate degree programs must be determined and reported in compliance with Board rules and policy as outlined in the Workforce Education Course Manual and state law.

(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



SUBCHAPTER F. CAREER TECHNICAL/WORKFORCE CONTINUING EDUCATION COURSES

19 TAC §§9.112 - 9.117

The Texas Higher Education Coordinating Board (Board) proposes amendments to §§9.112 - 9.117 relating to Workforce Continuing Education Courses. These amendments would add the words "career technical" to the words "workforce program(s)" in order to align the relevant terminology in Subchapter F with language contained in the Carl D. Perkins Technical Education and Improvement Act of 2006.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that there would be no fiscal implications for state or local government as a result of amending §§9.112 - 9.117.

Dr. Stephenson has also determined that for each year of the first five years the sections are in effect the establishment of conditions under which the approval of new academic and career technical/workforce associate degree programs, as well as approval of revision of existing academic and career technical/workforce associate degree programs is automatic, would permit public two-year colleges and the five public universities that are authorized to grant the associate degree to implement new degree programs much more quickly than is possible under the provisions of the current version of Chapter 9. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the new section as proposed. There is no impact on local employment.

Comments on the proposed rule amendment may be submitted to Dr. MacGregor M. Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or macgregor.stephenson@thehb.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, §61.051, which describes the Board's role in coordinating higher education in Texas.

The proposed amendments would affect Texas Education Code, Chapter 61, §61.051(e).

§9.112. Authority.

The Texas Education Code, §§54.051(n), 54.545, 61.051(j), 61.053, 61.054, 61.060, 61.061, 61.062, 130.001(b)(3)-(4), 130.003(e)(4), and 130.006, authorize the Coordinating Board to adopt policies, enact regulations, and establish rules for public two-year colleges for the coordination of career technical/workforce continuing education courses eligible for state appropriations.

§9.113. General Provisions.

(a) Tuition and fees for state-funded career technical/workforce continuing education courses shall be assessed according to policies established by the Board. The governing board of the institution shall establish tuition and fees for career technical/workforce continuing education courses not eligible for state appropriations.

(b) Any career technical/workforce continuing education program meeting or exceeding 360 contact hours shall be subject to all of the requirements for career technical/workforce education programs for state appropriations as outlined in Chapter 9, Subchapter E of this title (relating to Certificate and Associate Degree Programs).

(c) Any career technical/workforce continuing education program meeting or exceeding 780 contact hours in length must result in the award of semester or quarter credit hours and be applicable to a certificate and an applied associate degree program. An exception shall be made for Emergency Medical/Paramedic continuing education programs, which may reach 800 contact hours.

§9.114. Application and Approval Procedures for Career Technical/Workforce Continuing Education Courses.

(a) Any career technical/workforce continuing education course listed in the Workforce Education Course Manual (WECM) may be offered by any public two-year college without prior approval by the Board. Courses in the current WECM are valid until revised or deleted by subsequent updates of the WECM.

(b) All career technical/workforce continuing education courses shall meet the guidelines outlined in the Guidelines for Instructional Programs in Workforce Education as approved by the Board and the Workforce Education Course Manual.

§9.115. *Funding.*

(a) Contact hours reported for career technical/workforce education courses, which result in continuing education units (CEUs) shall be eligible for state appropriations.

(b) Career technical/workforce [Workforce] continuing education courses with fewer than seven (7) contact hours of instruction will not receive state funding unless the specific type and length of instruction are required by local, state, or national licensing, certifying, regulatory, or accrediting agencies.

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

§9.116. *Reporting to the Board.*

Contact hours for career technical/workforce continuing education courses from public two-year colleges must be determined and reported in compliance with Board policy as outlined in the Guidelines for Instructional Programs in Workforce Education as approved by the Board, the Workforce Education Course Manual, and state law.

§9.117. *Disapproval of Courses; Noncompliance.*

No funds appropriated to any public two-year college may be expended for any career technical/workforce continuing education course which has not been approved by the Board staff.

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 H. PARTNERSHIPS BETWEEN SECONDARY SCHOOLS AND PUBLIC TWO-YEAR COLLEGES

19 TAC §9.142

The Texas Higher Education Coordinating Board (Board) proposes amendments to §9.142 concerning Partnerships Between Secondary Schools and Public Two-Year Colleges. These amendments would delete the reference to the Carl D. Perkins Vocational and Applied Technology Education Act and replace it with the current title: The Carl D. Perkins Career and Technical Education Improvement Act of 2006.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that there would be no fiscal implications for state or local government as a result of amending §9.142.

Dr. Stephenson has also determined that for each year of the first five years the section is in effect the establishment of conditions under which the approval of new academic and career technical/workforce associate degree programs, as well as approval

of revision of existing academic and career technical/workforce associate degree programs is automatic, would permit public two-year colleges and the five public universities that are authorized to grant the associate degree to implement new degree programs much more quickly than is possible under the provisions of the current version of Chapter 9. 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 would be no impact on local employment.

Comments on the proposed rule amendment may be submitted to Dr. MacGregor M. Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or macgregor.stephenson@thexb.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 provisions of Texas Education Code, Chapter 61, §61.051, which describes the Board's role in coordinating higher education in Texas.

The proposed amendment would affect Texas Education Code, Chapter 61, §61.051(e).

§9.142. *Authority.*

Texas Education Code, §§29.182, 29.184, 61.076(a), 61.851 through 61.855, 130.001(b)(3) - (4), 130.008, 130.090, and 135.06(d), authorize the Coordinating Board to adopt policies, enact regulations, and establish rules for public two-year colleges to enter into agreements with secondary schools to offer courses which grant credit toward the student's high school academic requirements and/or college-level credit. In addition, the Carl D. Perkins Career and Technical Education Improvement Act of 2006 [~~Carl D. Perkins Vocational and Applied Technology Education Act~~] (hereinafter known as "the Act"), as amended, authorizes the State Board of Education in its capacity as the State Board for Career and Technology Education to designate the Coordinating Board as the administering agency of the Tech-Prep Education Act, or that section, part, or title of the Act referring to Tech-Prep Education.

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

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General Counsel

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SUBCHAPTER J. ACADEMIC ASSOCIATE DEGREE AND CERTIFICATE PROGRAMS

19 TAC §9.181, §9.183

The Texas Higher Education Coordinating Board (Board) proposes amendments to §9.181 and §9.183. These amendments would permit automatic Board approval of new academic and career technical/workforce associate degree programs, as well as automatic approval of revisions of existing academic and career technical/workforce associate degree programs provided that conditions stipulated in the amended version of Chapter 9 are met.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that there would be no fiscal implications for state or local government as a result of amending §9.181 and §9.183.

Dr. Stephenson has also determined that for each year of the first five years the sections are in effect establishment of conditions under which the approval of new academic and career technical/workforce associate degree programs, as well as approval of revision of existing academic and career technical/workforce associate degree programs is automatic, would permit public two-year colleges and the five public universities that are authorized to grant the associate degree to implement new degree programs much more quickly than is possible under the provisions of the current version of Chapter 9. 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 would be no impact on local employment.

Comments on the proposed rule amendments may be submitted to Dr. MacGregor M. Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or macgregor.stephenson@thexb.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, §61.051, which describes the Board's role in coordinating higher education in Texas.

The proposed amendments would affect Texas Education Code, Chapter 61, §61.051(e).

§9.181. Purpose.

This subchapter provides rules for the structure of academic associate degree programs offered by ~~the~~ public community colleges, Texas State Technical College-Harlingen, and the Lamar State Colleges ~~[College-Port Arthur and Lamar State College-Orange]~~ that are eligible for state appropriations.

§9.183. Degree Titles, Program Length, and Program Content.

(a) An academic associate degree may be called an associate of arts (AA), an associate of science (AS), or an associate of arts in teaching (AAT) degree.

(1) (No change.)

(2) If a college offers both associate of arts (AA) and associate of science (AS) degrees, the degree programs may be differentiated in one of two ways, including:

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

(C) Each academic associate degree must provide a clearly-articulated curriculum that can be associated with a discipline or field of study leading to a baccalaureate degree, and must be identified as such in the institution's program inventory.

(3) (No change.)

(b) (No change.)

(c) Except as provided in paragraphs ~~paragraph~~ (1) and (2) of this subsection, academic associate degree programs must incorporate the institution's approved core curriculum as prescribed by §4.28 of this title (relating to Core Curriculum) and §4.29 of this title (relating to Core Curricula Larger than 42 Semester Credit Hours).

(1) A college may offer a specialized academic associate degree that incorporates a Board-approved field of study curriculum as

prescribed by §4.32 of this title (relating to Field of Study Curricula) and a portion of the college's approved core curriculum if the coursework for both would total more than 66 SCH; or[-]

(2) A college may offer a specialized academic associate degree that incorporates a Board-approved statewide articulated transfer curriculum and a portion of the college's approved core curriculum if the coursework for both would total more than 66 SCH.

(d) ~~[(2)]~~ A college that has a signed articulation agreement with a General Academic Teaching Institution to transfer a specified curriculum may offer a specialized AA or AS (but not AAT) degree program that incorporates that curriculum.

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

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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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SUBCHAPTER J. ACADEMIC ASSOCIATE
DEGREE PROGRAMS

19 TAC §§9.184 - 9.186

(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 §§9.184 - 9.186, concerning Academic Associate Degree Programs. The repeal of these sections would delete §9.184 regarding implementation of academic associate degree programs without requesting approval from the Board; delete §9.185 regarding reporting contact hours in approved academic certificate and associate degree programs, and delete old language in §9.186 regarding disapproval of programs; non-compliance.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that there would be no fiscal implications for state or local government as a result of the repeal.

Dr. Stephenson has also determined that for each year of the first five years the repeal of these sections is in effect establishment of conditions under which the approval of new academic and career technical/workforce associate degree programs, as well as approval of revision of existing academic and career technical/workforce associate degree programs is automatic, would permit public two-year colleges and the five public universities that are authorized to grant the associate degree to implement new degree programs much more quickly than is possible under the provisions of the current version of Chapter 9. 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 would be no impact on local employment.

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

The repeal of these sections are proposed under the provisions of Texas Education Code, Chapter 61, §61.051, which describes the Board's role in coordinating higher education in Texas.

The proposed repeals would affect Texas Education Code, Chapter 61, §61.051(e).

§9.184. *Approval.*

§9.185. *Reporting to the Board.*

§9.186. *Disapproval of Programs; Noncompliance.*

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 J. ACADEMIC ASSOCIATE DEGREE AND CERTIFICATE PROGRAMS

19 TAC §§9.184 - 9.186

The Texas Higher Education Coordinating Board proposes new §§9.184 - 9.186, concerning Academic Associate Degree and Certificate Programs. These new sections would establish approval criteria for new academic associate degree programs and permit colleges to award an academic certificate to students who successfully complete a college's approved curriculum, a Board-approved field of study curriculum, and/or a Board-approved statewide articulated transfer curriculum of less than degree length.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that there would be no fiscal implications for state or local government as a result of the amendments.

Dr. Stephenson has also determined that for each year of the first five years the new sections are in effect establishment of conditions under which the approval of new academic and career technical/workforce associate degree programs, as well as approval of revision of existing academic and career technical/workforce associate degree programs is automatic, would permit public two-year colleges and the five public universities that are authorized to grant the associate degree to implement new degree programs much more quickly than is possible under the provisions of the current version of Chapter 9. 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 would be no impact on local employment.

Comments on the proposed new sections may be submitted to Dr. MacGregor M. Stephenson, Assistant Commissioner, Texas

Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas, 78711 or macgregor.stephenson@thexb.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 provisions of Texas Education Code, Chapter 61, §61.051, which describes the Board's role in coordinating higher education in Texas.

The proposed new sections would affect Texas Education Code, Chapter 61, §61.051(e).

§9.184. *Criteria for New Academic Associate Degree Programs and Steps for Implementation.*

Approval of new academic associate degree programs is automatic if all of the following conditions are met.

(1) The institution shall certify that the following criteria have been met:

(A) The program has institution and governing board approval:

(B) There is recent evidence of both short-term and long-term student demand for the program.

(C) Enrollment projections reflect student demand estimates to ensure the financial self-sufficiency of the program.

(D) The institution has an enrollment management plan for the program.

(E) If the program does not follow a Board-approved field of study curriculum or a Board-approved statewide articulation transfer curriculum, the institution has or will initiate a process to establish transfer of credit articulation agreements for the program with senior-level institutions.

(F) The program is designed to be consistent with the standards of the Commission on Colleges of the Southern Association of Colleges and Schools, other applicable accrediting agencies, and is in compliance with applicable licensing authority requirements.

(G) Adequate funding is available to cover all new costs to the institution over the first five years after the implementation of the program.

(H) The program complies with all applicable provisions contained in divisions of this subchapter and, and adheres to the Standards for Academic Associate Degree Programs approved by the Board.

(2) The Coordinating Board shall post the proposed program online for public comment for a period of 30 days. If no objections are received, the Coordinating Board staff shall update the institution's program inventory accordingly. If objections to the proposed program are received by the Coordinating Board staff, the proposed program shall not be implemented until all objections are resolved. The Coordinating Board reserves the right to audit a certificate or degree program at any time to ensure compliance with any of the criteria contained in paragraph (1)(A) - (H) of this section.

(3) New Program Approval. The Board delegates to the Commissioner final approval authority for all certificate programs, applied associate degree programs, and academic associate degrees that meet Board policies for approval as outlined in the Guidelines for Instructional Programs in Workforce Education and this subchapter. The Commissioner may delegate this final authority.

§9.185. *Academic Certificates.*

A college may award an academic certificate to a student who completes:

- (1) the college's approved core curriculum; or
- (2) a Board-approved field of study curriculum; or
- (3) a Board-approved statewide articulated transfer curriculum of less than degree length.

§9.186. Academic Programs Offered by Texas State Technical College-Harlingen.

(a) Texas State Technical College-Harlingen may offer the associate of science degree in accordance with the provisions of Texas Education Code §135.51(b)(1-2).

(b) An associate of science degree program offered by TSTC-Harlingen shall not unnecessarily duplicate existing programs offered in the service areas of Del Mar College, South Texas College, or Texas Southmost College.

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 K. TECH-PREP PROGRAMS AND CONSORTIA

19 TAC §9.203, §9.206

The Texas Higher Education Coordinating Board proposes amendments to §9.203 and §9.206, concerning Tech-Prep Programs and Consortia. These amendments would change the reference to the Carl D. Perkins Vocational and Technical Education Act to the Carl D. Perkins Career and Technical Education Improvement Act of 2006 in §9.203; add clarifying terms to §9.206(a) and (b), and add federally required goals for Tech-Prep programs to §9.206(b).

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that there would be no fiscal implications for state or local government as a result of the amendments.

Dr. Stephenson has also determined that for each year of the first five years the amendments are in effect establishment of conditions under which the approval of new academic and career technical/workforce associate degree programs, as well as approval of revision of existing academic and career technical/workforce associate degree programs is automatic, would permit public two-year colleges and the five public universities that are authorized to grant the associate degree to implement new degree programs much more quickly than is possible under the provisions of the current version of Chapter 9. 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 would be no impact on local employment.

Comments on the proposed rule amendments may be submitted to Dr. MacGregor M. Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O.

Box 12788, Austin, Texas 78711 or macgregor.stephenson@thexb.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, §61.051, which describes the Board's role in coordinating higher education in Texas.

The proposed amendments would affect Texas Education Code, Chapter 61, §61.051(e).

§9.203. General Provisions.

(a) The State Board of Education, in its capacity as the Board for Career and Technology Education, is the eligible agency responsible for implementation and evaluation of all programs funded in Texas under the Carl D. Perkins Career and Technical Education Improvement Act of 2006 [~~Carl D. Perkins Vocational and Technical Education Act~~] (the Act), as amended, (20 USC 2301 et seq.) until such time as the Act amends the provision defining the eligible agency.

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

§9.206. Evaluation of the Tech-Prep Programs and Consortia.

(a) [~~The~~] Board staff shall [~~biennially~~] evaluate each Tech-Prep consortium to determine the success of the consortium's Tech-Prep programs and activities.

(b) The required goals and performance measures [and standards] by which each consortium shall be evaluated include the following:

(1) Goal 1: Increase the number of secondary Tech-Prep graduates enrolled in postsecondary institutions. Measure 1: Perkins IV Tech-Prep Indicator 1STP1: The number and percent of secondary education Tech-Prep students enrolled in the Tech-Prep program who enroll in postsecondary education;

(2) Goal 2: Increase the number of secondary Tech-Prep graduates enrolled in the same field or major at postsecondary institutions. Measure 2: Perkins IV Tech-Prep Indicator 1STP2: The number and percent of secondary education Tech-Prep students enrolled in the Tech-Prep program who enroll in postsecondary education in the same field or major as the secondary education tech-prep students were enrolled at the secondary level;

(3) Goal 3: Increase the number of secondary Tech-Prep graduates that complete a State or industry-recognized certification or licensure. Measure 3: Perkins IV Tech-Prep Indicator 1STP3: The number and percent of secondary education Tech-Prep students enrolled in the Tech-Prep program who complete a State or industry-recognized certification or licensure;

(4) Goal 4: Increase the number of secondary Tech-Prep graduates with postsecondary credits. Measure 4: Perkins IV Tech-Prep Indicator 1STP4: The number and percent of secondary education Tech-Prep students enrolled in the Tech-Prep program who successfully complete, as a secondary school student, courses that award postsecondary credit at the secondary level;

(5) Goal 5: Reduce the number of secondary Tech-Prep graduates enrolled in remedial mathematics, writing, or reading courses upon entering postsecondary education. Measure 5: Perkins IV Tech-Prep Indicator 1STP5: The number and percent of secondary education Tech-Prep students enrolled in the Tech-Prep program who enroll in remedial mathematics, writing, or reading courses upon entering postsecondary education;

(6) Goal 6: Increase the number of postsecondary Tech-Prep graduates placed in a related field of employment. Measure 6:

Perkins IV Tech-Prep Indicator 1PTP1: The number and percent of postsecondary education Tech-Prep students who are placed in a related field of employment not later than 12 months after graduation from the tech-prep program;

(7) Goal 7: Increase the number of postsecondary Tech-Prep students that complete a State or industry-recognized certification or licensure. Measure 7: Perkins IV Tech-Prep Indicator 1PTP2: The number and percent of postsecondary education Tech-Prep students who complete a State or industry-recognized certification or licensure;

(8) Goal 8: Increase the number of postsecondary Tech-Prep students that complete a 2-year degree or certificate program. Measure 8: Perkins IV Tech-Prep Indicator 1PTP3: The number and percent of postsecondary education Tech-Prep students who complete a 2-year degree or certificate program within the normal time for completion of such program; and

(9) Goal 9: Increase the number of postsecondary Tech-Prep students that complete a baccalaureate degree program. Measure 9: Perkins IV Tech-Prep Indicator 1PTP4: The number and percent of postsecondary education Tech-Prep students who complete a baccalaureate degree program within the normal time for completion of such program.

~~[(1) Measure 1: The secondary participation rate. Standard 1: The rate shall be at least the state average (based on data provided by the Texas Education Agency) for the previous year and shall be increasing from year-to-year.]~~

~~[(2) Measure 2: The postsecondary participation rate. Standard 2: The rate shall be at least the state average (based on data provided by the Texas Higher Education Coordinating Board) for the previous year and shall be increasing from year-to-year.]~~

~~(c) [(3) [Measure 3:] The appropriate and timely expenditure of Tech-Prep funds;[- Standard 3:] The consortium shall have spent at least 95 percent of its allocated funds during the previous year and not had any findings during the fiscal desk review process.~~

~~(d) [(4) [Measure 4:] Maintenance of detailed time distribution records for staff paid from multiple sources of funds;[- Standard 4:] Time distribution records shall be completed for each consortium employee paid from multiple funds on at least a monthly basis, and be an accurate reflection of the time-on-task for consortium activities related to Tech-Prep. Monthly time sheets must be on file at the consortium office for a minimum of three years.~~

~~(e) [(5) [Measure 5:] Timely submission of accurate quarterly reports to the Coordinating Board;[- Standard 5:] Quarterly reports shall be submitted by Coordinating Board due dates and include a response for each goal and objective listed in that report.~~

~~[(6) Measure 6: Participation of consortia at state Tech-Prep quarterly and called meetings. Standard 6: Attendance by at least one consortium representative is required at all state Tech-Prep meetings.]~~

~~[(7) Measure 7: Site visits to member institutions and public schools. Standard 7: All consortium member institutions and public schools shall receive at least two site visits each grant year from consortium staff. Documentation of site visits shall be included as part of the final report for the grant year to the Coordinating Board.]~~

~~(f) [(e)] [The] Board staff shall provide each consortium with a written report on the results of the evaluation. A consortium shall respond to any finding of the failure to meet performance measures and standards within thirty (30) days of the receipt of the report.~~

~~(g) [(d)] If a consortium fails to meet two or more of the performance measures and standards established in this provision, Board staff shall conduct a technical site visit. As part of the technical site visit, the consortium shall provide to Board staff any additional documentation needed for a review of the following activities:~~

~~(1) Increasing secondary and/or postsecondary participation rates;~~

~~(2) Past and present marketing efforts to increase participation rates;~~

~~(3) Opportunities for professional development for teachers, counselors, and administrators;~~

~~(4) Career exploration activities for students;~~

~~(5) Current articulation agreements between and among public schools and institutions;~~

~~(6) Current Strategic Continuous Improvement Plan as described in §9.205(1) of this title (relating to Consortium Responsibilities);~~

~~(7) Use of funds;~~

~~(8) Support and opportunities for participation by member institutions and public schools; and~~

~~(9) Operation of the consortium within all the bylaws of the organization. Compliance with all by-laws shall be certified by the consortium governing board chair as part of the annual application to the Coordinating Board.~~

~~(h) [(e)] Within thirty (30) days of the technical site visit, Board staff shall provide a final evaluation of the consortium's programs and activities. If a consortium fails to meet the standards set out in subsection (b) of this section, Board staff shall provide assistance to the consortium governing board in developing a revised Strategic Continuous Improvement Plan. The revised Plan shall set requirements with reasonable deadlines for the purpose of assisting the consortium in meeting required performance measures and standards established in this provision.~~

~~(i) [(f)] Board staff shall monitor the consortium's performance of the revised Plan for six (6) months. If the consortium fails to comply with the requirements of the revised Plan, the Commissioner may determine that a consortium shall be reorganized, consolidated, or abolished as follows:~~

~~(1) If the consortium fails to improve its performance relating to participation rates, the Commissioner may require the consortium to reorganize or require the consolidation of the consortium with an existing, high-performing consortium;[-]~~

~~(2) If the consortium fails to improve its performance for appropriate and timely expenditure of Tech-Prep funds and maintenance of accurate time distribution records, the Commissioner may require the consortium to be abolished and a new consortium, or consortia, be established to serve the area; and[-]~~

~~(3) If the consortium fails to improve its performance for operation within the organization's established bylaws, the Commissioner may require the consortium to be abolished and a new consortium, or consortia, be established to serve the area.~~

~~(j) [(g)] Not later than October 1 of each even-numbered year, the Board staff shall report to each Tech-Prep consortium the results of all evaluations and follow-up actions during the previous two years. The report shall include the following:~~

- (1) Any failure of the consortium to meet the performance measures and standards established in this provision;
- (2) The activities and achievements of the consortium in meeting the performance measures and standards established in this provision;
- (3) Those areas in which the consortium has made improvement in meeting the performance measures and standards established in this provision; and
- (4) Any actions taken by Board staff.

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 July 24, 2009.

TRD-200903099

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: October 29, 2009

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



CHAPTER 10. INSTITUTIONAL EFFECTIVENESS IN PUBLIC TWO-YEAR COLLEGES

SUBCHAPTER A. PURPOSE, AUTHORITY, AND DEFINITIONS

19 TAC §§10.1 - 10.3

(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 §§10.1 - 10.3, concerning Institutional Effectiveness in Public two-Year Colleges, for the purpose of allowing the Board staff to completely re-write the chapter in order to establish rules for the new program review process. The Board staff is currently developing a process for the evaluation of academic programs at the associate, bachelor, and master's degree levels. The new process would replace the currently existing institutional effectiveness evaluation process that applies only to career and technical programs offered by public community and technical colleges.

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

Dr. Stephenson has also determined that for each year of the first five years the repeals are in effect the new program review process would significantly expand the Board Staff's ability to evaluate existing degree programs by extending the process to the bachelor's and master's degree levels. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the repeals as proposed. There is no impact on local employment.

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

The repeals are proposed under the provisions of Texas Education Code, Chapter 61, §61.051, which describes the Board's role in coordinating higher education in Texas.

The proposed repeals would affect Texas Education Code, Chapter 61, §61.051(e).

§10.1. *Purpose.*

§10.2. *Authority.*

§10.3. *Definitions.*

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 July 24, 2009.

TRD-200903100

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: October 29, 2009

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



SUBCHAPTER B. GENERAL PROVISIONS

19 TAC §§10.21 - 10.24

(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 (Board) proposes the repeal of §§10.21 - 10.24, related to Institutional Effectiveness in Public Two-Year Colleges, for the purpose of allowing the Board staff to completely re-write the chapter in order to establish rules for the new program review process. The Board staff is currently developing a process for the evaluation of academic programs at the associate, bachelor, and master's degree levels. The new process would replace the currently existing institutional effectiveness evaluation process that applies only to career and technical programs offered by public community and technical colleges.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that for each year of the first five years there will be no fiscal implications for state or local government as a result of repealing the rules listed above.

Dr. Stephenson has also determined that for each year of the first five years the repeal of these sections is in effect the new program review process would significantly expand the Board staff's ability to evaluate existing degree programs by extending the process to the bachelor's and master's degree levels. 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 repeal may be submitted to Dr. MacGregor Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or macgregor.stephenson@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under the provisions of Texas Education Code, Chapter 61, §61.051, which describes the Board's role in coordinating higher education in Texas.

The proposed repeal would affect Texas Education Code, Chapter 61, §61.051(e).

§10.21. *Procedures.*

§10.22. *Action and Order of the Board.*

§10.23. *Compliance and Certification.*

§10.24. *Noncompliance.*

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 July 24, 2009.

TRD-200903101

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: October 29, 2009

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



CHAPTER 13. FINANCIAL PLANNING SUBCHAPTER I. PERFORMANCE INCENTIVE FUNDING

19 TAC §§13.150 - 13.152

The Texas Higher Education Coordinating Board proposes new §§13.150 - 13.152, concerning rules applying to general provisions of programs related to performance incentive funding. Section 13.150 provides the definitions that will be needed for the subchapter. Section 13.151 establishes the authority for the program and rule making by the Board. Section 13.152 establishes the provisions of the program. Specifically, in compliance with House Bill 51, 81st Texas Legislature, the proposed rules would establish the definitions, authority, and general provisions for the Performance Incentive Funding (PIF).

Ms. Susan Brown, Assistant Commissioner, Planning and Accountability, has determined that for each year of the first five years the new sections are in effect, there will not be no 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 new sections are in effect, the public benefit anticipated as a result of administering the sections will be more efficient Board operations relating to distribution of funds allocated to this program by the legislature. 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 new sections may be submitted to Gary W. Johnstone, Deputy Assistant Commissioner, Planning and Accountability, 1200 East Anderson Lane, Austin, Texas 78752 or

gary.johnstone@thehb.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, §62.073.

The new sections affect Texas Education Code, §§62.071 - 62.073.

§13.150. *Definitions.*

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

(1) At-Risk Student--An undergraduate student who has one of the following attributes.

(A) score on the Scholastic Assessment Test (SAT) or the American College Test (ACT) is less than the national mean score of students' scores on that test;

(B) has been awarded a grant under the federal Pell Grant program;

(C) was 20 years of age or older on the date the student initially enrolled in the institution;

(D) enrolled as a part-time student; and

(E) did not receive a high school diploma but received a high school equivalency certificate within the last six years.

(2) Commissioner--The Commissioner of Higher Education; as used in this subchapter, "Commissioner" means the agency acting through its executive, and his or her designees, staff, or agents.

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

(4) Critical Field--Field of engineering, computer science, mathematics, physical science, allied health, nursing, or teacher certification in a field of science or mathematics.

(5) Eligible Public Institution--A general academic teaching institution other than a public state college as defined in Texas Education Code, §61.003.

§13.151. *Authority.*

(a) Texas Education Code, §62.071, defines the eligibility for the Performance Incentive Funding.

(b) Texas Education Code, §62.072, establishes the methodology for distribution of the funding provided for this purpose.

(c) Texas Education Code, §62.073, authorizes the Board, to adopt rules for the administration of the program.

§13.152. *Performance Incentive Fund (PIF).*

(a) Purpose. The purpose of this program is to provide funds to eligible institutions based on the degrees awarded and the increase in degrees awarded, as appropriated by the legislature, as compared to previous outcomes.

(b) Distribution.

(1) 50 percent to be distributed among eligible institutions in proportion to the increase, if any, in the average number of degrees awarded annually by each institution in the two most recent fiscal years from the average number of degrees awarded annually by that institution in the two fiscal years immediately preceding those fiscal years, using the weights assigned to each degree.

(2) 50 percent to be distributed among eligible institutions in proportion to the average number of degrees awarded annually by each institution in the three most recent fiscal years, using the weights assigned to each degree.

(c) Calculation of awards. A number of points is assigned for each degree awarded by an eligible institution according to the following:

- (1) Noncritical field--Not at-risk student: 1 point;
- (2) Noncritical field--at-risk student: 2 points;
- (3) Critical field--at-risk student: 2 points; and
- (4) Critical field--at-risk student: 3 points.

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-200903166

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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



CHAPTER 15. NATIONAL RESEARCH UNIVERSITIES

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §§15.1, 15.2, 15.10

The Texas Higher Education Coordinating Board proposes new §§15.1, 15.2, and 15.10, concerning rules applying to general provisions of programs related to national research universities. Section 15.1 provides the definitions that will be needed for the subchapter. Section 15.2 establishes the authority for the program and rulemaking by the Board. Section 15.10 establishes the provisions of the program. Specifically, in compliance with House Bill 51, 81st Texas Legislature, the proposed rules would establish the definitions, authority, and general provisions for the Texas Research Initiative Program (TRIP).

Ms. Susan Brown, Assistant Commissioner, Planning and Accountability, 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. Brown 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 more efficient Board operations relating to distribution of funds allocated to this program by the legislature. 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 new sections may be submitted to Gary W. Johnstone, Deputy Assistant Commissioner, Planning and Accountability, 1200 East Anderson Lane, Austin, Texas 78752 or gary.johnstone@thehb.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, §61.124.

The new sections affect Texas Education Code, §61.122.

§15.1. Definitions.

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

(1) Commissioner--The Commissioner of Higher Education; as used in this subchapter, "Commissioner" means the agency acting through its executive, and his or her designees, staff, or agents.

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

(3) Date of Certification--The date the gift was deposited by the institution in a depository bank or invested by the institution as authorized by law. A non-cash gift must be certified as the date the gift is converted to cash, and is considered to have been received on that date. The date of certification must be September 1, 2009 or later.

(4) Eligible Funds--Certified gifts for current use or endowment from private sources in a state fiscal year for the purpose of enhancing research activities at the institution, including a gift or endowment for endowed chairs, professorships, research facilities, research equipment, program costs, or graduate research stipends or fellowship.

(5) Eligible Public Institution--An institution of higher education designated as an emerging research university under the Coordinating Board's Accountability System.

(6) Gift--Including cash, cash equivalents, marketable securities, closely held securities, money market holdings, partnership interests, personal property, real property, minerals, and life insurance proceeds.

(7) Ineligible Funds--A gift for undergraduate scholarships or grants, or any portion in excess of \$10 million of gifts or endowments received from a single source in a state fiscal year.

(8) Institution of Higher Education--As defined in Texas Education Code, §61.003.

(9) Private Sources--Any individual or entity that cannot levy taxes and is not directly supported by tax funds.

(10) Program--The Texas Research Incentive Program.

(11) University-Associated Entity--Is an entity that exists to support the university.

§15.2. Authority.

(a) Texas Education Code, §62.122, establishes the Texas Research Incentive Program to provide matching funds to assist eligible public institutions in leveraging private gifts for the enhancement of research productivity and faculty recruitment.

(b) Texas Education Code, §62.123, establishes the rate of matching and authorizes the Board, to establish procedures for the certification of gifts.

(c) Texas Education Code, §62.124, authorizes the Board, to adopt rules for the administration of the program.

§15.10. Texas Research Initiative Program (TRIP).

(a) Purpose. The purpose of this program is to provide matching funds to assist eligible institutions in leveraging private gifts for the enhancement of research productivity and faculty recruitment.

(b) Matching Grants. Eligible funds will be matched at the following rates:

(1) 50 percent of the amount if the total amount of gifts and endowments are at least \$100,000, but not more than \$999,999;

(2) 75 percent of the amount if the total amount of gifts and endowments are at least \$1 million but not more than \$1,999,999; or

(3) 100 percent of the amount if the total amount of gifts and endowments are \$2 million or more.

(c) Distribution of Matching Funds.

(1) Matching funds will be distributed in order of their date of certification.

(2) All eligible funds with the same date of certification will be considered in a block.

(3) If there are insufficient funds to match gifts with the same date of certification those gifts will be prorated and any remaining unmatched gifts shall be eligible for matching funds in the following fiscal years using funds appropriated to the program, to the extent funds are available.

(d) Certification. In order for the Board to certify a gift, the institution must submit the following information for any gift to be considered eligible:

(1) A bank certification showing the amount and name of the donor;

(2) Fully executed copy of the donor agreement describing the purpose and the restrictions to meet the definition of eligible funds; and

(3) All information must be provided to the Coordinating Board within 30 days of the date of bank certification.

(e) Institutions will provide a complete list of all university associated entities.

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 July 24, 2009.

TRD-200903165

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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



CHAPTER 21. STUDENT SERVICES

SUBCHAPTER T. THE VACCINATION AGAINST BACTERIAL MENINGITIS FOR STUDENTS APPROVED TO RESIDE IN ON-CAMPUS DORMITORIES OR OTHER ON-CAMPUS HOUSING FACILITIES AT INSTITUTIONS OF HIGHER EDUCATION

19 TAC §§21.610 - 21.614

The Texas Higher Education Coordinating Board proposes new §§21.610 - 21.614, concerning The Vaccination Against Bacterial Meningitis for Students Approved to Reside In On-campus Dormitories or other On-Campus Housing Facilities at Institutions of Higher Education. House Bill 4189 of the 81st Legislature (Texas Education Code §51.9192, Subchapter Z) requires first-time students of an institution of higher education, including a transfer student, who reside in, or have applied for on-campus housing and have been approved to reside in, an on-campus dormitory or other on-campus student housing facility to provide to the institution a certificate signed by a health practitioner as evidence that the student has been vaccinated against bacterial meningitis. The proposed new sections describe the timeframe by which a student is required to have been vaccinated and the timeframe in which the student must submit evidence of having been vaccinated to the institution.

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 students residing in dormitories and other on-campus housing facilities being vaccinated against bacterial meningitis will enhance the public health and safety of students enrolled at institutions of higher education. There is no effect on small or micro businesses. There is no impact on local employment.

Comments on the proposal may be submitted to Dr. MacGregor M. Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or macgregor.stephenson@thehb.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, §51.9192.

The new sections affect implementation of Texas Education Code, §51.9192.

§21.610. Purpose.

Pursuant to the Jamie Schanbaum Act, this subchapter creates the procedure by which a first-time student of an institution of higher education, including a transfer student, residing in on-campus housing, will show evidence of being immunized against bacterial meningitis.

§21.611. Authority.

This subchapter relates to Texas Education Code, §51.9192, Subchapter Z, which regulates the requirement for bacterial meningitis vaccination for certain students and identifies exceptions to that requirement. This subchapter applies only to first-time students or transfer students enrolling in public or private or independent institutions of higher education on or after January 1, 2010, who plan to live in on-campus dormitories or other on-campus housing facilities.

§21.612. Definitions.

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

(1) Evidence of Vaccination--Acceptable evidence of vaccination includes:

(A) the month, day, and year the vaccination was administered;

(B) the signature or stamp of the physician or his/her designee, or public health personnel;

(C) an official immunization record generated from a state or local health authority; or

(D) an official record received from school officials, including a record from another state.

(2) First-time student--A student who has not previously enrolled at a public, private, or independent institution of higher education, or a dual enrollment or a transfer student who was previously enrolled at a public, private, or independent institution of higher education.

(3) Health practitioner--Any person authorized by law to administer a vaccination.

(4) Institution of Higher Education--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).

(5) On-campus housing--Student housing facilities located on the campus of an institution of higher education, such as dormitories, sorority and fraternity houses, privately owned residence halls, and apartments.

(6) Private or independent institution of higher education--Includes only a private or independent college or university as defined in Texas Education Code §61.003(15).

§21.613. Immunization Requirement.

(a) A first-time student attending an institution of higher education or private or independent institution of higher education, including a transfer student, who plans to reside in, or has applied for on-campus housing and has been approved to reside in an on-campus dormitory or other on-campus student housing facility must show evidence of vaccination against bacterial meningitis.

(b) Each institution of higher education that has on-campus housing for students must designate an office and administrative official to receive from the student evidence of having been vaccinated against bacterial meningitis.

(c) Evidence of the student having received the vaccination from an appropriate health practitioner must be received by the administrative official at the institution of higher education. The student must have received the vaccination at least 10 days prior to the student taking up residence in on-campus housing. This information shall be maintained in accordance with Family Education Rights and Privacy Act Regulations, and with Health Insurance Portability and Accountability Act.

§21.614. Exceptions.

(a) A student, or a parent or guardian of a student, is not required to submit evidence of receiving the vaccination against bacterial meningitis if the student, or a parent or guardian of a student, submits to the institution:

(1) an affidavit or a certificate signed by a physician who is duly registered and licensed to practice medicine in the United States, in which it is stated that, in the physician's opinion, the vaccination required would be injurious to the health and well-being of the student; or

(2) an affidavit signed by the student stating that the student declines the vaccination for bacterial meningitis for reasons of con-

science, including a religious belief. A conscientious exemption form from the Texas Department of State Health Services must be used.

(b) The exception noted in subsection (a)(2) of this section does not apply during a disaster or public health emergency, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency declared by an appropriate official or authority from the Texas Department of State Health Services and is in effect for the location of the institution the student attends.

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 July 24, 2009.

TRD-200903102

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: October 29, 2009

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



TITLE 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER C. RESPONSIBILITIES TO CLIENTS

22 TAC §501.75

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.75, concerning Confidential Client Communications.

The amendment to §501.75 will make it clear that licensees must provide client communications and records in response to grand jury subpoenas.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be clarification of the accountant/client confidentiality standards.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on September 7, 2009. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe Street, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.75. Confidential Client Communications.

Except by permission of the client or the authorized representatives of the client, a person or any partner, officer, shareholder, or employee of a person shall not voluntarily disclose information communicated to him by the client relating to, and in connection with, professional accounting services or professional accounting work rendered to the client by the person. Such information shall be deemed confidential. However, nothing herein shall be construed as prohibiting the disclosure of information required to be disclosed by the standards of the public accounting profession in reporting on the examination of financial statements or as prohibiting disclosures pursuant to a court order signed by a judge, a congressional or grand jury subpoena, [##] investigations or proceedings under the Act, [##] ethical investigations conducted by private professional organizations, or in the course of peer reviews.

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 July 23, 2009.
TRD-200903045

J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: September 6, 2009
For further information, please call: (512) 305-7842



CHAPTER 511. ELIGIBILITY SUBCHAPTER C. EDUCATIONAL REQUIREMENTS

22 TAC §511.57

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.57, concerning Definition of Accounting Courses.

The amendment to §511.57 will establish the effective date for course requirements to take the CPA exam.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

- A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.
- B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.
- C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will allow students and colleges sufficient time to transition into the new requirements.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on September 7, 2009. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe Street, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be

impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.57. Definition of Accounting Courses.

(a) An individual shall meet the board's accounting course requirements in one of the following ways:

(1) Hold a baccalaureate or higher degree from a recognized educational institution as defined by board rule, §511.52 and present a valid transcript from that institution that shows degree credit for not fewer than 30 semester hours of accounting courses as defined in subsection (c) of this section; or

(2) Hold a baccalaureate or higher degree from a recognized educational institution as defined by board rule, §511.52, and after obtaining the degree, complete not fewer than 30 semester hours of accounting courses, as defined in subsection (c) of this section, from four-year degree granting institutions, or accredited community colleges, provided that all such institutions are recognized by the board as defined by board rule, §511.52, and that the accounting programs offered at the community colleges are reviewed and accepted by the board.

(b) Credit for hours taken at recognized colleges and universities using the quarter system shall be counted as 2/3 of a semester hour for each hour of credit received under the quarter system.

(c) The board will accept not fewer than 30 semester credit hours of accounting courses without repeat from the courses listed below. The courses must meet the board's standards by containing sufficient business knowledge and application to be useful to candidates taking the Uniform CPA Examination. A recognized educational institution must have accepted the courses for purposes of obtaining a baccalaureate degree or its equivalent, and they must be shown on an official transcript. At least 15 of these hours must result from physical attendance at classes meeting regularly on the campus of the transcript-issuing institution. The subject-matter content should be derived from the Uniform CPA Examination Content Specification Outline and cover some or all of the following:

(1) financial accounting and reporting for business organizations that may include:

- (A) intermediate accounting;
- (B) advanced accounting;
- (C) accounting theory;

(2) managerial or cost accounting (excluding introductory level courses);

- (3) auditing and attestation services;
- (4) internal accounting control and risk assessment;
- (5) financial statement analysis;

(6) accounting research and analysis;

(7) up to twelve semester hours of taxation^[5] (including tax research and analysis);

(8) financial accounting and reporting for governmental and/or other nonprofit entities;

(9) up to twelve semester hours of accounting information systems, including management information systems ("MIS"), provided the MIS courses are listed or cross-listed as accounting courses, and the college or university accepts these courses as satisfying the accounting course requirements for graduation with a degree in accounting;

(10) fraud examination;

(11) international accounting and financial reporting; and

(12) an accounting internship program (not to exceed 3 semester hours) which meets the following requirements:

(A) the accounting knowledge gained is equal to or greater than the knowledge gained in a traditional accounting classroom setting;

(B) the employing firm provides the faculty coordinator and the student with the objectives to be met during the internship;

(C) the internship plan is approved in advance by the faculty coordinator;

(D) the employing firm provides a significant accounting work experience with adequate training and supervision of the work performed by the student;

(E) the employing firm provides an evaluation of the student at the conclusion of the internship, provides a letter describing the duties performed and the supervision to the student, and provides a copy of the documentation to the faculty coordinator and the student;

(F) the student keeps a diary comprising a chronological list of all work experience gained in the internship;

(G) the student writes a paper demonstrating the knowledge gained in the internship;

(H) the student and/or faculty coordinator provides evidence of all items upon request by the board;

(I) the internship course shall not be taken until a minimum of 12 semester hours of upper division accounting course work has been completed.

(13) At its discretion, the board may accept up to three semester hours of credit as accounting for course work with substantial merit in the context of a career in public accounting, provided the course work is predominantly accounting or auditing in nature but not included in paragraphs (1) - (12) of this subsection. For any course submitted under this provision, the Accounting Faculty Head or Chair must affirm to the board in writing its merit and content.

(d) Effective July 1, 2011, the [The] board requires that a minimum of two semester credit hours in research and analysis relevant to the course content described in subsection (c)(6) or (7) of this section is completed. The semester hours may be obtained through a discrete course or offered through an integrated approach. If the course content is offered through integration, the university must advise the board of the course(s) that contain the research and analysis content.

(e) The following types of introductory courses do not meet the accounting course definition in subsection (c) of this section:

- (1) elementary accounting;

- (2) principles of accounting;
- (3) financial and managerial accounting;
- (4) introductory accounting courses; and
- (5) accounting software courses.~~;~~ ~~and;~~

(f) Any CPA review course offered by an educational institution or a proprietary organization shall not be used to meet the accounting course definition.

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 July 23, 2009.

TRD-200903044

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: September 6, 2009

For further information, please call: (512) 305-7842



CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

SUBCHAPTER B. CONTINUING PROFESSIONAL EDUCATION RULES FOR INDIVIDUALS

22 TAC §523.118

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.118, concerning Limitation for Non-Technical Courses.

The amendment to §523.118 clarifies the length of time included in the reporting period that forms the basis for calculating the 50 percent limitation on Certified Public Accountants taking non-technical Continuing Professional Education credit hours.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

- A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.
- B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.
- C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a consistent application of the limitation on the taking of non-technical courses. The proposed revision will make the rule consistent with the language contained in §523.112.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on September 7, 2009. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe Street, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.118. *Limitation for Non-Technical Courses.*

A licensee may not claim more than fifty percent of the total CPE credit hours required from the non-technical area in a three year reporting period [any reporting period].

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 July 23, 2009.

TRD-200903046

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: September 6, 2009

For further information, please call: (512) 305-7842



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION SUBCHAPTER F. MOTOR VEHICLE SALES TAX

34 TAC §3.61

The Comptroller of Public Accounts proposes amendments to §3.61 concerning credit for motor vehicle sales or use tax paid to another state.

This rule is being amended to reflect changes to emission surcharge provisions per House Bill 1365, 78th Legislature, 2003. The Texas motor vehicle sales or use tax credit for sales or use tax legally imposed and paid another state does not apply to the Texas Emissions Reduction Plan surcharge.

This rule is also being amended to clarify that the sales or use tax paid to another state includes any political subdivision of that state but does not include any other special taxes, such as a foreign country's tax, custom or duty tax, or import tax. It also is being amended to indicate what documentation is required by the purchaser to claim the credit.

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

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the proposed amendment would benefit the public by identifying the tax responsibilities of purchasers of motor vehicles subject to the Texas Emissions Reduction Plan surcharge. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

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

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

This amendment implements Tax Code, §152.003 and §152.0215.

§3.61. Credit for Motor Vehicle Sales or Use Tax Paid to Another State.

A credit is allowed to a person, firm, or corporation that, as a purchaser, has paid legally imposed sales or use tax to another state, including any political subdivision of that state, on a motor vehicle that later becomes subject to the Texas Motor Vehicle Use Tax. The credit allowed is the amount of the prior payment to the other state and any political subdivision of that state. If the purchaser is leasing a vehicle and paying the tax to another state along with the lease payments, credit can be allowed only for tax already remitted to the other state prior to operating the vehicle in Texas. Credit is not allowed for a foreign country's tax, custom or duty tax, or import tax. The purchaser can show a tax receipt, a seller's invoice, or contract verifying the amount of tax paid to another state and any political subdivision of that state. Credit is not allowed against the \$90 new resident tax or the Texas Emissions Reduction

Plan surcharge, set forth in Tax Code, §152.0215. If a motor vehicle purchased tax-free for use solely outside Texas [the state] is later used inside Texas [the state], use tax is due on the [original] purchase price; however, credit is allowed in the amount of a legally imposed sales or use tax paid to another state and any political subdivision of that state.

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

Filed with the Office of the Secretary of State on July 21, 2009.

TRD-200902977

Martin Cherry

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: September 6, 2009

For further information, please call: (512) 475-0387



34 TAC §3.68

The Comptroller of Public Accounts proposes an amendment to §3.68, concerning United States and foreign military personnel stationed in Texas. This amendment implements House Bill 481, 80th Legislature, 2007, which added Transportation Code, §520.031(d), to allow a title transferee who is an active duty member of the military or National Guard up to 60 days, rather than the standard 20 days, to register a used motor vehicle with the county tax assessor-collector.

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

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the proposed amendment would benefit the public by indentifying the tax responsibilities of purchaser of motor vehicles subject to the motor vehicle sales and use tax, and registration and titling in Texas. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

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

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

The amendment implements Transportation Code, §520.031(d), and Tax Code, Chapter 152.

§3.68. United States and Foreign Military Personnel Stationed in Texas.

(a) North Atlantic Treaty Organization (NATO) foreign military personnel.

(1) Foreign military personnel, their dependents, and military-employed foreign civilians, if attached to a member of NATO and stationed in Texas, are exempt from the motor vehicle sales or use tax

on any motor vehicle purchased in Texas or brought into Texas while stationed in Texas.

(2) Non-United States members of the North Atlantic Treaty Organization [as of December 14, 2005] include: Belgium, Bulgaria, Canada, Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Turkey, and The United Kingdom.

(b) United States military personnel and foreign military personnel other than NATO personnel. A member of the United States military residing in Texas on military orders and foreign military personnel, their dependents, and military employed foreign civilians, other than NATO related personnel referred to in subsection (a) of this section, are:

(1) subject to the motor vehicle sales tax on any motor vehicle purchased in Texas and not immediately removed from Texas for use exclusively outside of Texas pursuant to Tax Code, §152.092 and §3.90 of this title (relating to Motor Vehicles Purchased for Use Outside of Texas); and

(2) subject to the motor vehicle use tax or the motor vehicle new resident use tax on any vehicle purchased outside of Texas and subsequently brought into Texas for use in Texas. The domicile and legal residence for United States military personnel is the person's "home of record" as designated in the person's [their] military records.

(c) Tax payment due dates.

(1) Motor vehicle sales or use tax is due 20 county working days from the date of Texas sale or first use in Texas, except as provided in paragraph (2) of this subsection. The tax must be paid when the purchaser files the appropriate documents with the county tax assessor-collector to transfer the title and register the vehicle, in accordance with Transportation Code, §520.031.

(2) A member of the United States military, of a reserve unit of the United States military, of the Texas National Guard or of the National Guard of another state who is on active military duty under an order of the president of the United States must pay motor vehicle sales or use tax as the purchaser of a motor vehicle no later than 60 county working days after the date of receipt of the vehicle.

(d) Calculation of tax due. For information regarding the proper calculation of motor vehicle sales or use tax due on the transfer of a vehicle title, refer to §3.79 of this title (relating to Standard Presumptive Value).

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 July 21, 2009.

TRD-200902978

Martin Cherry

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: September 6, 2009

For further information, please call: (512) 475-0387



PART 9. TEXAS BOND REVIEW BOARD

CHAPTER 181. BOND REVIEW BOARD

SUBCHAPTER A. BOND REVIEW RULES

34 TAC §181.10

The Texas Bond Review Board (BRB) proposes amendments to 34 TAC Chapter 181, Subchapter A, §181.10, concerning Bond Review Rules. The proposed amendments to the rule are to facilitate information reporting related to material events of state securities approved by the BRB.

Robert Kline, Executive Director for the BRB, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments to this section.

Mr. Kline has also determined that for each year of the first five years the amendments are in effect the public will benefit from clearer debt issuance and reporting procedures. There will be no effect on small or micro businesses. There is no additional anticipated economic cost to persons to comply with the amendments to this section.

Comments on the proposal may be submitted in writing to Robert Kline, Texas Bond Review Board, P.O. Box 13292, Austin, Texas 78711-3292. Comments may also be submitted electronically to kline@brb.state.tx.us or faxed to (512) 475-4802.

The amendments are proposed under Government Code, §1231.022, which gives BRB the authority to adopt rules governing application for review, the review process, and reporting requirements involved in the issuance of state securities.

The proposed amendments implement the Government Code, Chapter 1231.

§181.10. *State Debt Issuer Reports.*

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

(c) An issuer of state securities issued in the form of commercial paper notes shall submit as part of the required semi-annual reports the following information for so long as the issuer has authority to issue commercial paper under program proceedings approved by the Board or exempt from approval pursuant to §181.9 of this title (relating to State Exemptions). The report shall contain the following information:

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

(d) All issuers whose state securities are subject to review by the Board must file material event notices with the bond finance office when a submission is made to the Municipal Securities Rulemaking Board, Nationally Recognized Municipal Securities Information Repositories, or any applicable State Information Depository pursuant to Securities and Exchange Commission Rule 15c2-12(b)(5)(i)(C), as amended, or any analogous state statute. When requested by the bond finance office, such issuers must also file financial information with the office when the information is submitted to any of the above-described repositories pursuant to Securities and Exchange Commission Rule 15c2-12(b)(5)(i)(A) or (B), as amended, or any analogous state statute.

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 July 27, 2009.

TRD-200903163

Robert Kline
Executive Director
Texas Bond Review Board
Earliest possible date of adoption: September 6, 2009
For further information, please call: (512) 463-9891



CHAPTER 190. ALLOCATION OF STATE'S LIMIT ON CERTAIN PRIVATE ACTIVITY BONDS

SUBCHAPTER A. PROGRAM RULES

34 TAC §§190.1 - 190.3, 190.5

The Texas Bond Review Board (BRB) proposes amendments to 34 TAC Chapter 190, Subchapter A, §§190.1 - 190.3 and §190.5, concerning Private Activity Bond Rules. The proposed amendments are to update the rules pursuant to changes made in Senate Bill 2064 of the 81st Legislature.

Robert Kline, Executive Director for the BRB, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments to these sections.

Mr. Kline also has determined that for each year of the first five years the amendments are in effect the public will benefit from updated rules pursuant to Senate Bill 2064 and clearer program procedures. There will be no effect on small or micro businesses. There is no additional anticipated economic cost to persons to comply with the amendments to these sections.

Comments on the proposal may be submitted in writing to Robert Kline, Texas Bond Review Board, P.O. Box 13292, Austin, Texas 78711-3292. Comments may also be submitted electronically to kline@brb.state.tx.us or faxed to (512) 475-4802.

The amendments are proposed under Government Code, §1372.004, which gives BRB the authority to adopt rules necessary to accomplish the purposes of Chapter 1372.

The proposed amendments implement the Government Code, Chapter 1372.

§190.1. General Provisions.

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

(c) Definition of terms. The following words and terms, when used in this chapter [section], shall have the following meanings, unless the context clearly indicates otherwise.

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

(3) Application fee--Excluding residential rental projects and excluding sewage facilities, solid waste disposal facilities, and qualified hazardous waste facilities with multiple facilities on a single application, the \$500 nonrefundable fee submitted to the board simultaneously with an application for reservation or an application for carryforward as defined in paragraph (4)(A) or (B) of this subsection. For residential rental projects, the \$5,000 nonrefundable fee submitted to the board simultaneously with an application for reservation. For sewage facilities, solid waste disposal facilities, and qualified hazardous waste facilities with multiple facilities on a single application, a \$500 nonrefundable fee per facility submitted to the board simultaneously with an application for reservation.

(4) - (32) (No change.)

(33) Local population--The population in the local government unit or units on whose behalf a housing finance corporation is created. If two local government units overlap, each having created housing finance corporations with the power to issue bonds to provide home mortgage financing, prior to the submission of either the application for reservation or the application for carryforward by either housing finance corporation, there shall be excluded from the population of the larger local government unit that portion of the population of any smaller local government unit having a population of 50,000 [20,000] or more which is within the larger local government unit, unless the smaller local government unit assigns its authority to issue qualified mortgage bonds, based upon its population, to the larger local government unit. A resolution assigning authority to issue qualified mortgage bonds must have been adopted within the twelve months preceding the date of submission of the application to the board.

(34) - (58) (No change.)

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

§190.2. Allocation and Reservation System.

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

(d) The order of priority for reservations in the category described in §1372.022(a)(4) shall further be determined as provided in §1372.0321 and §1372.0231.

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

(6) Pursuant to §2306.6703(a)(2)(C), any multifamily issuer who indicates that they plan to redeem bonds within the first five years may not receive a reservation while there is a waiting list in their priority level established under §1372.0321, or if there is a waiting list in the applicable uniform state services region, as referenced in §1372.0231.

(e) (No change.)

(f) If state ceiling becomes available on August 15, it shall be available [prior to September 1] for all applications for reservations in the order determined by the board by lot. If all applications have been offered a portion of the available state ceiling then the board shall grant reservations in the order in which the applications are received. [subject to §1372.0321 and subsection (d) of this section without regard to the provisions of §1372.0231.]

[(g) If any issuer which was subject to the lottery conducted as described in subsection (b) of this section does not, prior to September 1 of the program year, receive the amount requested by such issuer in its application for reservation filed on or before October 20 of the preceding year, and if state ceiling becomes available on or after September 1 of the program year, such issuer, subject to the provisions of §1372.037, Government Code, shall receive a reservation for any state ceiling becoming available on or after September 1 of the program year, in the order of priority established by such lottery, without regard to the provisions of §§1372.032, 1372.0321, and 1372.033, Government Code.]

[(g) [(h)] All applications for a reservation filed after October 20 of the preceding year by any issuer for the issuance of bonds shall be accepted by the board in their order of receipt.

[(h) [(i)] An application for a reservation for the current program year may not be submitted and a reservation may not be granted after November 15 [December 1] of the program year.

[(i) [(j)] An issuer may refuse to accept a reservation for any amount if the reservation is granted after September 23 of the program year.

[(j) [(k)] The amount of the state's ceiling that has not been reserved prior to December 15 [1] of the program year and any amount

previously reserved that becomes available on or after that date because of the cancellation of a reservation or any other reason, may be designated, by the board, as traditional carryforward for the carryforward purposes outlined in the Code through submission of the application for carryforward and any other required documentation. If the 120-day, 150-day, or 180-day period, as applicable, expires on or after December 24th of a program year in which a reservation was issued, an issuer is required to close on its bonds before December 24th. However, if an issuer's applicable period expires after December 31st, the issuer must notify the board in writing before December 24th of their intent to request non-traditional carryforward designation of the reservation and with their expected bond closing date. The granting by the board of a non-traditional carryforward designation through this described process, will allow an issuer the remaining balance of their 120-day, 150-day, or 180-day period as applicable to close on their bond by the expected closing date. If any issuer makes this election and does not close the bonds on or before the expected closing date, the amount of non-traditional carryforward designation will be administered by the board in compliance with the requirements of the code.

(k) ~~[(k)]~~ An issuer may submit an application for carryforward to the board at any time during the year through the last business day in December.

(l) ~~[(m)]~~ Issuers will be eligible for carryforward according to the priority classifications listed in the Act, specifically §1372.062.

(m) ~~[(n)]~~ With respect to the amount of the state ceiling set aside under §1372.0231(a)(1) and (3), applications are subject to review and approval by board staff prior to receiving a reservation of allocation.

(n) ~~[(o)]~~ With respect to the amount of the state ceiling set aside under §1372.0231(a)(1), should the Texas Department of Housing and Community Affairs (TDHCA) opt to participate in the lottery, TDHCA shall submit residential rental project applications to the board during the application period outlined in §1372.028. The board shall include a number of lottery balls in the lottery on behalf of TDHCA equal to the number of applications TDHCA submits that are eligible for participation in the lottery. Prior to the date of the lottery, TDHCA will rank its eligible applications according to the provisions established by TDHCA and shall provide this ranking to the board. After the lottery, the board will assign the lottery numbers drawn on behalf of TDHCA to TDHCA's eligible applications based upon the rank provided by TDHCA, with the lowest lottery number being assigned to the highest-ranking application. TDHCA applications submitted post-lottery are ineligible for lottery numbers and may not receive a reservation ahead of any other project with a lottery number.

(o) ~~[(p)]~~ For applications for reservations in the category described in §1372.022(a)(5):

(1) Applications for reservations in the category described in §1372.022(a)(5) must be filed in the preceding year during the time period established by the board for applications qualifying for the lottery.

(2) A Texas eligible loan may be used in determining annual need only if

(A) the qualified non-profit corporation purchased the Texas loan directly from an originating lender that made the loan, or

(B) the qualified non-profit corporation purchased the Texas loan directly from a non-profit corporation described in §53.47(g), Education Code that purchased the Texas loan directly from the originating lender that made the loan.

(3) A qualified non-profit corporation shall include a Texas eligible loan in its annual need only one time, and may not include any loan authorized under Section 428C of the Higher Education Act of 1965.

(4) The report of an independent auditor shall include a report stating that the audit was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. Accordingly the audit shall include examining, on a test basis, evidence supporting the statement of annual need and performing an attributes sampling designed to achieve a minimum 90% confidence level with +/- 5% precision. Any errors in the sample shall be projected to the population from which the sample was selected, and the annual need of the issuer shall be adjusted accordingly.

(5) No issuer in the category described in §1372.022(a)(5) shall be granted a reservation that exceeds "annual need" as defined by §1372.033(2).

(p) ~~[(q)]~~ Until August 1 of the program year, within the category described by §1372.022(a)(6), priority shall be granted to the Texas Economic Development Bank for projects that the Texas Economic Development and Tourism Office determines meet the governor's criteria for funding from the Texas Enterprise Fund, pursuant to the requirements of §1372.031(b).

(q) On the last business day of a program year the Board may assign as carryforward unencumbered state ceiling to any state agency at their request and in the order received without a formal application process. Unencumbered means any state ceiling that is not reserved or designated as carryforward and for which no application for carryforward is pending.

§190.3. Filing Requirements for Applications for Reservation.

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

(g) Application restrictions.

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

(4) Except as provided by §1372.037(b) for any one project, no issuer~~[-]~~ prior to August 15 of the program year~~[-, no issuer]~~ may apply for an amount that exceeds the ~~[following]~~ maximum application limits as described in §1372.037(a).

~~[(A) \$25,000,000 for issuers described by §1372.022(a)(1) other than the Texas Department of Housing and Community Affairs and the Texas State Affordable Housing Corporation;]~~

~~[(B) \$50 million for issuers described by §1372.022(a)(2) other than the Texas Higher Education Coordinating Board or \$75 million for the Texas Higher Education Coordinating Board;]~~

~~[(C) an amount as limited by the code for issuers described by §1372.022(a)(3);]~~

~~[(D) the lesser of \$15 million or 15 percent of the amount set aside for this purpose for issuers described by §1372.022(a)(4);]~~

~~[(E) the amount as prescribed in §1372.033(d), (e) and (f) for issuers described by §1372.022(a)(5) and §1372.033;]~~

~~[(F) \$50 million for issuers described by §1372.022(a)(6);]~~

(5) - (8) (No change.)

§190.5. Consideration of Qualified Applications by the Board.

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

(f) The board may grant a reservation at any time on or after January 2 and before November 16 [~~December 2~~] if the amount of state ceiling available in any category exceeds the amount of state ceiling applied for in that category by the next applicant. Partial reservations may be granted only in accordance with §1372.036.

(g) - (i) (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 July 27, 2009.

TRD-200903164

Robert Kline

Executive Director

Texas Bond Review Board

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For further information, please call: (512) 463-9891



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 15. DRIVER LICENSE RULES SUBCHAPTER A. LICENSING REQUIREMENTS

37 TAC §15.5, §15.7

The Texas Department of Public Safety proposes amendments to Subchapter A, §15.5 and §15.7, concerning Driver License Rules. Amendments to the sections are necessary in order to further align the rules with existing statute and to repeal rules addressed in statute. Terms have been modified to align with industry standards, i.e., "driver's" to "driver" and "instruction permit" to "learner license." Rule changes also provide that licenses issued by the department, including driver licenses, minor's restricted driver licenses, learner licenses, and occupational and interlock licenses will be issued with a photograph with current information being displayed on each license or identification certificate issued.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government or local economies.

Mr. Ybarra also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the sections as proposed. There are no anticipated economic costs to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to establish clearer policy guidelines for the issuance of Texas driver license and identification cards, processing of administrative actions and maintenance of driver related information.

The Department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The Department has determined that Chapter 2007 of the Texas Government Code does not apply to these rules. Accordingly, the Department is not required to complete a takings impact assessment regarding these rules.

Comments on the proposal may be submitted to Ron Coleman, Program Specialist IV, Driver License Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78765-0300, (512) 424-7652.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the Department's work; and Texas Transportation Code, §521.165.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.165 are affected by this proposal.

§15.5. Learner [~~Learner's~~] License[~~--Instruction Permit~~].

(a) A learner [~~learner's~~] license authorizes the driving of the same vehicles authorized by a classified driver license.

(b) A learner [~~learner's~~] license is a regular photo-type Class [A, B, or C] license issued to an applicant under the age of 18 and restricted to "accompanied by licensed driver age 21 or over in front seat" or Class M license restricted to "licensed motorcycle operator age 21 or over in sight." The standard fee and expiration dates apply to a learner's license.

~~[(c) An instruction permit is a driving permit without a photograph. It is issued to any beginning driver for any class of vehicles subject to applicable age and driver education requirements: Class A, B, or C type permits will be restricted to "accompanied by licensed driver age 21 or over in front seat" or the Class M permit will be restricted to "licensed motorcycle operator age 21 or over in sight." The fee for an instruction permit is \$5.00.]~~

~~[(d) An instruction permit is renewable only as a photo-type learner's license with statutory validity period applicable to under 18 years of age and 18 years of age and older. A learner's license or instruction permit authorizes the driving of vehicles subject to the license classification and restrictions on the permit. Any restriction which would permit driving any vehicle without an accompanying driver requires a regular photo-type license with the statutory validity period.]~~

(c) ~~[(e) Minor [~~Minor's~~] restricted driver license (MRDL) or hardship license issued under the hardship provisions[; except 60-day permits;] will be a photo-type license which expires in 60 days for emergency permits or on the licensee's birth date.~~

§15.7. Occupational License (Essential Need).

(a) An occupational license authorizes the driving of any non-commercial motor vehicle subject to the restrictions imposed and is a special license issued [~~without photograph by the Safety Responsibility Bureau in Austin~~] upon authorization by a district court or county court. It may authorize the driving of any noncommercial motor vehicle:

(1) in the performance of an occupation or trade or transportation to and from such occupation or trade;

(2) for transportation to and from an educational facility in which the person is enrolled; or

(3) in the performance of essential household duties.

(b) The person issued an occupational license is required to carry a certified copy of the court order showing the restrictions imposed by the court along with the license issued by the department [~~Safety Responsibility Bureau~~] and is required to show the court order and license to a peace officer on request.

(c) (No change.)

(d) The fee is \$10 for up to one year. If the suspension or revocation is more than [~~over~~] one year the applicant may [~~can~~] apply for a two year occupational license if permitted by the court order and submits an additional \$10 fee for the second year. If the suspension is an automatic suspension or a safety responsibility suspension which has become effective, an additional statutory reinstatement fee is required with the SR-22 form.

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

(g) If the suspension or revocation is still in effect after the expiration of the occupational license, the individual may apply to renew the occupational license for one year by submitting an application and a \$10 fee. The applicant must have a court order authorizing the occupational license for the extended period. This can either be the original court order granting the occupational license for the entire suspension or revocation period or a separate court order extending the time period for the occupational license.

(h) (No change.)

(i) Subsequent suspension/revocation action taken by the department may [~~will~~] result in the suspension/revocation of all driving privileges including driving privileges granted by an occupational driver license. The department will notify the licensee of the cancellation. Any subsequent occupational license issuance will require a court order addressing the new suspension/revocation action.

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

Filed with the Office of the Secretary of State on July 24, 2009.

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Lamar Beckworth

Director

Texas Department of Public Safety

Earliest possible date of adoption: September 6, 2009

For further information, please call: (512) 424-2135



37 TAC §15.8

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

The Texas Department of Public Safety proposes the repeal of Subchapter A, §15.8, concerning Licensing Requirements. Section 15.8 specific to the classified driver license is being repealed

as Subchapter D of the Transportation Code provides for the classification of driver licenses.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications for state or local government or local economies.

Mr. Ybarra also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeal as proposed. There are no anticipated economic costs to individuals who are required to comply with the repeal as proposed. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also determined that for each year of the first five-year period the repeal is in effect, the public benefit anticipated as a result of enforcing the repeals will be current and updated rules.

The Department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The Department has determined that Chapter 2007 of the Texas Government Code does not apply to this repeal. Accordingly, the Department is not required to complete a takings impact assessment regarding the repeal.

Comments on the proposal may be submitted to Ron Coleman, Program Specialist IV, Driver License Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78765-0300, (512) 424-7652.

The repeal is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the Department's work; and Texas Transportation Code, §521.165.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.165 are affected by this proposal.

§15.8. *Classified Driver's Licenses.*

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

Filed with the Office of the Secretary of State on July 24, 2009.

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Lamar Beckworth

Director

Texas Department of Public Safety

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For further information, please call: (512) 424-2135



SUBCHAPTER B. APPLICATION
REQUIREMENTS--ORIGINAL, RENEWAL,
DUPLICATE, IDENTIFICATION CERTIFICATES
37 TAC §§15.21 - 15.23, 15.25 - 15.31, 15.33 - 15.40, 15.42,
15.44, 15.48

The Texas Department of Public Safety proposes amendments to Subchapter B, §§15.21 - 15.23, 15.25 - 15.31, 15.33 - 15.40, 15.42, 15.44, and 15.48, concerning Driver License Rules. Amendments to the sections are necessary in order to further align the rules with existing statute and to repeal rules addressed in statute. Terms have been modified to align with industry standards, i.e., "driver's" to "driver" and "instruction permit" to "learner license." Rule changes also provide that licenses issued by the department, including driver licenses, minor's restricted driver licenses, learner licenses, and occupational and interlock licenses will be issued with a photograph with current information being displayed on each license or identification certificate issued.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government or local economies.

Mr. Ybarra also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the sections as proposed. There are no anticipated economic costs to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to establish clearer policy guidelines for the issuance of Texas driver license and identification cards, processing of administrative actions and maintenance of driver related information.

The Department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The Department has determined that Chapter 2007 of the Texas Government Code does not apply to these rules. Accordingly, the Department is not required to complete a takings impact assessment regarding these rules.

Comments on the proposal may be submitted to Ron Coleman, Program Specialist IV, Driver License Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78765-0300, (512) 424-7652.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the Department's work; and Texas Transportation Code, §521.165.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.165 are affected by this proposal.

§15.21. *Signature.*

The applicant's usual signature is required on all applications for a driver license or identification certificate.

(1) The usual signature is preferred. If a man's name is John Henry Jones and his usual signature is J.H. Jones, he should so sign it. This section also applies to women. The usual signature is asked for simply because it will not disturb the applicant so much as it would to require the full name.

(2) The signature on the [face of the] application must be in ink. The license or certificate must include a facsimile of the license holder's signature or a space on which the holder shall write the holder's usual signature in ink immediately on receipt of the license or certificate. [~~The applicant may sign his name on the back of the application, verifying tests taken, in pencil.~~]

(3) The primary purpose of the signature is to identify the applicant and verify the information given on the application.

(4) If an applicant cannot write his name, he may make his "mark." This is usually a cross in the place of his signature followed by the applicant's printed name. The Driver License field employee shall sign under the applicant's "mark" showing who printed the applicant's name.

§15.22. *Notarizations.*

Original ~~driver~~ [drivers] license applications must be verified by the applicant before a person authorized to administer oaths. Such oaths or affirmations may be administered by the following officials:

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

(5) general:

(A) in the absence of evidence to the contrary, it is presumed that all notarizations are legally made;

(B) the omission of the seal by officers normally required to use same for notarization invalidates the oath;

(C) notarized ~~driver~~ [drivers] license applications must be dated not more than six months prior to date of application.

§15.23. *Names.*

The applicant's full name is required on all applications for driver's license and identification certificates.

(1) A married woman may choose the surname she wishes to use. She may use either her maiden name or she may adopt the surname of her husband or the surname of a previous husband (Attorney General's Opinion H-432). However, no name will be used that has not been documented. If she elects not to adopt her husband's surname, she will simply list her name as if unmarried on the application. If she chooses to adopt her husband's surname, the application should list married name, first name, and middle name, or the maiden name may be used in lieu of middle name at the option of the applicant. The first name of the applicant must be used as the first name on the application and on the transaction card, even if the applicant normally uses a middle name as the given name. Middle names will not be substituted for first names. Examples: Mary Ellen Smith marries Brown; she may list her name as Brown, Mary Ellen or Brown, Mary Smith. In all cases, three full names will be used, unless the applicant does not have three names, including the maiden name.

(A) When change [Change] of name because of marriage, divorce, annulment, or by death of spouse occurs, the [may be certified by the applicant's signature. The] licensee [then] may choose

to either keep her current married name, or revert to her maiden name, or adopt a previous husband's surname. However, no name will be used that has not been documented. If the name is changed for reasons other than those set out above, a court order verifying such change is required and the name shown on the order is acceptable.

(B) Persons who are currently licensed and request that they be allowed to change their name may apply for a duplicate and exercise the same privilege in name selection as an original applicant.

(C) Paragraph (1) of this section is [~~The above rules pertaining to names are~~] applicable to both sexes.

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

§15.25. *Address.*

The address requirement for a driver license and identification certificate is:

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

(3) The application form also provides space for a mailing address. If there is no mail delivery at the address shown, then a post office box number or other mailing address must be shown in conjunction with the Texas residence address provided. If an applicant has a mailing address in addition to the Texas residence address, which [this address] may include post office [offices] boxes, or other mailing locations it may be provided in this space.

(4) - (7) (No change.)

§15.26. *Description.*

An application for a driver [drivers] license and identification certificate must contain the following items of the applicant's description:

- (1) race;
- (2) color of eyes;
- (3) height;
- (4) sex;
- (5) color of hair;
- (6) weight.

§15.27. *Signature by Parent or Guardian for a Driver License.*

(a) Application. The application of a minor for a driver [drivers] license must be signed by the person having custody of the minor. This should be the father or mother; if the minor is not in the custody of his father or mother, then his guardian should sign, and if not in the custody of any of the foregoing, his employer or the county judge of the county in which he resides may sign.

(b) - (d) (No change.)

(e) Request to withdraw or restore an authorization. A request to withdraw or restore an authorization must be submitted to the department in writing [to the department and notarized].

§15.28. *Minor's Restricted Driver [Drivers] License Application.*

(a) A minor's authorization certificate for licensing privileges is obtained by submitting a minor's restricted driver [drivers] license application [for driver license] to the department establishing the necessity for a minor age 15-18 to drive under the provisions set out in Texas Transportation Code, §521.223. Such applications may be obtained from any Texas Department of Public Safety office or by writing the Texas Department of Public Safety, Customer Service [Driver Records], Box 4087, Austin, Texas 78773-0370, or online at www.txdps.state.tx.us [78773-0360].

(b) - (d) (No change.)

(e) The department may require evidence or conduct an [make any] investigation [necessary] for the purpose of confirming [confirmation] information furnished on any application for a driver's license or early enrollment authority under Texas Transportation Code, §521.223.

(f) (No change.)

(g) Minors restricted driver [driver's] license application [for driver's license] must be executed by an authorized adult in behalf of a minor with the adult and the minor signing the form and presenting it in person at a driver's license office.

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

§15.29. *Driver Education Forms.*

Driver education students, ages 15 through 17, must present the proper driver education form verifying that an approved driver education course has been satisfactorily completed.

(1) Driver education applications.

(A) A Texas driver education course to be used as the basis for applying for a driver [drivers] license must conform to the current Texas Education Agency-Department of Public Safety joint agreement approved by the governor's office.

(B) Driver education certificate must be presented to verify all required information.

(C) A certificate showing completion of the class instruction phase authorizes the applicant to take an examination for a learner license [an instruction permit] only, restricted to an accompanying driver. This restriction cannot be removed until age 16 is reached and laboratory experience is completed, or applicant reaches age 18, or other special authorizations are presented.

(D) A learner license [Instruction permits] issued to an applicant [applicants] who failed to complete concurrent driver education class instruction courses will be cancelled by the department.

(E) A certificate showing completion of laboratory experience authorizes the department to examine the licensee after he reaches age 16 for removal of the accompanying driver restriction.

(F) Driver education affidavits will be used only when it is impossible for the actual instructor to sign.

(G) Driver education certificates issued by a jurisdiction or agency other than one of the 50 united states must be approved by a driver [drivers] license supervisor or his delegate.

(H) A certificate from any state showing completion of an approved course in driver education will be accepted. Applications with certificates showing completion of only classroom instruction may be accepted for restricted license, and applications with certificates showing completion of both behind-the-wheel and classroom may be accepted for an unrestricted license.

(2) Form DE-964A. The prescribed driver education certificate contains applicable items for certification of classroom or laboratory training, and an affidavit for use by the school when it is impossible to obtain the signature of the certified instructor.

(3) Applicants under age 18 applying for Class M license.

(A) Persons under age 18 enrolling in a Department-Approved Basic Motorcycle Operator Training Course must have successfully completed the classroom phase of driver education. The form DE-964E must be presented as evidence of completion as a prerequisite to enrolling in a Department-Approved Basic Motorcycle Operator Training Course.

(B) Persons 15 to 17 years of age applying for a Class M license or adding a Class M to an existing license must have completed the classroom phase of driver education and have completed a Department-Approved Basic Motorcycle Operator Training Course.

(C) Persons 15 to 17 years of age applying for a Class M learner license ~~[instruction permit]~~ must have completed the classroom phase of driver education and have completed a Department-Approved Basic Motorcycle Operator Training course.

(D) Any driver education instructor desiring to teach the Department-Approved Basic Motorcycle Operator Training Course must successfully complete the Motorcycle Safety Foundation's Motorcycle Instructor's Course and be certified by that organization. Persons desiring information on this program should be referred to the DPS Motorcycle Operator Training Section in Austin.

§15.30. Identification Certificates.

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

(c) There are no age limits and testing is not required.

~~[(e) Basic requirements are as follows:]~~

~~[(1) age: no limits:]~~

~~[(2) fee: \$15.00; except for applicants 60 years of age or older, the fee is \$5.00:]~~

~~[(3) expiration: next birth date of applicant occurring six years after date of application; except that a certificate that is issued to a person 60 years of age or older does not expire.]~~

~~[(4) tests: none required.]~~

§15.31. Out-of-State Renewals.

(a) (No change.)

(b) The following Texas licensees may be issued a license without a photograph:

(1) an out-of-state Texas licensee who is required to hold a Texas license because of his domicile in Texas; and

(2) an out-of-state Texas licensee who should hold a Texas license under the one license concept because of his domicile in Texas.

(3) an out-of-state Texas licensee applying for renewal who is 78 years of age or younger on the expiration date of their current license.

(c) (No change.)

(d) Normal birth date expiration will be shown on the license plus "valid without photo" if the license is issued without a photograph. [to expiration date shown or until 45 days after return to Texas, whichever occurs first.]

(e) (No change.)

(f) Any other examinations in addition to vision required for the renewal of licenses in this category may be conducted by other jurisdictions and submitted to the department for approval. Duplicates and renewals issued to out-of-state applicants may [will] be issued without photographs.

(g) This section applies to a noncommercial driver [drivers] license (CDL) only. CDL licenses are not eligible to renew by mail.

§15.33. Renewal of Texas License with Validity Period Extended by Military Service.

(a) Holders of Texas driver [drivers] licenses whose validity period has been extended by military service for more than two years

beyond normal expiration date must present extended Texas driver [drivers] license and proof of military service when applying for renewal.

(b) If application is made two or more years after the original expiration date, the expired, but extended, Texas driver [drivers] license and separation papers from the military service are required to verify that license was valid when applicant entered the service.

(c) (No change.)

§15.34. Renewal Period Prior to Expiration.

(a) Provisional licenses may be renewed [normally are not renewed more than] 30 days before expiration; applicants required to register under Chapter 62, Code of Criminal Procedure may be renewed 60 days before expiration; all others may normally be renewed 12 months before expiration.

(b) Any class license, except as otherwise noted, may be renewed 12 months before expiration date. Earlier renewals will be accepted for good cause.

(1) Any application for the renewal of a provisional license other than within 30 days of the 18th birthday will require a Texas Education Agency Verification of Enrollment and Attendance form. The enrollment and attendance form is valid for 30 days from date of signature during the regular semester and is valid for 90 days from date of signature during the summer break.

~~[(2) An instruction permit may be renewed any time for the appropriate photo-type license. If renewed, an instruction permit must be renewed for the appropriate type photograph license at the time the learner's restriction is removed or upon its expiration. It will not be renewed for another instruction permit, but may be renewed as a learner's license with the appropriate restriction.]~~

(2) ~~[(3)]~~ Applicants for renewal of licenses must present evidence of eligibility plus one other piece of personal identification if the license is not presented, if necessary to identify the applicant, prior to renewal.

(3) ~~[(4)]~~ Applicants for renewal of a license will be required to complete a DL-43, Texas Driver License and Identification Renewal-Duplicate Application.

§15.35. Renewal of a Texas Driver [Drivers] License Expired over Two Years.

Any person whose Texas driver [drivers] license has been expired over two years must apply as an original applicant and pass all required examinations.

§15.36. Applications for Duplicates and Corrections.

(a) A licensee is required to notify the department of any change of name or address within 30 days and apply for a duplicate license when such change occurs. If the licensee holds a Texas driver license and Texas Identification card, they will be required to update both cards or surrender the card with obsolete information.

(b) An application for duplicate will be accepted in any of the following cases:

(1) when a Texas driver [drivers] license, including an occupational driver license or learner license ~~[drivers licenses and instruction permits]~~, has been lost, destroyed, marred, or mutilated;

(2) when an out-of-state, no-photo licensee returns to Texas, before or after the expiration of 45 days;

(3) when there has been a change in any other pertinent information.

§15.37. *Medical History Questions--Original and Renewal.*

An applicant for an original or renewal of a Texas driver [~~drivers~~] license must answer certain questions relating to their physical and mental condition prior to licensing.

§15.38. *Fee Exemption.*

Veterans desiring fee exemptions for driver [~~drivers~~] license must present proof of eligibility.

(1) Veterans who are:

(A) honorably discharged from the armed services of the United States;

(B) who have 60% or more service-connected disability; and

(C) who receive compensation from the federal government because of the disability are exempt from original, renewal, examination, or duplicate driver [~~drivers~~] license fees.

(2) Any disabled veteran may waive his fee exemption. Application and payment of fee will be considered as such a waiver and no refund of fee will be made.

(3) When renewing by mail, the proof of eligibility must be submitted with the renewal by mail invitation.

(4) These provisions do not apply to applicants for a commercial driver [~~drivers~~] license (CDL) or to an applicant subject to the registration requirements of Code of Criminal Procedure, Chapter 62.

§15.39. *Verification of Enrollment and Attendance.*

(a) The issuance of a driver [~~drivers~~] license to any person under the age of 18 [~~on or after September 1, 1989,~~] is prohibited unless the person:

(1) has obtained a high school diploma or its equivalent (GED); or

(2) has been enrolled for at least 45 days, and is currently enrolled in a program to prepare persons to pass the high school equivalency exam (GED); or

(3) is a student currently enrolled, or during the summer was enrolled at the end of the spring semester, in a public or private school (includes home school students) and who attended classes at least 80 days during the fall or spring semester immediately preceding the date of application; or

(4) has received MRDL authorization to obtain a license.

(b) - (d) (No change.)

§15.40. *Application Fee.*

(a) After completion of an original application for the type and class of license that the applicant needs, it is necessary to collect the proper fee for the license requested [~~, i.e., \$5.00, instruction permit; \$24, regular driver's license; and \$60, commercial driver's license~~]. A transaction service fee shall be added to each application fee collected as provided by §2054.1115(a) Government Code. If it is determined during completion of the application forms that the applicant is clearly ineligible for the immediate issuance of the license sought (disqualified, suspended, denied, revoked, or "immediate hazard under MAB considerations"), the fee will not be collected and the proper explanation and instructions will be given to the applicant.

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

~~[(d) The application fee will be valid for only one driver license office and will not be transferable from one office to another.~~

~~Should an applicant desire to take tests at another location, an additional application and application fee will be required for the second location. An application fee submitted to a schedule operation will be valid at any of the locations served by that schedule.]~~

~~[(e) An individual who has had a Texas driver's license which has been expired over two years but who continues to be in the driver record system is not an original applicant under this section and is considered a renewal.]~~

§15.42. *Social Security Number.*

(a) (No change.)

(b) When a social security number is originally obtained, it is mandatory that documentation be provided to verify the number. Documentation may include:

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

(4) Military identification (Applies to active, reserve and dependent status [~~Active and reserve duty personnel only, not acceptable for dependents~~]),

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

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

§15.44. *Driver [~~Drivers~~] License Photograph.*

A color photograph of a licensee may be obtained through any medium which produces a retrievable visual image including, but not limited to, film, videotape, digital or visual imagery, or any other technology which may be approved by the director.

§15.48. *Optional Selective Service Registration.*

(a) Applicants for a driver license or identification certificate, who are male and at least 18 but less than 26 years of age, will be provided the opportunity to register for the United States Selective Service.

(b) (No change.)

(c) Applicants completing a transaction in a Driver License Office will be provided a Selective Service Consent statement. The applicant's response will be recorded and become a part of the driver history record. [~~This response will also be printed on the applicant's receipt upon completion of the transaction. It is the applicant's responsibility to verify that the correct response has been recorded, as this is the only indicator the applicant will receive from the department.~~]

(d) Applicants invited to complete a transaction by an alternate method will receive the Selective Service Consent statement with the mailed notice.

(1) Applicants completing a transaction via the Internet must verify their response as recorded on the confirmation page as this is the only indicator they will receive from the Department.

(2) Applicants completing a transaction via the mail must indicate their response on the notice returned to the department. No confirmation of the applicant's response will be returned by the department [~~Department~~].

(3) Applicant completing a transaction via the telephone will not receive a confirmation of their response from the department.

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

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

Filed with the Office of the Secretary of State on July 24, 2009.

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Lamar Beckworth
Director
Texas Department of Public Safety
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For further information, please call: (512) 424-2135



37 TAC §15.41, §15.47

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

The Texas Department of Public Safety proposes the repeal of Subchapter B, §15.41 and §15.47, concerning Application Requirements--Original, Renewal, Duplicate, Identification Certificates. Section 15.41 specific to the voter registration application form is being repealed as this transaction is now the collection of information in an automated process in the driver license system. Section 15.47 specific to the electronically readable information on the magnetic stripe of a driver license, commercial driver license, or identification card is being repealed as §521.126 of the Transportation Code provides for the provisions of electronically readable information on a driver license or identification card.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the repeals are in effect there will be no fiscal implications for state or local government or local economies.

Mr. Ybarra also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeals as proposed. There are no anticipated economic costs to individuals who are required to comply with the repeals as proposed. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also determined that for each year of the first five-year period the repeals are in effect, the public benefit anticipated as a result of enforcing the repeals will be current and updated rules.

The Department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The Department has determined that Chapter 2007 of the Texas Government Code does not apply to these repeals. Accordingly, the Department is not required to complete a takings impact assessment regarding these repeals.

Comments on the proposal may be submitted to Ron Coleman, Program Specialist IV, Driver License Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78765-0300, (512) 424-7652.

The repeals are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the Department's work; and Texas Transportation Code, §521.165.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.165 are affected by this proposal.

§15.41. *Voter Registration.*

§15.47. *Electronically Readable Information.*

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

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For further information, please call: (512) 424-2135



SUBCHAPTER C. EXAMINATION REQUIREMENTS

37 TAC §§15.52, 15.54, 15.56, 15.59

The Texas Department of Public Safety proposes amendments to Subchapter C, §§15.52, 15.54, 15.56, and 15.59, concerning Driver License Rules. Amendments to the sections are necessary in order to further align the rules with existing statute and to repeal rules addressed in statute. Terms have been modified to align with industry standards, i.e., "driver's" to "driver" and "instruction permit" to "learner license." Rule changes also provide that licenses issued by the department, including driver licenses, minor's restricted driver licenses, learner licenses, and occupational and interlock licenses will be issued with a photograph with current information being displayed on each license or identification certificate issued.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government or local economies.

Mr. Ybarra also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the sections as proposed. There are no anticipated economic costs to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to establish clearer policy guidelines for the issuance of Texas driver license and identification cards, processing of administrative actions and maintenance of driver related information.

The Department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The Department has determined that Chapter 2007 of the Texas Government Code does not apply to these rules. Accordingly, the Department is not required to complete a takings impact assessment regarding these rules.

Comments on the proposal may be submitted to Ron Coleman, Program Specialist IV, Driver License Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78765-0300, (512) 424-7652.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the Department's work; and Texas Transportation Code, §521.165.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.165 are affected by this proposal.

§15.52. Knowledge Examination.

The department administers examinations to determine an applicant's knowledge of the traffic laws of Texas and such applicant must meet a predetermined score of 70% correct, or better, on each test to qualify for a driver [drivers] license. Although the applicant must understand highway signs in the English language and must have a knowledge of the traffic laws of the state, literacy itself is not a condition which must be met before a Texas driver [drivers] license can be issued. Understanding is not considered to be synonymous with speaking the language. Written and oral examinations will be offered in English and Spanish only. Oral tests will be administered when actually needed.

§15.54. Vehicle Inspection.

The department inspects vehicles prior to road testing to determine if such vehicle meets the requirements of law and is safe to operate on a public street or highway.

(1) Registration of vehicles.

(A) Texas law does not require the license of the driver and the registration of the vehicle to be from the same state. Hence, residents of Texas may legally operate vehicles registered properly in other states; and nonresidents properly licensed in their home states may legally operate a Texas registered vehicle. Many states do require driver [drivers] license and registration to be issued by the same state.

(B) Farm registered vehicles may be legally used for authorized farm and ranch purposes and family transportation to church, to school, to a doctor, or to obtain family necessities, but not for gainful employment.

(2) (No change.)

(3) Vehicle inspection.

(A) Inspection certificate. The inspection certificate must be:

(i) a current Texas vehicle inspection certificate properly affixed for all motor vehicles registered in Texas;

(ii) for valid out-of-state vehicle inspection certificates that are acceptable, refer to §4.37 [§3.72] of this title (relating to Acceptance of Out-of-State Vehicle Inspection Certificate [Certificates]);

(iii) no inspection certificate is required for a Texas-registered vehicle which was out of the state of Texas during an inspection period during the first trip to the home station or destination in Texas and for three days thereafter.

(B) Vehicle inspection for road tests in Class C vehicles and Class A and B vehicles under 80 inches wide. The following will be inspected:

(i) - (x) (No change.)

(xi) registration receipts if used for commercial driver [drivers] license (CDL) test.

(C) - (H) (No change.)

(4) (No change.)

§15.56. Road Test.

(a) The department administers a road test to determine an applicant's ability to exercise ordinary and reasonable control of a motor vehicle; such applicant must meet a predetermined score. The road test will be given in English or Spanish only and will consist of three separate standalone examinations, designated as the on-street test, the backing test, and parallel parking test, and will include the following maneuvers:

(1) - (16) (No change.)

(b) (No change.)

§15.59. Alternate Methods For Driver License Transactions.

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

(d) The following licensees will not be considered eligible to renew their license by an alternate method:

(1) holders of a learner, provisional [øɾ] occupational [H-license] or commercial driver license (CDL);

[(2) licensees whose driver license reflects a restriction to driving with telescopic lenses or telescopic aids;]

(2) [(3)] licensees whose record [driver license] reflects ad-
ministrative or card status [restrictions] because of driving ability or a medical condition that requires a periodic review, including any medical or physical condition that may affect the licensees' ability to safely operate a motor vehicle;

(3) [(4)] any licensee whose license is suspended, canceled, revoked, or denied;

(4) [(5)] any licensee applying for renewal that will be 79 years of age or older on the expiration of their current license [that to the best of the department's knowledge has an outstanding warrant or eapias on a ease filed by a DPS officer];

(5) [(6)] any licensee who does not have a social security number and digital image on file with the department; or

(6) [(7)] any licensee subject to the registration requirements of Chapter 62, Code of Criminal Procedure.

(e) The following identification certificate holders will not be considered eligible to renew or duplicate their certificate and the following driver license holders will not be considered eligible to duplicate their license by an alternate method:

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

(4) any applicant who does not have a social security number on file with the department; or

~~[(5) any applicant that to the best of the department's knowledge has an outstanding warrant or capias on file by a DPS officer; or]~~

(5) ~~[(6)]~~ any applicant that holds a commercial driver license.

(f) - (i) (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 July 24, 2009.

TRD-200903056

Lamar Beckworth

Director

Texas Department of Public Safety

Earliest possible date of adoption: September 6, 2009

For further information, please call: (512) 424-2135



SUBCHAPTER D. DRIVER IMPROVEMENT

37 TAC §§15.81 - 15.83, 15.85, 15.87

The Texas Department of Public Safety proposes amendments to Subchapter D, §§15.81 - 15.83, 15.85, and 15.87, concerning Driver License Rules. Amendments to the sections are necessary in order to further align the rules with existing statute and to repeal rules addressed in statute. Terms have been modified to align with industry standards, i.e., "driver's" to "driver" and "instruction permit" to "learner license." Rule changes also provide that licenses issued by the department, including driver licenses, minor's restricted driver licenses, learner licenses, and occupational and interlock licenses will be issued with a photograph with current information being displayed on each license or identification certificate issued.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government or local economies.

Mr. Ybarra also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the sections as proposed. There are no anticipated economic costs to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to establish clearer policy guidelines for the issuance of Texas driver license and identification cards, processing of administrative actions and maintenance of driver related information.

The Department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The Department has determined that Chapter 2007 of the Texas Government Code does not apply to these rules. Accordingly, the Department is not required to complete a takings impact assessment regarding these rules.

Comments on the proposal may be submitted to Ron Coleman, Program Specialist IV, Driver License Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78765-0300, (512) 424-7652.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the Department's work; and Texas Transportation Code, §521.165.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.165 are affected by this proposal.

§15.81. *Definition of Terms.*

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

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

(4) Reexamination of drivers--will normally consist of a comprehensive review of the required examinations including the vision, rules and signs tests, and a driving demonstration. The driving demonstration is to determine if restrictions or limitations should be imposed, and may be more intensive than a routine driving test. Guidelines for requiring the reexamination include:

(A) minimum of six entries (convictions for moving violations and accidents where negligence is indicated) in a two-year period with a minimum of 3 entries within the 12 month period preceding the examination request;

(B) determined by a Driver Improvement and Compliance Bureau [~~driver improvement~~] analyst following a review of two or more accidents within a 12-month period in which the licensee was at fault;

(C) recommendation by proper medical authority following a professional evaluation of the medical facts; or

(D) recommendation by an experienced field representative of the department or any law enforcement agency following a thorough investigation showing clear and convincing evidence that such examination is reasonable and necessary.

(5) Reliable report--refers to any report that can be verified or substantiated.

§15.82. *Notice of Suspension, Disqualification or Revocation. Order of Suspension, Disqualification and Revocation.*

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

(d) If the licensee does not request a timely hearing or a judge affirms the department's action, the department will mail to the licensee's mailing address or address of record an order of suspension, revocation or disqualification. The order will contain the dates of the suspension, revocation, or disqualification, [~~or the start date of a revocation;~~] and any [~~it will also provide all~~] necessary information for the reinstatement of the license. If the department has been notified that the address of record is no longer valid, a notice will not be mailed.

§15.83. *Hearing Requests.*

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

(c) The written hearing request may [~~must either~~] be mailed, e-mailed or faxed to the department's Driver Improvement and Compliance Bureau in Austin at the address, e-mail address or fax number provided on the notice of suspension, revocation or disqualification.

(d) - (h) (No change.)

§15.85. *Appeals.*

(a) A licensee may appeal an affirmative finding by the presiding judge.

(b) The 30-day period for filing an appeal begins the date the department's suspension, revocation or disqualification order is dated and mailed.

(c) To perfect service on the department of a judicial appeal of a final order of the presiding officer, a defendant must send a file-stamped copy of the defendant's appeal petition certified by the clerk of the court in which the petition is filed, to the department's Driver Improvement and Compliance Bureau at its headquarters in Austin. A suspension will not be stayed until service is perfected according to this subsection.

(d) A 90-day stay will be effective from the date the Driver Improvement and Compliance Bureau receives the certified file-stamped petition. If there has not been a final decision by the appellate court, on the 91st day the department shall impose the suspension, probated suspension, disqualification, or revocation.

(e) If an affirmative finding by the presiding officer is reversed on appeal, the appellant shall notify the department by mailing a file-stamped copy of the judgment from the appellate court to the department's Driver Improvement and Compliance Bureau in Austin. This address is provided on the original notice of suspension, revocation or disqualification. Upon verification, the department shall lift the suspension, revocation or disqualification, which will be indicated on the individual's driving record.

§15.87. *Cancellation of Driver License.*

The department will cancel a driver [~~drivers~~] license upon confirmation of any of the following:

- (1) nonpayment of fee;
- (2) all applicants suspended in another state;
- (3) death of authorizing signer;
- (4) withdrawal of authorization for a minor;
- (5) mental incapacity;
- (6) some false statement convictions;
- (7) failure to complete a concurrent driver education course;
- (8) license issued to person not entitled thereto.

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 July 24, 2009.

TRD-200903057

Lamar Beckworth

Director

Texas Department of Public Safety

Earliest possible date of adoption: September 6, 2009

For further information, please call: (512) 424-2135

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SUBCHAPTER E. RECIPROCITY IN DRIVER LICENSING

37 TAC §§15.91 - 15.93

The Texas Department of Public Safety (Department) proposes amendments to Subchapter E, §§15.91 - 15.93, concerning Driver License Rules. Amendments to the sections are necessary in order to further align the rules with existing statute and to repeal rules addressed in statute. Terms have been modified to align with industry standards, i.e.; "driver's" to "driver" and "instruction permit" to "learner license." Rule changes also provide that licenses issued by the Department, including driver licenses, minor's restricted driver licenses, learner licenses, and occupational and interlock licenses will be issued with a photograph with current information being displayed on each license or identification certificate issued. Additionally, §15.91 is reformatted in order to allow for revisions regarding the nations to which the department has obtained a license reciprocal agreement.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government or local economies.

Mr. Ybarra also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the sections as proposed. There are no anticipated economic costs to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to establish clearer policy guidelines for the issuance of Texas driver license and identification cards, processing of administrative actions and maintenance of driver related information.

The Department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The Department has determined that Chapter 2007 of the Texas Government Code does not apply to these rules. Accordingly, the Department is not required to complete a takings impact assessment regarding these rules.

Comments on the proposal may be submitted to Ron Coleman, Program Specialist IV, Driver License Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78765-0300, (512) 424-7652.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the Department's work; and Texas Transportation Code, §521.165.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.165 are affected by this proposal.

§15.91. *International Reciprocity.*

(a) International reciprocity. International reciprocity in driver licensing between a state in the United States and another nation is determined, first, by international agreements between the United States and other countries, and, second, in the absence of any international agreement, by individual state laws. The Department of Public Safety complies with all driver license reciprocal agreements. As of March, 1972, the 1949 World Convention on International Road Traffic was in force in the following countries:

- (1) Albania;
- (2) Algeria (DZ);
- (3) Argentina (RA);
- (4) Australia (AUS);
- (5) Austria (A);
- (6) Barbados;
- (7) Belgium (B);
- (8) Botswana;
- (9) Bulgaria (BR);
- ~~[(10) Burundi;]~~
- ~~[(11) Cambodia (K);]~~
- ~~[(12) Cameroon;]~~
- ~~[(13) Canada;]~~
- ~~[(14) Central African Republic (RCA);]~~
- ~~[(15) Ceylon (CL);]~~
- (12) ~~[(16) Chile (RCH);]~~
- ~~[(17) China (RC);]~~
- (13) ~~[(18) Congo (RCB) (Brazzaville);]~~
- (14) ~~[(19) Congo (CGO) (Kinshasa);]~~
- (15) ~~[(20) Cuba;]~~
- (16) ~~[(21) Cyprus (CY);]~~
- (17) ~~[(22) Czechoslovakia (CS);]~~
- ~~[(23) Dahomey (DY);]~~
- (18) ~~[(24) Denmark (DK);]~~
- (19) ~~[(25) Dominican Republic (DOM);]~~
- (20) ~~[(26) Ecuador (EC);]~~
- ~~[(27) Equatorial Guinea;]~~
- (21) ~~[(28) Fiji;]~~
- (22) ~~[(29) Finland (SF);]~~
- (23) ~~[(30) France (F);]~~
- (24) ~~[(31) Gambia;]~~
- (25) ~~[(32) Ghana (GH);]~~
- (26) ~~[(33) Greece (GR);]~~
- (27) ~~[(34) Guatemala (GCA);]~~
- (28) ~~[(35) Guyana;]~~
- ~~[(36) Haiti (RH);]~~
- (30) ~~[(37) Hungary (H);]~~
- (31) ~~[(38) India (IND);]~~
- (32) ~~[(39) Ireland (IRL);]~~
- (33) ~~[(40) Israel (IL);]~~
- (34) ~~[(41) Italy (I);]~~
- (35) ~~[(42) Ivory Coast (CI);]~~
- (36) ~~[(43) Jamaica (JA);]~~
- (37) ~~[(44) Japan (J);]~~
- (38) ~~[(45) Jordan (JOR);]~~
- (39) ~~[(46) Korea;]~~
- (40) ~~[(47) Laos (LAO);]~~
- (41) ~~[(48) Lebanon (RL);]~~
- (42) ~~[(49) Luxembourg (L);]~~
- (43) ~~[(50) Madagascar;]~~
- ~~[(51) Malagasy Republic (RM);]~~
- (44) ~~[(52) Malawi (MW);]~~
- (45) ~~[(53) Malaysia (PTM);]~~
- (46) ~~[(54) Mali (RMM);]~~
- (47) ~~[(55) Malta;]~~
- (48) ~~[(56) Mauritius;]~~
- (49) ~~[(57) Monaco (MC);]~~
- (50) ~~[(58) Morocco (MA);]~~
- (51) ~~[(59) Netherlands (NL);]~~
- (52) ~~[(60) New Zealand (NZ);]~~
- (53) ~~[(61) Niger (NIG);]~~
- (54) ~~[(62) Norway (N);]~~
- (55) ~~[(63) Paraguay;]~~
- (56) ~~[(64) Peru (PE);]~~
- (57) ~~[(65) Philippines (PI);]~~
- (58) ~~[(66) Poland (PL);]~~
- (59) ~~[(67) Portugal (P);]~~
- (60) ~~[(68) Rumania (R);]~~
- (61) ~~[(69) Rwanda (RWA);]~~
- (62) ~~[(70) San Marino (RSM);]~~
- (63) ~~[(71) Senegal (SN);]~~
- (64) ~~[(72) Sierra Leone (WAL);]~~
- (65) ~~[(73) Singapore;]~~
- (66) ~~[(74) South African Republic (ZA);]~~
- (67) ~~[(75) Spain (E);]~~
- (68) ~~[(76) Swaziland;]~~
- (69) ~~[(77) Sweden (S);]~~
- (70) ~~[(78) Syria (SYR);]~~

- (71) ~~[(79)]~~ Tanzania; Zanzibar;
- (72) ~~[(80)]~~ Thailand (T);
- (73) ~~[(81)]~~ Togo (TG);
- (74) ~~[(82)]~~ Trinidad and Tabago (TT);
- (75) ~~[(83)]~~ Tunisia (TN);
- (76) ~~[(84)]~~ Turkey (TR);
- (77) ~~[(85)]~~ Uganda;
- ~~[(86) Union of Soviet Socialist Republics (SU);]~~
- ~~[(87) United Arab Republic (ET);]~~
- (78) ~~[(88)]~~ United Kingdom (GB);
- (79) ~~[(89)]~~ United States (USA);
- (80) ~~[(90)]~~ Vatican City (V);
- (81) ~~[(91)]~~ Venezuela (YV);
- (82) ~~[(92)]~~ Viet Nam (VN);
- ~~[(93) Western Samoa;]~~
- ~~[(94) Yugoslavia (YU);]~~
- (83) ~~[(95)]~~ Zambia.

~~[(b) Inter-American Convention on the Regulation of Inter-American Automotive Traffic. As of January, 1967, the 1943 Inter-American Convention on the Regulation of Inter-American Automotive Traffic was in force in the following countries which are not parties to the 1949 Geneva Convention. (Bolivia is the only American Republic that is not a party to either the 1949 or the 1943 agreements);]~~

- ~~[(1) Brazil;]~~
- ~~[(2) Colombia;]~~
- ~~[(3) Costa Rica;]~~
- ~~[(4) El Salvador;]~~
- ~~[(5) Honduras;]~~
- ~~[(6) Mexico;]~~
- ~~[(7) Nicaragua;]~~
- ~~[(8) Panama;]~~
- ~~[(9) Uruguay;]~~

~~[(c) Other Countries Honoring Agreements. The following countries, with the exception of Mexico, have ratified neither of the preceding agreements. They will, however, honor the provisions of those agreements;]~~

- ~~[(1) Mexico;]~~
- ~~[(2) Switzerland;]~~
- ~~[(3) Germany;]~~

(b) The countries or territories listed are either direct parties to one or both of the cited Conventions or the U.S. State Department considers them bound as beneficiaries by the signature of a former governor. NOTE: Until further notice, licenses from the following republics of the USSR and countries of the Baltics should be honored:

- (1) Armenia;
- (2) Azerbaijan;
- (3) Belarus;

- (4) Estonia;
- (5) Kazakstan;
- (6) Latvia;
- (7) Lithuania;
- (8) Moldova;
- (9) Tajikistan;
- (10) Turkmenistan;
- (11) Ukraine;
- (12) Uzbekistan.

(c) [(d)] Provisions of international agreements. The international agreements honored by the countries listed in subsections (a) - (c) of this section provide the following.

(1) Reciprocal privileges are limited to ages 18 to 75 and for a period not to exceed one year from date of entry into the United States or other country.

(2) Reciprocal privileges are limited to private vehicles. Carriage of persons for hire or goods other than personal baggage of the occupants of the vehicles is not authorized. This excludes all commercial buses, trucks, and trailers.

(3) Every vehicle must have a registration certificate issued in accordance with the laws of the country of residence and identifying the vehicle and owner. The vehicle registration number must be shown on the rear of the vehicle or on a plate attached to the rear.

(4) The vehicle must also show on the rear an oval sign or plaque to indicate the country from which it comes.

(5) Every driver must have a valid driver's permit (license) issued by a contracting country or state or an international permit issued by an authorized authority in the form of a booklet containing identification and photograph of the bearer and pages printed in several languages including English.

(6) All countries ratifying the agreements are required to communicate to each other information regarding persons operating vehicles under the provisions of the agreement who are liable to proceedings for a driving offense or have been involved in a serious accident as a driver. In the United States, information of this kind should be reported by the appropriate state agency to the Department of State, Washington, D.C. 20520, referring to the "Convention on Road Traffic of 1949" or the "1943 Inter-American Convention on the Regulation of Inter-American Automotive Traffic."

(7) The United States Department of State does not issue international driving permits, but authorizes the American Automobile Association and the American Touring Alliance to issue oval United States plaques and international driving permits. In Texas the American Automobile Association issues international driving permits in El Paso, Houston, Fort Worth, and Austin. However, applications are accepted by any American Automobile Association office. The fee for an international permit is \$3.00 when issued under the Geneva Convention and \$2.00 when issued under the Inter-American Convention. Other governments also authorize their motoring associations to perform these services for their countries.

(8) A treaty entered into in 1943 between the United States and Mexico exempts any consular officer, members of his family, and employees who are Mexican nationals from paying the required licensing fees provided they are not engaged in any private occupation for gain and are able to show proper identification. The comptroller of public accounts issues consular exemption certificates and these will be

accepted as sufficient identification to qualify for waiver of the driver's license fee.

(9) We must be governed wholly by state law in determining driver [~~drivers~~] license requirements for:

(A) drivers of private vehicles from countries which do not honor existing international agreements; and

(B) drivers of commercial vehicles from all foreign countries.

(10) On this basis, we presume that no reciprocity is extended to residents of Texas unless specific evidence is presented indicating otherwise. In the absence of specific evidence, such applicants are required to obtain a Texas driver [~~drivers~~] license.

(d) [~~(e)~~] Foreign Diplomats in the United States. The United States Code, Title 22, §§4301-4304, provides that the United States Department of State will provide certain benefits to foreign diplomats who are in the United States. It has been determined that a driver's license is one of these benefits. Based on interpretations of the State Department, the Department of Public Safety has been requested to deny issuance of a Texas driver's license to persons in this status due to the requirement that these persons obtain a Department of State driver's license. If any person is identified as having diplomatic status he will be denied a Texas license and referred to the Department of State. Foreign Diplomats are defined as: Ambassadors, Ministers, Minister Counselors, Counselors, First Secretaries, Second Secretaries, Third Secretaries, Consuls-General, Deputy Consuls-General, Consuls, and Vice Consuls. Only family members of Consuls may obtain a Texas driver's license.

§15.92. *Reciprocity in Driver Licensing.*

The Department grants like reciprocity for driver licensing to residents of other states.

(1) Nonresident recognition in Texas of licenses held by persons from other states, territories of the United States, provinces of Canada, and the United States military service is based upon Texas Transportation Code, §521.029, and administrative policies. Thus:

(A) residents of other states, including the District of Columbia but excluding United States territories and the provinces of Canada, who are at least 16 years of age may drive in Texas on a valid license from their home state, as a Class C or Class M driver only.

(B) residents of other states, the District of Columbia, and the provinces of Canada who are at least 18 years of age may drive the same vehicles in Texas which they are licensed to drive at home as a Class A, B, C, or M operator, provided like recognition is granted to citizens of Texas;

(C) for the purposes of determining nonresident reciprocity, United States territories are identified as follows: American Samoa, Commonwealth of Puerto Rico, Corn Islands, Guam, Midway Islands, Trust Territory of Pacific Islands, Virgin Islands, Canton, Baker, Carolina, Christmas, Danger, Enderbury, Flint, Funafuti, Howland, Jarvis, Johnston, Kingman, Navassa, Malden, Manahiki, Nukufetan, Nukulailai, Nurakita, Palmyra, Penrhyn, Rakahanga, Reef, Sand, Starbuck, Swan, Vostok, Wake, and Phoenix Group. Reciprocity or nonreciprocity exists with these territories as indicated by the following:

(i) Puerto Rico. One hundred twenty days for all classes;

(ii) Guam. Thirty days for all classes;

(iii) Trust Territory of Pacific Islands. All classes until residence is established;

(iv) all other territories. No reciprocity.

(D) In all cases where reciprocity exists with a United States territory, the driver must be at least 18 years of age.

(E) Exceptions to general reciprocity provisions are Illinois, where all operators of passenger cars, motorcycles, motor-driven cycles, and "not for hire" commercial vehicles must be at least 18 years of age; operators of taxicabs, school buses, and "for hire" commercial vehicles must be at least 21 years of age.

(2) Many states in addition to Texas extend the validity period of licenses issued to members of the military. Such extensions are honored for driving in Texas. A list of such extensions is furnished by the department.

(3) Any person on active United States military duty who has a valid driver [~~drivers~~] license issued by the United States Armed Forces in a foreign country may drive the following vehicles in Texas for 90 days from date of return to the United States:

(A) any vehicle designated on or by the license certificate;

(B) any vehicle of a lower class than that designated on the license certificate, except that motorcycles must be designated.

(4) Issuance in a foreign country may be determined by checking the location of issuance on the license certificate.

(5) Texas statutes can authorize driving in Texas only. Recognition by other states will depend on their statutes.

(6) The department adheres to the NATO agreement signed in 1951 which provides that the receiving state shall either:

(A) accept as valid, without a driving test or fee, the driving permit or license or military driving permit issued by the sending state or a subdivision thereof to a member of a force or a civilian component;

(B) issue its own driving permit or license to any member of a force or civilian component who holds a driving permit or license or military driving permit issued by the sending state or subdivision thereof, provided that no driving test shall be required. The NATO member countries are Belgium, Bulgaria, Canada, Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxemburg, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Turkey, United Kingdom of Great Britain and the United States of America; or

(C) permit members of the military and its civilian components to operate a vehicle in Texas with the permit, license, or military driving permit, appropriate for the class of vehicle being driven, issued by the sending state (country) or a subdivision; or issue its own permit (Texas license) after the applicant has taken the required vision tests and paid the required fee. The written knowledge tests and driving skills test will be waived when applying for a Texas license of the same or lower type. The members of the military or its civilian components of a NATO country may drive in Texas on their country's license appropriate for the class of vehicle being driven or be issued a Texas license after they have met all of the licensing requirements except for the written and driving tests, which will be waived unless applying for an advance in grade. This provision applies only to the actual members of the military or its civilian components, and it does not apply to the spouse or dependent of the member.

§15.93. *Out-of-State Examinations and Applications.*

(a) General. Driver [~~Drivers~~] license examinations and services for a nonresident in need of same may be given at the request of the licensing state or licensee from such state. The purpose of these

examinations and services is to make it possible for the licensing state to renew, restrict, endorse, or reinstate a license for a person who is absent from the state. Department of Public Safety will conduct and honor driver [~~drivers~~] license examinations and services according to the following provisions.

(1) The agency responsible for the driver [~~drivers~~] license program in any state in the United States, in any province of Canada, or in any United States or Canadian military base outside the continental limits of the United States and Canada may sign and participate in this agreement.

(2) Any driver [~~drivers~~] license service authorized by a signatory for its own drivers will be conducted for a resident of any other jurisdiction which has signed this agreement when such resident shows to the satisfaction of the host jurisdiction need and entitlement to same.

(3) Except for specific cause to the contrary, all signatories to this agreement will accept as valid the results of tests conducted or services rendered by another signatory when properly certified.

(4) Any fees due a jurisdiction for which tests or services have been conducted should be transmitted by the applicant to the home jurisdiction. The host jurisdiction should collect and retain any examination and other authorized fees for services rendered.

(5) Tests for services not ordinarily authorized by the host jurisdiction or agency should be conducted only after special agreement between the jurisdictions or agencies involved.

(6) A signatory assumes responsibility only for the competence and accuracy of its services or certifications.

(7) The nonresident examinations and services authorized herein should not be conducted for persons who could reasonably return to the home state for the required examinations or services.

(8) In any case of a burdensome volume of nonresident tests or services, such tests or services may be postponed or suspended by notifying the jurisdictions involved.

(9) A signatory may at its discretion conduct examinations or services for a nonsignatory.

(b) Restriction or endorsement.

(1) A restriction or endorsement, such as "motorcycle also," can be added to an out-of-state license certificate only:

(A) after completion of the necessary tests and other requirements; and

(B) upon specific authorization from the licensing state.

(2) In the absence of specific authorization, the applicant may apply for a Texas license.

(c) Examination by request. The Driver Improvement and Compliance Bureau [~~improvement and control~~] or Texas citizens stranded in other states may request examination from such other states to clear Texas records. Such tests must be evaluated and approved by the Driver Improvement and Compliance Bureau [~~driver improvement and control~~] as meeting the necessary requirements before they may be accepted for Texas purposes.

(d) Testing for Department of State. Testing for the United States Department of State will be conducted by driver license personnel for the issuance of a Department of State driver's license. Testing may include vision testing, written tests, and driving tests. Unless tests are provided by the State Department, Texas tests will be administered. Test results will be recorded on documents provided by the State Department.

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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Lamar Beckworth

Director

Texas Department of Public Safety

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For further information, please call: (512) 424-2135



SUBCHAPTER F. REGULATIONS IN MAINTAINING DRIVER RECORDS

37 TAC §15.101

The Texas Department of Public Safety proposes amendments to Subchapter F, §15.101, concerning Regulations in Maintaining Driver Records. Amendments to the section are necessary in order to further align the rules with existing statute and to repeal rules addressed in statute. Terms have been modified to align with industry standards, i.e.; "driver's" to "driver," "accident" to "crash" and "instruction permit" to "learner license." Rule changes also provide that licenses issued by the department, including driver licenses, minor's restricted driver licenses, learner licenses, and occupational and interlock licenses will be issued with a photograph with current information being displayed on each license or identification certificate issued.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government or local economies.

Mr. Ybarra also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the section as proposed. There are no anticipated economic costs to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to establish clearer policy guidelines for the issuance of Texas driver license and identification cards, processing of administrative actions and maintenance of driver related information.

The Department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The Department has determined that Chapter 2007 of the Texas Government Code does not apply to this rule. Accordingly, the Department is not required to complete a takings impact assessment regarding the rule.

Comments on the proposal may be submitted to Ron Coleman, Program Specialist IV, Driver License Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78765-0300, (512) 424-7652.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the Department's work; and Texas Transportation Code, §521.165.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.165 are affected by this proposal.

§15.101. *Records Required.*

(a) All courts having jurisdiction over violations of the traffic laws of Texas are required by statute to report such convictions to the department.

(b) The department is required by law to maintain records on licensed drivers, including convictions for traffic law violation charges and incidents of ~~crash~~ ~~[accident]~~ involvement. Prior to licensing or relicensing an individual, an examination is to be made of the records and applicants with a history of convictions for traffic violations and incidents of ~~crash~~ ~~[accident]~~ involvement and can be denied a license as being inimical to public safety.

(c) The department shall not be required to maintain such records when, in the opinion of the director, they are no longer necessary for the purpose of suspension, revocation, cancellation, disqualification, or denial of a driver ~~[drivers]~~ license.

(1) Records of original application, examination and reports of convictions resulting in automatic suspension are kept on microfilm electronic image, or any other technology which may be approved by the Director. History records containing conviction, crash and administrative information on the licensee are kept in computer form.

(2) The department interprets its responsibility for record keeping to identify those drivers experiencing difficulty in the operation of a motor vehicle involving the safety and welfare of others and considers these factors in withholding or withdrawing an individual's driving privileges as provided by statute.

(3) Violations creating a hazard to other persons or property are maintained.

(4) Convictions resulting in automatic suspension of license are kept indefinitely. Those convictions not resulting in automatic suspension of license and incidents of accident involvement are removed from the record ~~[after five years]~~ by administrative authority granted by statute.

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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Lamar Beckworth

Director

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SUBCHAPTER G. DENIAL OF RENEWAL OF DRIVER'S LICENSE FOR FAILURE TO APPEAR FOR TRAFFIC VIOLATION

37 TAC §15.111, §15.112

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

The Texas Department of Public Safety proposes the repeal of Subchapter G, §15.111 and §15.112, concerning Denial of Renewal of Driver's License for Failure to Appear for Traffic Violation. Section 15.111 specific to the purpose and scope for the renewal of driver license for failure to appear for traffic violations is being repealed as provisions regarding purpose and scope may be found in Texas Transportation Code, Chapter 706. Section 15.112 specific to the Authority to Enter Interlocal Contract for services of denying the renewal of driver's license for failure to appear for traffic violation is being repealed as these provisions may be found in Texas Transportation Code, Chapter 706.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the repeals are in effect there will be no fiscal implications for state or local government or local economies.

Mr. Ybarra also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeals as proposed. There are no anticipated economic costs to individuals who are required to comply with the repeals as proposed. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also determined that for each year of the first five-year period the repeals are in effect, the public benefit anticipated as a result of enforcing the repeals will be current and updated rules.

The Department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The Department has determined that Chapter 2007 of the Texas Government Code does not apply to these repeals. Accordingly, the Department is not required to complete a takings impact assessment regarding these repeals.

Comments on the proposal may be submitted to Ron Coleman, Program Specialist IV, Driver License Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78765-0300, (512) 424-7652.

The repeals are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the Department's work; and Texas Transportation Code, §521.165.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.165 are affected by this proposal.

§15.111. *Purpose and Scope.*

§15.112. *Authority To Enter Interlocal Contract.*

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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Director

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SUBCHAPTER G. DENIAL OF RENEWAL OF DRIVER LICENSE FOR FAILURE TO APPEAR FOR TRAFFIC VIOLATION

37 TAC §15.113, §15.114

The Texas Department of Public Safety proposes amendments to Subchapter G, §15.113 and §15.114, concerning Denial of Renewal of Driver License for Failure to Appear for Traffic Violation. Amendments to the sections are necessary in order to further align the rules with existing statute and to repeal rules addressed in statute. Terms have been modified to align with industry standards, i.e.; "driver's" to "driver," "accident" to "crash" and "instruction permit" to "learner license." Rule changes also provide that licenses issued by the department, including driver licenses, minor's restricted driver licenses, learner licenses, and occupational and interlock licenses will be issued with a photograph with current information being displayed on each license or identification certificate issued.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government or local economies.

Mr. Ybarra also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the sections as proposed. There are no anticipated economic costs to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to establish clearer policy guidelines for the issuance of Texas driver license and identification cards, processing of administrative actions and maintenance of driver related information.

The Department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The Department has determined that Chapter 2007 of the Texas Government Code does not apply to these rules. Accordingly, the Department is not required to complete a takings impact assessment regarding these rules.

Comments on the proposal may be submitted to Ron Coleman, Program Specialist IV, Driver License Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78765-0300, (512) 424-7652.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the Department's work; and Texas Transportation Code, §521.165.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.165 are affected by this proposal.

§15.113. *Contract with Private Vendor.*

The department ~~may contract~~ ~~[has contracted]~~ with a private vendor to implement the provisions of Texas Transportation Code, Chapter 706. The vendor shall be the primary custodian of all failure to appear violator records and will receive and process reports from contracting local political subdivisions. The vendor will also maintain readily accessible customer-support services, including a toll-free telephone service, to advise license holders on how to contact the court in which the failure to appear ~~or failure to pay~~ report originated.

§15.114. *Originating Court To File Failure To Appear Report.*

If a person fails to appear or fails to pay or satisfy a judgment as provided in Texas Transportation Code, Chapter 706, a local political subdivision may submit a report to the contract vendor for entry into the failure to appear/failure to pay database ~~[failure to appear report to the department]~~. The local political subdivision shall make reasonable efforts to ensure that each report is accurate, complete, and nonduplicative. The report shall include ~~[the following]~~ information as prescribed by the department. ~~[:]~~

- ~~[(1) the name of the political subdivision submitting the report;]~~
- ~~[(2) the jurisdiction in which the alleged offense occurred;]~~
- ~~[(3) the name, date of birth, and the Texas driver license number of the person alleged to have failed to appear or failed to pay or satisfy a judgment;]~~
- ~~[(4) the date of the alleged violation;]~~
- ~~[(5) a brief description of the alleged violation;]~~
- ~~[(6) a statement that the person failed to appear or failed to pay or satisfy a judgment;]~~
- ~~[(7) the date that the person failed to appear or failed to pay or satisfy a judgment; and]~~
- ~~[(8) any other information required by the department.]~~

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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Lamar Beckworth
Director
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SUBCHAPTER H. ADVERTISING

37 TAC §15.131

The Texas Department of Public Safety proposes amendments to Subchapter H, §15.131, concerning Advertising. Amendments to the section are necessary in order to further align the rule with existing statute and to repeal rules addressed in statute. Terms have been modified to align with industry standards, i.e.; "driver's" to "driver," "accident" to "crash" and "instruction permit" to "learner license."

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government or local economies.

Mr. Ybarra also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the section as proposed. There are no anticipated economic costs to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rules will be to establish clearer policy guidelines for the issuance of Texas driver license and identification cards, processing of administrative actions and maintenance of driver related information.

The Department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The Department has determined that Chapter 2007 of the Texas Government Code does not apply to this rule. Accordingly, the Department is not required to complete a takings impact assessment regarding the rule.

Comments on the proposal may be submitted to Ron Coleman, Program Specialist IV, Driver License Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78765-0300, (512) 424-7652.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the Department's work; and Texas Transportation Code, §521.165.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.165 are affected by this proposal.

§15.131. Advertising in Texas Driver [Drivers] Handbook and Driver License Mailings.

The department may contract with a person or a small or large business to provide advertising in any [the] Texas Driver [Drivers] Handbook or mailing. The ad price will be based on circulation at the time of ad purchase, ad placement, and printing costs. The frequency of printing the handbooks or mailings is driven by the department [print schedule of the ~~Reproduction Bureau~~. The appropriate personnel such as Graphics, ~~Reproduction~~, and ~~Cost Recovery~~ will coordinate work efforts such as advertising specifications (camera ready ads; number of colors within ads; ad location; and printing deadlines)].

(1) All advertisements solicited by the department must be in good taste and must be approved by the appropriate department authority prior to use in the handbook or mailings.

(2) The following subjects or types of advertising may not be included in the handbook or mailings:

- (A) religious ads;
- (B) controversial organizations;
- (C) ballot measures;
- (D) tobacco ads;
- (E) ads contrary to agency goals;
- (F) political ads;
- (G) gambling ads;
- (H) controversial issues;
- (I) alcoholic beverage ads;
- (J) personal or offensive issues; and
- (K) ads which mention the department anywhere in the advertisement.

(3) The department reserves the right to add additional exclusions if warranted to be in the public's best interest.

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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Director

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SUBCHAPTER J. DRIVER RESPONSIBILITY PROGRAM

37 TAC §15.163

The Texas Department of Public Safety proposes amendments to Subchapter J, §15.163, concerning Driver Responsibility Program. Amendments to the section are necessary in order to further align the rules with existing statute and to repeal rules addressed in statute. Terms have been modified to align with industry standards, i.e.; "driver's" to "driver," "accident" to "crash" and "instruction permit" to "learner license." Rule changes also provide that licenses issued by the department, including driver

licenses, minor's restricted driver licenses, learner licenses, and occupational and interlock licenses will be issued with a photograph with current information being displayed on each license or identification certificate issued.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government or local economies.

Mr. Ybarra also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the section as proposed. There are no anticipated economic costs to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to establish clearer policy guidelines for the issuance of Texas driver license and identification cards, processing of administrative actions and maintenance of driver related information.

The Department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The Department has determined that Chapter 2007 of the Texas Government Code does not apply to this rule. Accordingly, the Department is not required to complete a takings impact assessment regarding the rule.

Comments on the proposal may be submitted to Ron Coleman, Program Specialist IV, Driver License Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78765-0300, (512) 424-7652.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the Department's work; and Texas Transportation Code, §521.165.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.165 are affected by this proposal.

§15.163. Amnesty, Incentive and Indigency Programs.

(a) The department may provide for amnesty, incentive and indigency programs under the Driver Responsibility Program.

(b) The Amnesty Program will consist of an agreement made between the department and an individual to reduce a surcharge assessment based upon compliance with the law. The Amnesty Program will apply to surcharges for Failure to Maintain Insurance and Driving Without a Valid License.

(1) For a No Insurance surcharge, the assessment may be reduced to 75% of the initial assessment if the individual provides proof of insurance satisfactory to the department.

(A) The individual will be required to maintain liability insurance for the term of the surcharge assessment to qualify for the reduction each year.

(B) The individual will be required to present proof of insurance at the time of payment. If the individual enters an installment agreement, proof of insurance must be presented with each payment made to the department.

(C) Proof of insurance submitted by the individual may be verified by the department through the Financial Responsibility Verification program. Proof of insurance which cannot be verified may no longer be considered valid.

(D) [(C)] If the individual fails to comply with subparagraphs (A) and (B) or defaults on the payment plan during the reduced assessment period, the amnesty provision will be voided and the full assessment will be applied.

(2) For a Driving Without a Valid License surcharge, the assessment may be reduced to 75% of the initial assessment if the individual obtains the appropriate driver license for the type of vehicle for which the offense was issued.

(A) The individual will be required to maintain a valid driver license for the term of the surcharge assessment to qualify for the reduction each year.

(B) If the individual fails to maintain a valid driver license as required or defaults on the payment plan during the reduced assessment period, the amnesty provision will be voided and the full assessment amount will be applied.

(c) The Incentive Program will consist of an agreement made between the department and an individual to reduce surcharge assessments based upon compliance with the surcharge program. The Incentive Program will apply to surcharges for Points, Intoxication and Driving While License Invalid.

(1) At the annual review for a second surcharge assessment, if the driver record reflects no additional convictions subject to the Driver Responsibility Program, the second surcharge assessment will be reduced to 90% of the full assessment.

(2) At the annual review for a third surcharge assessment, if the driver record reflects no additional convictions subject to the Driver Responsibility Program, the third surcharge assessment will be reduced to 80% of the full assessment.

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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Lamar Beckworth

Director

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CHAPTER 16. COMMERCIAL DRIVER LICENSE

SUBCHAPTER A. LICENSING REQUIREMENTS, QUALIFICATIONS, RESTRICTIONS, AND ENDORSEMENTS

37 TAC §§16.3, 16.4, 16.8, 16.9, 16.11, 16.12

The Texas Department of Public Safety proposes amendments to Subchapter A, §§16.3, 16.4, 16.8, 16.9, 16.11 and 16.12, concerning Licensing Requirements, Qualifications, Restrictions, and Endorsements. The title of the chapter is changed to "Commercial Driver License." The amendments to the sections are necessary in order to address Federal Motor Carrier Safety Administration (FMCSA) findings during the 2006 review of Texas' CDL program. These amendments further align Chapter 16 rules to new and previously existing statutory requirements governing Commercial Driver License issuance procedures where FMCSA determined the statute and/or rule was not clear enough for enforcement purposes.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government or local economies.

Mr. Ybarra also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the sections as proposed. There are no anticipated economic costs to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be clarification on the rules for commercial drivers and aligns the current rules with the federal regulations to ensure any conflicts between statutes and, federal regulations are negated.

The Department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The Department has determined that Chapter 2007 of the Texas Government Code does not apply to these rules. Accordingly, the Department is not required to complete a takings impact assessment regarding these rules.

Comments on the proposal may be submitted to Ron Coleman, Program Specialist IV, Driver License Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78765-0300, (512) 424-7652.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the Department's work; and Texas Transportation Code, §521.165.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.165 are affected by this proposal.

§16.3. *Persons Exempted.*

Persons exempted from commercial driver [~~driver's~~] license (CDL) requirements are:

(1) A person operating a vehicle that is controlled and operated by a farmer which is used to transport agricultural products, farm machinery, or farm supplies to or from a farm and which is not used in the operations of a common or contract carrier and used within 150 miles of the person's farm.

(A) Under this exemption, a rancher is considered a farmer.

(B) A farmer and his farmhands are equally exempt when the farmhands are in the employ of the farmer.

(C) One who purchases a crop in a field and only harvests and transports the produce, but takes no part in the planting and cultivating of the product, is not considered a farmer.

(D) One who purchases acres of growing timber and cultivates and harvests it over a period of months or years is considered a farmer.

(2) A person operating a fire fighting or emergency vehicle necessary to the preservation of life or property or the execution of emergency governmental functions, whether operated by an employee of a political subdivision or by a volunteer fire fighter, or a fire fighter employed by a private company, for example, a refinery. This would not exempt operators of vehicles used by utility companies.

(A) Drivers of industrial emergency response vehicles, including an industrial ambulance are exempt only if the vehicle is operated in compliance with criteria established by the Texas Industrial Fire Training Board or the State Firemen's and Fire Marshall's Association of Texas.

(B) Drivers of public or private ambulances are exempt only if they have been issued a license by the Department of State Health Services [~~Texas Department of Health~~].

(C) Electric company employees repairing downed power lines are not exempt.

(3) A person operating a military vehicle or a commercial motor vehicle, when operated for military purposes by military personnel, members of the reserves and national guard on active duty (including personnel on full-time national guard duty), personnel on part-time training duty, and national guard military technicians. This exemption includes the operation of vehicles leased by the United States government for use by the military branches of government.

(4) A person operating a vehicle that is a recreational vehicle that is driven for personal use.

(A) For purposes of this exemption recreational vehicle means a vehicular type unit primarily designed as temporary living quarters for recreational camping or travel use that either has its own motive power or is mounted on or towed by another vehicle.

(B) This exemption includes travel trailers, camping trailers, truck campers, and motor homes.

(5) A person operating a vehicle that is owned, leased, or controlled by an air carrier, as defined by Texas Transportation Code, §21.155(d), and that is driven or operated exclusively by an employee of the air carrier only on the premises of an airport, as defined by Texas Transportation Code, §22.001(2), on service roads to which the public does not have access.

(6) A person operating a vehicle used exclusively to transport seed cotton modules or cotton burrs.

§16.4. *Classes of Commercial Driver [Driver's] Licenses.*

(a) Class A commercial driver [driver's] license (CDL) authorizes the driving of any combination of vehicles with a gross combination weight rating (GVWR) of 26,001 pounds or more, providing the gross vehicle weight rating (GVWR) of the vehicle or vehicles being towed exceeds 10,000 pounds. If multiple vehicles are being towed, the weight of each towed vehicle will be added together to determine whether the towed vehicles exceed 10,000 pounds, even though no one vehicle being towed exceeds 10,000 pounds.

(b) Class B CDL authorizes the driving of any single vehicle with a GVWR of 26,001 pounds or more, any one of those vehicles towing a vehicle that does not exceed 10,000 pounds GVWR, and any vehicle designed to transport 24 passengers or more, including the driver.

(c) Class C CDL authorizes the driving of any single vehicle with a GVWR of less than 26,001 pounds, ~~and~~ any one of those vehicles towing another vehicle with a GVWR that does not exceed 10,000 pounds, ~~or any vehicle [when either is]:~~

(1) designed to transport 16 to 23 or more passengers, including the driver; or

(2) used in transportation of hazardous materials that require the vehicle to be placarded under 49 Code of Federal Regulations, Part 172, Subpart F. Hazardous materials has the meaning assigned by the Hazardous Materials Transportation Act (49 United States Code §1801 et seq.).

(d) Persons who operate motorcycles which carry hazardous materials that require a placard must hold a Class M license in conjunction with a Class A, B, or C CDL.

§16.8. *Qualifications To Drive in Interstate Commerce.*

(a) Interstate commerce is transportation of persons or property (a commodity) which crosses state or international boundaries. The bill of lading will be an indicator as to whether a shipment or commodity is interstate or intrastate. If there is no bill of lading, the origin and destination of the shipment will be an indicator.

(b) A person applying for a commercial driver [driver's] license (CDL) which authorizes operation of a commercial motor vehicle (CMV) in interstate commerce, must meet the following requirements.

(1) ~~Except for the issuance of a nonresident CDL, the [The]~~ applicant must be domiciled in Texas. For purposes of this requirement, the state of domicile means the state where a person has the person's true, fixed, and permanent home and principal residence and to which the person intends to return whenever absent. A person may have only one state of domicile.

(2) The applicant must be at least 21 years of age.

(3) The applicant must read and speak the English language. For purposes of this requirement, a person who has the ability in English to communicate to department personnel the need for a CDL will have complied.

(4) The applicant must meet the federal vision requirements set out in 49 Code of Federal Regulations, Part 391.41 or have been issued an exemption. Note: Vision waivers issued by the department are valid for intrastate operation only as stated in §16.9 of this title (relating to Qualifications To [to] Drive in Intrastate Commerce).

(5) The applicant must meet the federal physical requirements set out in 49 Code of Federal Regulations, Part 391.41. The applicant must:

(A) have no loss of a foot, a leg, a hand, or an arm, or have been granted a Skill Performance Evaluation certificate (Note:

Limb waivers issued by the department are valid for intrastate operation only as stated in §16.9 of this title [~~relating to Qualifications To Drive in Intrastate Commerce~~]);

(B) have no impairment of hand or finger which interferes with prehension or power grasping, or impairment of an arm, foot, or leg which interferes with the ability to perform normal tasks associated with operating a motor vehicle, or any other significant limb defect or limitation which interferes with the ability to perform normal tasks associated with operating a motor vehicle, or have been granted a Skill Performance Evaluation certificate (Note: Limb waivers issued by the department are valid for intrastate operation only as stated in §16.9 of this title [~~relating to Qualifications To Drive in Intrastate Commerce~~]);

(C) have no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control;

(D) have no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure;

(E) have no established medical history or clinical diagnosis of a respiratory dysfunction likely to interfere with the ability to control and drive a motor vehicle safely;

(F) have no current clinical diagnosis of high blood pressure likely to interfere with the ability to operate a motor vehicle safely;

(G) have no established medical history or clinical diagnosis of pneumatic, arthritic, orthopedic, muscular, neuromuscular, or vascular disease which interferes with the ability to control and operate a motor vehicle safely;

(H) have no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a motor vehicle;

(I) have no mental, nervous, organic, or functional disease or psychiatric disorder likely to interfere with the ability to drive a motor vehicle safely;

(J) first perceive a forced whispered voice in the better ear at not less than five feet with or without the use of a hearing aid or, if tested by use of an audiometric device, do not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA standard) Z24.5-1951;

(K) not use a Schedule I drug or other substance, an amphetamine, a narcotic, or any other habit-forming drug; and

(L) have no current clinical diagnosis of alcoholism.

(6) The applicant must not be disqualified from driving a motor vehicle.

(c) The vision exemptions which are acceptable in lieu of the vision requirements stated in subsection (b)(4) of this section and the Skill Performance Evaluation certificates for missing or impaired limbs which are acceptable in lieu of the physical requirements stated in subsection (b)(5)(A) and (B) of this section are issued by the Federal Motor Carrier Safety Administration. Drivers who wish to operate in interstate commerce must obtain an exemption, waiver or Skill Performance Evaluation certificate from the Federal Motor Carrier Safety Administration. An applicant must present the applicable document at the time of application. Note: Refer to §16.14 of this title (relating to Qualifications To Obtain Interstate Skills Performance Evaluation Certificate) for information on application requirements.

(d) The diabetes exemption which are acceptable in lieu of complying with the diabetes requirements stated in subsection (b)(5)(C) of this section are issued by the Federal Motor Carrier Safety Administration. Drivers who wish to operate in interstate commerce who meet the criteria stated in subsection (b)(5)(C) must obtain an exemption from the Federal Motor Carrier Safety Administration. An applicant must present the applicable document at the time of application. Note: Refer to §16.14 of this title for information on application requirements.

§16.9. Qualifications To Drive in Intrastate Commerce.

(a) Persons who do not qualify to drive in interstate commerce may still qualify to drive in intrastate commerce. In such cases the commercial driver's license (CDL) will contain an "M" restriction which will indicate that the holder of the license is restricted to travel in intrastate commerce.

(b) Intrastate commerce is the transportation of persons or property (a commodity) within the State of Texas where both the point of origin and the destination point are within the state and where no state line or international boundary is crossed. The bill of lading will be an indicator as to whether a shipment or commodity is interstate or intrastate.

(c) A person applying for a CDL which authorizes operation of a commercial motor vehicle (CMV) in intrastate commerce must meet the same requirements as those for interstate driving, except for the following:

(1) The applicant must be at least 18 years of age and has held a driver license for a minimum of three (3) years.

(2) There is no English language requirement.

(3) An applicant may present the department's vision or limb waiver certificate in lieu of meeting the vision or physical requirements of Title 49, Code of Federal Regulations, Part 391.41. Waivers issued by the department may be renewed through the License Issuance Bureau of the department in Austin.

(4) A driver who operates a motor vehicle in intrastate commerce only, and does not transport property requiring a hazardous material placard, and was regularly employed operating a commercial motor vehicle in Texas prior to August 28, 1989, is not required to meet the federal physical and vision standards.

(5) A driver who operates a CMV in intrastate commerce only may obtain a vision or limb waiver from the department provided the following qualifications are met: (Only one waiver can be used to obtain a CDL)

(A) Vision Waiver requirements:

(i) the applicant has 20/40 (Snellen) or better distant visual acuity with corrective lenses in the better eye; or

(ii) the applicant's vision is uncorrectable in one eye and the applicant does not wear corrective lenses, then uncorrected vision must be at least 20/25 (Snellen) in the better eye;

(iii) has the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber, and

(iv) a medical certificate required under Title 49, Code of Federal Regulations, Part 391.43.

(v) Applicants may be referred to a vision specialist in cases involving a failure on the vision examination:

(I) when the applicant protests the results of the vision examination; or

(II) when other conditions necessitate verification by a medical professional.

(B) Limb Waiver requirements:

(i) Medical certificate required under Title 49, Code of Federal Regulations, Part 391.43; and

(ii) Pass a comprehensive driving examination in the appropriate class vehicle (equipped with all necessary vehicle modifications) for the CDL the applicant is applying for.

(6) Applications for a Texas Intrastate Vision/Limb Waiver will include a review of the applicant's driving record for the three-year period immediately preceding the date of the application. An applicant may obtain a waiver from the department only if their driving record:

(A) contains no suspensions, revocations, disqualifications or cancellations of the driver license based on an alcohol, drug or driving related conviction or an administrative action resulting from the operation of any motor vehicle, including a personal vehicle;

(B) contains no involvement in an accident for which a citation was issued resulting in a conviction for a moving violation;

(C) contains no convictions for a disqualifying offense, as defined in Transportation Code, §522.081, or more than one serious traffic conviction, as defined in Transportation Code, §522.003, during the three-year period, which disqualified or should have disqualified the applicant in accordance with the driver disqualification provisions of Transportation Code, §522.081; or

(D) contains no more than two convictions for moving violations in a CMV.

(7) If the driving record shows either convictions for moving violations or accident involvement but does not indicate the type of vehicle operated or the number of miles per hour above the posted speed limit, the department may request additional official documentation (e.g., a copy of the citation or accident report, or copies of court records) from the applicant.

(8) If the applicant is arrested, cited for, or convicted of any disqualifying offense or other moving violations during the period an application is pending, the applicant must immediately report such arrests, citations, or convictions to the Texas Department of Public Safety, Driver License Division/License Issuance Bureau, P.O. Box 4087, Austin, Texas 78773-0310. No waiver determination will be completed while any charge against the applicant, for what would be a disqualifying offense, is still pending. Convictions occurring during the processing of an application will be considered in the overall driving record. The applicant must also report any conviction that is not listed on the driving record because of processing delays. If a subsequent review of the applicant's driving record identifies incidents that should have been reported, any waiver issued may be subject to revocation.

(9) Applicants for a Texas Intrastate Vision or Limb Waiver must be able to meet all other physical requirements specified in 49 CFR, Part 391.41 without the benefit of any other waiver.

(10) Applicants for a CDL must present a valid vision or limb waiver certificate (Medical Examiner's Certificate, form LI-5 or LI-5A) which they obtain from the department's License Issuance Bureau in Austin. A vision waiver may be used to obtain a Hazardous Materials Endorsement; however, a limb waiver cannot be used to obtain this endorsement.

(11) All recipients of a Texas Intrastate Vision/Limb Waiver will be required to have a license with the appropriate "M" (CDL-Intrastate Commerce Only), "P" (valid Texas vision/limb waiver

required) and any other restrictions as they apply. Waiver recipients will be notified in writing by means of the most recent address on file of the requirement to add the restrictions and will be given sixty days to comply. The waiver recipient's driver record will be alarmed until the appropriate restrictions have been added to their license. Failure to comply within the specified period may result in the revocation of any waiver and their disqualification as a commercial motor vehicle driver.

(12) Applications for the renewal of the Vision or Limb Waiver certificates will be granted provided the applicant's driving history continues to meet the requirements as detailed in paragraph (6) of this subsection [section] and:

(A) the applicant for a vision waiver continues to meet the vision standards listed in paragraph [subsection (e)](5)(A) of this subsection [section] and all other requirements of Title 49, Code of Federal Regulations, Part 391.41; or

(B) the applicant for a limb waiver certificate continues to meet all other requirements of Title 49, Code of Federal Regulations, Part 391.41.

(13) Applicants denied a vision/limb waiver may appeal the decision of the department by contacting the director or his designee, in writing, within 20 days after receiving notification of the denial. The request for an appeal must contain the name, address, and driver license number of the applicant, the reasons why the waiver should be granted, and include all pertinent documents which support the reasons why the waiver should be granted. The denial is stayed pending the review of the director or his designee. The decision of the director or his designee is final.

~~[(14) Appeal procedures for vision waiver denials are found in 37 FAC §3.62 (relating to Regulations Governing Transportation Safety).]~~

(14) ~~[(15)]~~ Waiver certificates will be approved by the director or his designee and are valid for a period not to exceed two years after the date of the applicant's medical examiner's physical examination.

(15) If the vision or limb waiver application is approved, the applicant must obtain a CDL with the appropriate restrictions within 60 days of the approval. Failure to obtain the CDL with the appropriate restrictions within the 60 day period may result in the cancellation of the waiver certificate. Any cancellations will require the applicant to reapply for the waiver.

(16) If the vision or limb waiver application is denied and the applicant currently holds a commercial driver license, the commercial driver license privilege will be cancelled and a demand for the surrender of the commercial driver license will be made. Failure to surrender the CDL may result in charges being filed for failure to surrender on demand.

(17) If the holder of a Texas vision/limb waiver fails to renew the waiver, the driver will be notified in writing by the department of this requirement via the most recent address on file. Failure to comply within a 60 day period may result in the cancellation of their commercial driver license and the demand for the surrender of the CDL currently held.

(18) Prior to the renewal of their CDL those applicants who were previously issued a vision waiver with an indefinite expiration date must comply with this section in order to retain their CDL. Notice of this requirement will be sent to the mailing address on record. Failure to comply with this section will result in the denial of their renewal application and the cancellation of their CDL operating privilege.

(19) Applicants desiring to obtain a limb waiver for interstate operation must apply to the State Director, Federal Motor Carrier Safety Administration as described in §16.14[-] of this title (relating to Qualifications To Obtain Interstate Skills Performance Evaluation Certificate).

§16.11. Restrictions.

(a) L--vehicles without air brakes. This restriction applies only to vehicles requiring a commercial driver license (CDL). The licensee is restricted to operating a commercial motor vehicle (CMV) which does not have air brakes. [M--commercial driver's license (CDL) intrastate commerce only. The licensee is restricted to operating a commercial motor vehicle (CMV) in intrastate commerce only and may not drive in interstate commerce.]

(b) M--CDL intrastate commerce only. The licensee is restricted to operating a CMV in intrastate commerce only and may not drive in interstate commerce. [L--vehicles without air brakes. This restriction applies only to vehicles requiring a CDL. The licensee is restricted to operating a CMV which does not have air brakes.]

(c) P--Personal Restrictions. The licensee is restricted to operating a motor vehicle as per the restriction stated on the driver license. [X--licensed CDL operator in the front seat: all classes of commercial motor vehicles. The licensee is the holder of any class CDL but is restricted to operating the class of CMV authorized only while accompanied by a holder of a CDL which is valid for the vehicle being operated. The purpose of this restriction is to give the person an opportunity to practice driving the vehicle and obtain experience before taking the skills test.]

(d) Y--Valid Texas vision or limb waiver required. [licensed CDL operator in the front seat: commercial motor vehicles above Class B. The licensee has a Class A CDL but is restricted to operating a Class A CMV while accompanied by a holder of a CDL which is valid for a Class A vehicle. The purpose of this restriction is to give the person an opportunity to practice driving the Class A vehicle and obtain experience before taking the skills test. This person may legally operate a Class B or Class C CMV alone.]

(e) Z--Valid Federal vision, limb, or diabetes waiver required. [licensed CDL operator in the front seat: commercial motor vehicles above Class C. The licensee has a Class A CDL or Class B CDL but is restricted to operating as Class A or Class B CMV while accompanied by a holder of a CDL which is valid for the class of vehicle being operated. The purpose of this restriction is to give the person an opportunity to practice driving the Class A or Class B CMV and obtain experience before taking the skills test. This person may legally operate a Class C CMV alone.]

~~[(f) A CDL with restriction X, Y, or Z is considered a commercial driver learner's permit.]~~

§16.12. Endorsements.

(a) T--Double/Triple Trailer (commercial driver [driver's] license and noncommercial driver [driver's] license). This endorsement authorizes the holder to tow more than one trailer.

(b) P--Passenger Vehicles (CDL only). This endorsement authorizes the holder to operate a vehicle which is designed to transport 16 or more passengers, including the driver.

(c) N--Tank Vehicle (CDL only). This endorsement authorizes the holder to operate a vehicle or combination of vehicles which are designed to transport any liquid or gaseous materials within a tank that is either permanently or temporarily attached to the vehicle or chassis. Such vehicles include, but are not limited to, cargo tanks and portable

tanks, as defined in 49 CFR, Part 171. A CDL tank endorsement is required if the cargo tank has a bulk packaging over 119 gallons for liquids, or a water capacity greater than 1,000 pounds as a receptacle for a gas if they are permanently attached to or form a part of a motor vehicle, or is not permanently attached to a motor vehicle but which, by reason of its size, construction or attachment to a motor vehicle is loaded or unloaded without being removed from the motor vehicle and is not built to the specifications for cylinders, or portable tanks. A portable tank is defined as a bulk packaging (except a cylinder having a water capacity of 1,000 pounds or less) designed primarily to be loaded onto, or on or temporarily attached to a transport vehicle and equipped with skids, mounting, or accessories to facilitate handling of the tank by mechanical means. A portable tank that meets the bulk packaging definition described in this subsection requires a CDL with a tank endorsement. However, this definition does not include portable tanks having a rated capacity under 1,000 gallons.

(d) H--Hazardous Materials (CDL only). This endorsement authorizes the holder to operate a vehicle or combination of vehicles which are required to be placarded under the Hazardous Materials Transportation Act (49 USC §1801 et seq.).

(e) School Bus (CDL only). This endorsement authorizes the holder to operate a school bus.

(f) [(e)] X--Combination of N and H (CDL only). This endorsement is used to combine the endorsements N and H.

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 July 24, 2009.

TRD-200903066

Lamar Beckworth

Director

Texas Department of Public Safety

Earliest possible date of adoption: September 6, 2009

For further information, please call: (512) 424-2135



SUBCHAPTER B. APPLICATION REQUIREMENTS AND EXAMINATIONS

37 TAC §§16.34, 16.47, 16.48, 16.50, 16.51

The Texas Department of Public Safety proposes amendments to Subchapter B, §§16.34, 16.47, 16.48, 16.50, and 16.51, concerning Commercial Driver License. The amendments to the sections are necessary in order to address Federal Motor Carrier Safety Administration (FMCSA) findings during the 2006 review of Texas' CDL program. These amendments further align Chapter 16 rules to new and previously existing statutory requirements governing Commercial Driver License issuance procedures where FMCSA determined the statute and/or rule was not clear enough for enforcement purposes.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government or local economies.

Mr. Ybarra also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the sections as proposed. There are no anticipated economic costs to individuals who are required to

comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be clarification on the rules for commercial drivers and aligns the current rules with the federal regulations to ensure any conflicts between statutes and, federal regulations are negated.

The Department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The Department has determined that Chapter 2007 of the Texas Government Code does not apply to these rules. Accordingly, the Department is not required to complete a takings impact assessment regarding these rules.

Comments on the proposal may be submitted to Ron Coleman, Program Specialist IV, Driver License Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78765-0300, (512) 424-7652.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the Department's work; and Texas Transportation Code, §521.165.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.165 are affected by this proposal.

§16.34. CDL-3 Substitute for Commercial Driver [~~Driver's~~] License (CDL) Driving Skills Test.

(a) This certificate must be completed if the applicant for a CDL is claiming waiver from the CDL driving skills test.

~~[(b) The waiver applies to all skills tests including those skills tests required for endorsements, except endorsement "P". An applicant obtaining a "P" endorsement must take a driving skills test in a bus meeting the requirements of the CDL applied for.]~~

(b) ~~[(e)]~~ To be accepted, the applicant must be employed in an exempt status or legally operating a commercial motor vehicle (CMV).

(c) ~~[(d)]~~ This waiver may only be claimed one time. This waiver certification may only be completed when converting from a non-commercial driver [~~driver's~~] license to a CDL or when applying for an original Texas CDL when coming from another state. Any later transaction including advance in grade, removal of restrictions, or addition of an endorsement will necessitate a skills test if required by law or regulation.

(d) ~~[(e)]~~ The CDL-3 form must be accompanied by a CDL-3A form.

§16.47. Waivers from Skills Test.

(a) An applicant may be exempted from the skills test if:

(1) currently licensed (in Texas or in another state);

(2) for the two years preceding application:

(A) has not had more than one license at any one time;

(B) has not had any license suspended, revoked, disqualified, denied, or canceled;

(C) has not had a conviction for any disqualifying offense, such as Driving While Intoxicated, Driving Under the Influence of Drugs, Failure to Give Information and Render Aid, failure to comply with any offense as cited in Texas Transportation Code, Chapter 550, Subchapter B, Blood, ~~or~~ Breath, or Urine Test Refusal or Failure, a felony involving the use of a commercial motor vehicle (CMV), or use of a CMV in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance; and

(D) has not been convicted for a serious traffic violation, as defined by Texas Transportation Code, §522.003(25) and §16.93 of this title (relating to Serious Traffic Violations and Habitual Violators). These convictions may result from the operation of any vehicle; and

(3) regularly employed in a job requiring the operation of a CMV:

(A) has previously taken and passed a skills test given by a state with a classified licensing system and the test was behind-the-wheel in a representative vehicle for the driver ~~driver's~~ license classification; or

(B) has operated for at least two years immediately preceding application for a commercial driver ~~driver's~~ license (CDL), a vehicle representative of the CMV the applicant operates or expects to operate.

(b) Waivers for the skills test only apply to original applicants for CDL. Those who subsequently apply for an advance in grade, removal of restriction, or addition of endorsement after receiving a CDL will not be given a second waiver of any required skills tests.

(c) Waivers for the skills test apply only to CMV operators with an exempt status and those legally operating CMVs such as the operation of CMVs on non-public roads in large company lots such as power or chemical companies.

(d) Applicants who hold a CDL from another state will not be required to take any knowledge or skills tests when making an application for an original Texas CDL of the same class and with the same restrictions or endorsements excluding the hazardous materials endorsement. Applicants desiring to retain the hazardous materials endorsement must take and pass the hazardous materials knowledge examination and pass a background check conducted by the appropriate federal agency. To maintain the hazardous materials endorsement beyond the initial 90 day period from date the CDL is issued, the department must receive a Notification of No Security Threat from the appropriate federal agency conducting the background check. Applicants must surrender a valid CDL license, a valid CDL temporary permit, or other acceptable proof that the person has a valid license from another state in order to have the tests waived.

§16.48. Road Test.

(a) Skills tests are required in a vehicle that is representative of the commercial motor vehicle (CMV) that the applicant is being licensed to drive.

(b) Any applicant required to take a skills test to obtain a passenger endorsement "P" or school bus endorsement "S" must take the skills test in a bus. Bus means any vehicle designed to carry 16-23 ~~16 or more~~ passengers, including the driver for a Class C₂ and 24 or more passengers, including the driver for a Class B.

§16.50. Pre-trip Inspection.

{(a)} All applicants for a Class A or B CDL will be required to complete a written pre-test inspection exam, and answer 80% of the

questions correctly, prior to taking the skills test. [The first part of the skills test is the pre-trip inspection. This is a pass/fail test.] If the driver is unable to pass this part of the knowledge ~~skills~~ test, he/she will not be allowed to continue and take the road test. Drivers must demonstrate to the examiner that he or she has the skill and knowledge needed to determine that the vehicle the person is operating is safe to drive. The pre-trip inspection exam will include:

- (1) air compressor (belt);
- (2) air/electric connectors;
- (3) air/electric lines;
- (4) alternator belt;
- (5) ammeter/voltmeter;
- (6) axle oil seal;
- (7) battery/box;
- (8) brake chamber;
- (9) brake drum/linings;
- (10) brake hoses/lines;
- (11) catwalk;
- (12) clutch/gearshift;
- (13) coolant level;
- (14) door(s);
- (15) doors secure;
- (16) doors/tie/lifts;
- (17) drive shaft;
- (18) emergency exits;
- (19) exhaust system;
- (20) frame;
- (21) fuel tank/leaks;
- (22) header board;
- (23) heater/defroster;
- (24) hydraulic brake check;
- (25) kingpin/apron/gap;
- (26) landing gear;
- (27) leaks/hoses (engine);
- (28) lighting indicators;
- (29) lug nuts;
- (30) mirrors;
- (31) mounting bolts;
- (32) oil level;
- (33) oil pressure gauge;
- (34) parking brake;
- (35) passenger entry/lift;
- (36) platform (fifth wheel);
- (37) power steering fluid (belt);
- (38) release arm;

- (39) rims;
- (40) safety belt/emergency equipment;
- (41) safety latch/locking jaws;
- (42) seating;
- (43) shock absorbers;
- (44) slack adjuster;
- (45) sliding fifth wheel/locking pins;
- (46) splash guards;
- (47) spring/air/torque;
- (48) spring mount;
- (49) steering box/hoses;
- (50) steering linkage;
- (51) steering play;
- (52) stop arm (if equipped);
- (53) student lights;
- (54) tandem release (arm and locking pins);
- (55) temperature gauge;
- (56) tires;
- (57) water pump (belt);
- (58) windshield; and
- (59) wiper/washers.

~~(b) The second part of the skills test is the air brake inspection test. This is a pass/fail test. If the driver is unable to pass this part of the skills test, he/she will not be allowed to continue and take the road test. The air brake test requires the driver to demonstrate his or her knowledge and ability to conduct a complete air brake safety inspection. The air brake safety inspection will include:~~

- ~~{(1) leak in system;}~~
- ~~{(2) warning signals; and}~~
- ~~{(3) emergency brakes.}~~

§16.51. Road Test Maneuvers.

(a) The first part of the skills test is the air brake inspection test. This is a pass/fail test. If the driver is unable to pass this part of the skills test, he/she will not be allowed to continue and take the road test. The air brake test requires the driver to demonstrate his or her knowledge and ability to conduct a complete air brake safety inspection. The air brake safety inspection will include:

- (1) Leak in system;
- (2) warning signals; and
- (3) emergency brakes.

(b) ~~(a)~~ The second part of the skills test is the road test and will consist of the following maneuvers:

- (1) start;
- (2) quick smooth stop;
- (3) backing;
- (4) upshifting;
- (5) downshifting;

- (6) lane change;
- (7) merge;
- (8) use of lanes;
- (9) right-of-way;
- (10) posture;
- (11) approach to corner;
- (12) traffic signals;
- (13) traffic signs;
- (14) left turns;
- (15) right turns; and
- (16) parallel parking (if applicable).

(c) ~~(b)~~ Rejection standards for road test are:

(1) accident. Any contact with another vehicle, object, or pedestrian which applicant could have prevented, regardless of who was responsible, resulting in any damage or injury;

(2) dangerous action:

(A) accident is prevented only by defensive driving on the part of another or dodging by a pedestrian;

(B) any loss of control creating a hazard;

(C) driver stalls vehicle in middle of busy intersection so as to obstruct traffic;

(D) drives one or more wheels over the curb or onto the sidewalk;

(E) accident prevented only by warning given by the examining officer; or

(F) runs over parking standards on the parallel parking test;

(3) violation of law. Unless otherwise stipulated in scoring standards, a driver is disqualified for:

(A) any act for which the driver might be arrested; or

(B) any act which might make the driver liable for damages in case of accident;

(4) deductions. Various or repeated minor mistakes totaling more than 30 points deducted on the on-street test for any vehicle;

(5) lack of cooperation or refusal to perform:

(A) refusal to try any maneuver in good faith;

(B) repeated failure to follow instructions;

(C) offer a bribe or gratuity;

(D) argument concerning scoring, not just a discussion of scoring; or

(E) refusal to wear a seat belt when required and has no physician's statement for waiver.

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 July 24, 2009.

TRD-200903067

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**SUBCHAPTER C. CHANGE OF LICENSE
STATUS, RENEWALS, SURRENDER OF
LICENSE, FEES**

37 TAC §§16.71 - 16.73, 16.75

The Texas Department of Public Safety proposes amendments to Subchapter C, §§16.71 - 16.73, and 16.75, concerning Commercial Driver License. The amendments to the sections are necessary in order to address Federal Motor Carrier Safety Administration (FMCSA) findings during the 2006 review of Texas' CDL program. These amendments further align Chapter 16 rules to new and previously existing statutory requirements governing Commercial Driver License issuance procedures where FMCSA determined the statute and/or rule was not clear enough for enforcement purposes.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government or local economies.

Mr. Ybarra also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the sections as proposed. There are no anticipated economic costs to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be clarification on the rules for commercial drivers and aligns the current rules with the federal regulations to ensure any conflicts between statutes and, federal regulations are negated.

The Department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The Department has determined that Chapter 2007 of the Texas Government Code does not apply to these rules. Accordingly, the Department is not required to complete a takings impact assessment regarding these rules.

Comments on the proposal may be submitted to Ron Coleman, Program Specialist IV, Driver License Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78765-0300, (512) 424-7652.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the Department's work; and Texas Transportation Code, §521.165.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.165 are affected by this proposal.

§16.71. Change in Class or Type.

(a) The holder of a Texas commercial driver [~~driver's~~] license (CDL) who desires to advance in grade, remove restrictions, or add endorsements will be required to take the applicable tests, including knowledge tests and skills tests in a representative vehicle if required.

(b) A driver desiring to remove the "No Air Brakes" restriction "L" from a previously obtained CDL must take the knowledge, and the air-brake inspection [~~pre-trip~~] test.

(c) Upon request for change in class or type of license, a new CDL-40 Examination Report must be completed.

(d) Upon passing the required exams, the old license must be surrendered or invalidated in accordance with §16.73 of this title (relating to Surrender of License). An exam fee will be collected unless the change is made in conjunction with a renewal.

(e) A motorcycle fee must be collected in accordance with §16.76 of this title (relating to Motorcycle Education Fees).

§16.72. Renewals.

(a) When a valid commercial driver [~~driver's~~] license (CDL) is renewed after the original issuance and there is no change in status, the applicant will be given the vision exam. If the licensee has a hazardous materials endorsement he must take and pass the hazardous materials knowledge examination, and pass a background check conducted by the appropriate federal agency. To maintain the hazardous materials endorsement beyond the initial 90 day period from the date the CDL is issued, the department must receive a Notification of No Security Threat from the appropriate federal agency conducting the background check. [~~to keep this endorsement.~~]

(b) When a CDL is renewed after the original issuance and there is a change in status (advance in grade, endorsement added, or restriction removed), the applicant will be given the vision test, as well as the appropriate knowledge and skills tests if these are required for the requested changes. If the licensee has a hazardous materials endorsement he must take and pass the hazardous materials knowledge examination, and pass a background check conducted by the appropriate federal agency. To maintain the hazardous materials endorsement beyond the initial 90 day period from the date the CDL is issued, the department must receive a Notification of No Security Threat from the appropriate federal agency conducting the background check. [~~to keep this endorsement.~~]

(c) Applicants who have passed a background check and have been issued a hazardous materials endorsement will not be required to complete a new background check to retain the hazardous materials endorsement provided that the expiration date of the renewed CDL does not exceed the expiration date of the background check. [~~Licenses can be renewed within 12 months of the expiration date.~~]

(d) Applicants required to register under Chapter 62, Code of Criminal Procedure may be renewed 60 days prior to expiration; all others may be renewed within 12 months of the expiration date. [~~A commercial driver learner's permit may not be renewed. These are licenses containing restrictions X, Y, or Z.~~]

(e) All applications for CDL renewals must be made in person.

(f) All applicants for CDL must provide information relating to their United States citizenship and provide their county of residence at the time of application for renewal.

§16.73. Surrender of License.

Any and all valid driver [driver's] licenses issued by Texas or any other state must be surrendered to the department before a new license will be issued. [Licenses issued by another state will be returned to that state.] Upon surrender, the department may invalidate a Texas license by completely removing the header (color) bar from the documents. When an applicant with a Texas license obtains a commercial driver [driver's] license (CDL), advances in grade, renews a license, or obtains a duplicate and more than 30 days validity remains on the old license, this license will be invalidated and the invalid document returned to the applicant for identification purposes only. The invalidated document is not a license to drive.

§16.75. Credits.

(a) On the date the original CDL is issued the applicant will be given \$4.00 for each whole year that remains on his current Texas license. If the original CDL is issued on the applicant's birthday and the current license does not expire until the next year, the applicant will be given \$4.00 credit, in which case the fee to be collected will be \$56.

(b) Credit will not be given for a learner license [an instruction permit] or a CDL held by an applicant.

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

Filed with the Office of the Secretary of State on July 24, 2009.

TRD-200903068

Lamar Beckworth

Director

Texas Department of Public Safety

Earliest possible date of adoption: September 6, 2009

For further information, please call: (512) 424-2135



SUBCHAPTER D. SANCTIONS AND DISQUALIFICATIONS

37 TAC §16.91

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

The Texas Department of Public Safety proposes the repeal of Subchapter D, §16.91, concerning Commercial Drivers License. Section 16.91 specific to the issuance of non-commercial driver permits is being repealed to further align licensing requirements with federal recommendations governing commercial drivers. All commercial drivers who are disqualified from operating a commercial motor vehicle are required to surrender their commercial driver license for the issuance of a non-commercial driver license containing a photograph.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications for state or local government or local economies.

Mr. Ybarra also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeal as proposed. There are no anticipated economic costs to individuals who are required to comply with the repeal as proposed. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also determined that for each year of the first five-year period the repeal is in effect, the public benefit anticipated as a result of enforcing the repeals will be current and updated rules.

The Department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The Department has determined that Chapter 2007 of the Texas Government Code does not apply to this repeal. Accordingly, the Department is not required to complete a takings impact assessment regarding the repeal.

Comments on the proposal may be submitted to Ron Coleman, Program Specialist IV, Driver License Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78765-0300, (512) 424-7652.

The repeal is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the Department's work; and Texas Transportation Code, §521.165.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.165 are affected by this proposal.

§16.91. Noncommercial Motor Vehicle Permits.

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 July 24, 2009.

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Lamar Beckworth

Director

Texas Department of Public Safety

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For further information, please call: (512) 424-2135



37 TAC §§16.99, 16.103 - 16.105

The Texas Department of Public Safety proposes amendments to Subchapter D, §16.99 and §§16.103 - 16.105, concerning Commercial Driver License. The amendments to the sections are necessary in order to address Federal Motor Carrier Safety Administration (FMCSA) findings during the 2006 review of Texas' CDL program. These amendments further align Chapter 16 rules to new and previously existing statutory requirements governing Commercial Driver License issuance procedures

where FMCSA determined the statute and/or rule was not clear enough for enforcement purposes.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government or local economies.

Mr. Ybarra also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the sections as proposed. There are no anticipated economic costs to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be clarification on the rules for commercial drivers and aligns the current rules with the federal regulations to ensure any conflicts between statutes and, federal regulations are negated.

The Department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The Department has determined that Chapter 2007 of the Texas Government Code does not apply to these rules. Accordingly, the Department is not required to complete a takings impact assessment regarding these rules.

Comments on the proposal may be submitted to Ron Coleman, Program Specialist IV, Driver License Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78765-0300, (512) 424-7652.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the Department's work; and Texas Transportation Code, §521.165.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.165 are affected by this proposal.

§16.99. Lifetime Disqualifications.

(a) A person who has been disqualified from driving a commercial motor vehicle (CMV) for life under Texas Transportation Code, §522.081, may apply for reinstatement of his/her commercial driver [driver's] license. Such applicant is not eligible for reinstatement unless and until such time as the applicant has first served a minimum disqualification period of 10 years. The applicant must fully meet the qualifications and standards set out in Texas Transportation Code, Chapter 522, and the rules set forth in Chapter 15 of this title (relating to Driver [Driver's] License Rules) and this chapter. A person who has been disqualified under Texas Transportation Code, §522.081(d)(2) may not apply for reinstatement of his/her commercial driver license.

(b) The applicant must make application for reinstatement in writing to the department's Driver Improvement and Compliance Bureau, Box 4087, Austin, Texas 78773-0320. A conviction for any of

the following offenses, if the conviction occurred within the two years immediately preceding application, will be grounds for denial of an application for reinstatement.

(1) driving any motor vehicle, including a CMV, under the influence of alcohol or a controlled substance, including a violation of Texas Penal Code, §§49.03, 49.04, 49.045, 49.07, and 49.09; or

(2) knowingly and willfully leaving the scene of an accident involving any motor vehicle, including a CMV driven by the person; or

(3) using any motor vehicle, including a CMV, in the commission of any felony as defined in Texas Transportation Code, §522.081; or

(4) refusal to submit to, or failing a test to determine the driver [driver's] alcohol concentration or the presence in his body of a controlled substance or drug while driving any motor vehicle, including a CMV.

(c) For purposes of this chapter, the term "conviction" has the same meaning as found in Texas Transportation Code, §522.003.

(d) The department will advise the applicant whether or not his application for reinstatement has been granted. If denied reinstatement, the applicant will be advised of the reasons for denial.

§16.103. Disqualifications and Penalties for Violations of Out-of-Service Orders.

(a) Texas Transportation Code, §522.071 and §522.090 provide for an offense and penalty for a driver who is convicted of violating an out-of-service order while driving a commercial motor vehicle (CMV). Section 522.090 provides that in addition to the penalties provided for in §522.071, a driver may be disqualified from driving a CMV as provided for in 49 Code of Federal Regulations (CFR), Part 383. In addition, such driver is subject to the special penalties as contained in 49 CFR, Part 383.53. Texas Transportation Code, §522.072 provides that an employer commits an offense if the employer permits a driver who has been placed out-of-service or disqualified to operate a CMV, or while the employer is subject to an out-of-service order that affects the driver or the vehicle. The employer may be penalized or disqualified as provided for in 49 CFR, Part 383.

(b) The term "out-of-service" as used in this chapter has the same definition as that found in Texas Transportation Code, §522.003(23) and 49 CFR, Part 383.5.

§16.104. Disqualifications.

Driver disqualifications as set out in 49 CFR, Part 383, are adopted by this department and are as follows:

(1) First violation. A driver is disqualified for not less than 90 days nor more than one year if the driver is convicted of a first violation of an out-of-service order.

(2) Second violation. A driver is disqualified for not less than one year nor more than five years if, during any 10-year period, the driver is convicted of two violations of out-of-service orders in separate incidents.

(3) Third or subsequent violation. A driver is disqualified for not less than three years nor more than five years if, during any ten-year period, the driver is convicted of three or more violations of out-of-service orders in separate incidents.

(4) Special rule for hazardous materials and passenger offenses. A driver is disqualified for a period of not less than 180 days nor more than two years if the driver is convicted of a first violation of an out-of-service order while transporting hazardous materials required

to be placarded under the Hazardous Materials Transportation Act (49 United States Code, §§1801 - 1813), or while operating a motor vehicle designed to transport more than 15 passengers, including the driver. A driver is disqualified for a period of not less than three years nor more than five years if, during any ten-year period, the driver is convicted of any subsequent violations of out-of-service orders, in separate incidents, while transporting hazardous materials required to be placarded under the Hazardous Materials Act, or while operating motor vehicles designed to transport more than 15 passengers, including the driver.

(5) Court to report conviction. If a driver is convicted of an offense under the Transportation Code, §522.071, the convicting court shall order a disqualification period as set out in paragraphs (1) - (4) of this section. The court shall report the conviction and disqualification on a form approved by the department. If the court fails to set a period of disqualification, the department shall disqualify the CMV driving privileges for 90 days for the first violation, one year for a second violation, and three years for the third or subsequent violation. If the court fails to set a period of suspension for convictions of these offenses which occurred while transporting hazardous materials required to be placarded under the Hazardous Materials Act or while operating a motor vehicle designed to transport more than 15 passengers, including the driver, the department shall disqualify the CMV driving privileges for 180 days for the first violation and three years if, during any ten-year period, the driver is convicted of any subsequent violations.

(6) A disqualification imposed under Transportation Code, §522.981(b)(1); (b)(2); (c)(1)(A); or (d)(2) will become effective 10 days after the date the order of disqualification is issued by the department.

§16.105. Special Penalties Pertaining to Violation of Out-of-Service Orders and Railroad Grade Crossing Violations for Drivers and Employers.

In addition to the penalties provided for in the Texas Transportation Code, §522.071 and §522.072, drivers and employers are subject to the penalties of 49 CFR, Part 383, which are hereby adopted by this department and are as follows:

(1) General rule. Any person who violates the rules set forth in Subparts B and C of 49 CFR, Part 383, may be subject to civil or criminal penalties as provided for in 49 United States Code, 521(b).

(2) Driver violations. A driver who is convicted of violating an out-of-service order shall be subject to a civil or administrative penalty of not less than \$2,500 for a first conviction, and not less than \$5,000 for a second conviction [~~\$1,000 nor more than \$2,500~~], in addition to disqualification action as provided for by 49 CFR, Part 383 and this section.

(3) Employer violations. An employer who is convicted of a violation of 49 CFR, Part 383.37(c), shall be subject to a maximum civil or administrative penalty of not [~~less than \$2,500 nor~~] more than \$25,000. An employer who is convicted of a violation of 49 CFR, Part 383.37(d) shall be subject to a civil or administrative penalty of not more than \$10,000.

(4) Penalties. Civil penalties for violations of the regulations adopted herein may be assessed by a court of competent jurisdiction or assessed as an administrative penalty under the provisions of Texas Transportation Code, Chapter 644[, and §3.62 of this title (relating to Regulations Governing Transportation Safety)].

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 July 24, 2009.

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Lamar Beckworth

Director

Texas Department of Public Safety

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For further information, please call: (512) 424-2135



CHAPTER 18. DRIVER EDUCATION

SUBCHAPTER A. COMMERCIAL DRIVER TRAINING SCHOOL TESTING AND ISSUANCE OF LEARNER LICENSE

37 TAC §§18.1 - 18.4

The Texas Department of Public Safety (Department) proposes amendments to Subchapter A, §§18.1 - 18.4, concerning Driver Education. The first amendment changes the title of the subchapter. Additional amendments are made to reduce the processes and paperwork required for the issuance of learner licenses. Modification is also made to the rules to change the term "instruction permit" to "learner license" and to align additional terms with industry standards, i.e., "driver's" to "driver".

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government or local economies.

Mr. Ybarra also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the sections as proposed. There are no anticipated economic costs to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be a reduction in paperwork for persons participating in a commercial driver training school for testing and issuance of learner license and simplifies the procedures for learner licenses.

The Department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The Department has determined that Chapter 2007 of the Texas Government Code does not apply to these rules. Accordingly, the Department is not required to complete a takings impact assessment regarding these rules.

Comments on the proposal may be submitted to Ron Coleman, Program Specialist IV, Driver License Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78765-0300, (512) 424-7652.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the Department's work; and Texas Transportation Code, §521.165.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.165 are affected by this proposal.

§18.1. Definitions.

Unless otherwise defined, the terms in these rules shall have the same meaning assigned to them in the Transportation Code, Chapter 521, concerning driver [~~driver's~~] licenses and certificates. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Driving school, driver training school and driver education school--have the same meaning and may be used interchangeably.

(2) Instructor (for purposes of the parent taught program)--refers to parent, stepparent, grandparent, step-grandparent and legal guardian as a person approved to conduct a Parent Taught Driver Education course. In addition, the instructor must hold a valid Texas driver license, or if active duty United States military personnel and their spouses, must hold a valid license from their state of permanent residence or last duty station and must not have been convicted of criminally negligent homicide, driving while intoxicated, or be disabled because of mental illness.

(3) Laboratory, behind-the-wheel, and in-car instruction--have the same meaning and may be used interchangeably.

(4) Licensed driver--refers to a person who holds a valid Texas driver license of any class which is not suspended (including probated suspensions), canceled, denied, revoked, or disqualified. This also includes active United States military personnel and their spouses who hold a valid license from their state of permanent residence or last duty station.

(5) TEA--refers to the Texas Education Agency or Central Education Agency.

(6) Texas Driver Education Certificate--form DE-964, is a numbered[, two-part] form [consisting of three copies and is] used to certify completion of both classroom and laboratory phases of the driver education course. Under the parent taught program, the certificate may be [is] sent to the Driver License office indicated on the Request for Driver Education Packet form DL-92 in paper form or generated electronically. For security purposes, the certificate will be maintained by the department. [The Driver License office will file the certificate upon receipt for security purposes and it will remain under the control of the department.]

§18.2. Required Documentation and Application Fee.

(a) Prior to issuing a learner license [an instruction permit] as authorized by the Driver License law to a person 15 years of age or older, but younger than 18 years of age, the applicant [driver education school] must submit to the department the following [for each student]:

(1) a completed and notarized Texas Driver License Application, form DL-14A;

(2) an application fee of \$5.00;

(3) a high school diploma or its equivalent, or acceptable certification of high school/GED enrollment and attendance, TEA form GEA-043R93, or the equivalent;

(4) if previously licensed (including an instruction permit or learner license) in another state, the out of state license must be surrendered or a DPS affidavit must be executed that the out of state license has been lost, stolen, or expired;

(5) if the student owns a vehicle for which proof of financial responsibility is required, evidence of liability insurance;

(6) an original social security card or other acceptable proof of social security number;

(7) an original birth certificate or other acceptable proof of name, date of birth, and place of birth; [and]

(8) other information as required by the department; and[-]

(9) copy of the properly completed FOR INSTRUCTION PERMIT ONLY portion of the Texas Driver Education Certificate, form DE-964, including the test results for the vision and written exams.

(b) Applicants 18 years of age or older are not eligible for a learner license as authorized by subsection (a) of this section. Prior to the issuance of a driver license, the applicant [issuing an instruction permit as authorized by subsection (a) of this section, to a person 18 years of age or older, the driver education school] must submit [a packet for each student which shall contain] all [of] the items listed in subsection (a) of this section with the exception of paragraph (3).

[(c) The documents will be presented to a local Driver License office at a mutually agreed upon time and in a format or order sequence acceptable to the department. Presentation of these documents in any other manner may be grounds for rejection.]

[(d) Upon receipt, Driver License Service personnel will inspect the documents presented by the driving school representative. Any packet not containing all required items as listed, or questionable documents will be rejected and returned to the driver education school. Driver License personnel will issue an Application Fee Receipt for each student bearing the original Driver License number assigned to that student for all accepted applications. The receipts will be available for a representative of the driver training school to pick up. Birth, insurance, and social security documents will be returned with the receipts.]

[(e) NO INSTRUCTION PERMIT SHALL BE ISSUED BY THE DRIVER EDUCATION SCHOOL WITHOUT FIRST OBTAINING THE ORIGINAL DRIVER LICENSE NUMBER ASSIGNED TO THE STUDENT BY THE DEPARTMENT.]

[(f) Instruction permits issued by a driver training school must be purchased from the Texas Department of Public Safety, General Services Bureau. The license number assigned by the department must be recorded by the driver training school on any instruction permit which is issued by the school. The license number is the permanent driver license number and should be recorded on the student instruction record and the driver education certificate.]

[(g) The driver education school is responsible for ensuring that the student has satisfactorily completed and passed the required classroom phase of an approved driver education course prior to administering any driver examination required by Texas statutes.]

§18.3. Tests Administered by a Commercial Driver Training School Prior to Issuance of a Learner License [Issuing Instruction Permits].

(a) Prior to application for a learner license, [the issuance of an instruction permit by] the commercial driver training school[, the school must have obtained the driver license number from the department and] must have administered a vision exam, the Class C--Road Signs test, and the Class C--Road Rules test to each student. Each student issued a learner license [an Instruction Permit] must have passed the Class C--Road Signs and Class C--Road Rules tests with a score of at least 70% on each. The tests will be administered by the commercial driver training school in accordance with the following guidelines:

(1) Vision. The student's distant visual acuity must be checked by the commercial driver training school utilizing a device suitable for accurately measuring a person's visual acuity and in a manner which is consistent with the procedures prescribed by the manufacturer of the device. The results of the student's visual acuity will be recorded on the Texas Driver Education Certificate, form DE-964. If the student normally wears corrective lenses and/or has no objection to being restricted to wearing corrective lenses while driving, the student must be tested with corrective lenses. Record the uncorrected vision test results on the DE-964 certificate in the spaces provided. If the vision is checked with corrective lenses, the corrected vision test results will also be recorded. The test results will be evaluated upon presentation of the DE-964 certificate to the Driver License office [after issuance of the instruction permit by the commercial driver training school]. If a license restriction is required due to vision limitations, [an instruction permit will be issued by the department which indicates] the proper restriction(s) will be added to the learner license. Students with obvious visual problems should be referred to the Driver License office where the learner license [instruction permit] will be issued after testing and any necessary referrals to vision specialists. [A student with obvious vision problems should not be issued an instruction permit by a commercial driver training school nor should behind-the-wheel instruction be given until the student is issued a permit.]

(2) Class C--Road Signs and Class C--Road Rules Tests. The student will be tested by the commercial driver training school using the Class C--Road Signs and Class C--Road Rules examinations obtained from the Texas Department of Public Safety, General Services Bureau. The tests will be available in English and Spanish. Other languages and oral tests must be referred to a Driver License office. Each student must score a minimum of 70% correct on each exam in order to pass. These results will be recorded on the DE-964 certificate. NO STUDENT MAY BE TESTED PRIOR TO THEIR 15TH BIRTHDAY.

(b) A commercial driver training school may administer the vision, Class C--Road Signs, and Class C--Road Rules parts of the driver examination only to a student enrolled in the school for purposes of satisfying the examination requirements of the Driver License Law [and only when the commercial driver training school is going to issue the instruction permit as prescribed herein]. Tests may be reviewed with a student after completion of the exam, but students may not be given copies of the tests. The tests may not be reviewed with students prior to testing.

§18.4. Reporting Testing Results [Issuance of Instruction Permit].

[(a) After a driving school has issued the instruction permit in accordance with each of the requirements stated in §18.3 of this title (relating to Tests Administered by a Driving School), the school must submit the department copy of the properly completed FOR INSTRUCTION PERMIT ONLY portion of the Texas Driver Education Certificate, form DE-964, to the same Driver License office where the original applications were processed within five days after issuing the instruction permit.]

(a) [(b)] The FOR INSTRUCTION PERMIT ONLY part of the certificate shall be completed and dated on the same day the testing is completed [instruction permit is issued] by the driver training school. The certificate will serve as verification to the department that the required examinations were administered by the school and that the student has passed the required examinations and has met all other requirements for the issuance of a learner license [an instruction permit]. The actual Class C--Road Signs and Class C--Road Rules exams or electronic records of the exams, and the results of the vision exam administered by the school shall be kept by the driver training school as part of the permanent student instruction record. The tests shall be

made available for inspection and review with other parts of the student instruction record by department or TEA personnel for a period of three years from the date of the exams.

[(e) When a driver training school submits the completed DE-964 certificate to the department as required by subsection (b) of this section, department personnel will update the student's driving record. The update will indicate that an instruction permit has been issued, that the student is enrolled in a concurrent program or has completed the classroom phase of driver education, and if the department imposed any additional restrictions.]

[(d) If additional restrictions are required, an instruction permit will be issued by the department with proper restrictions. Department personnel will contact the driver training school to advise them that the department has placed additional restrictions on the student's instruction permit. The driving school-issued instruction permit will no longer be valid. The department instruction permit will replace the school instruction permit and will be available at the Driver License office for a representative of the driving school to pick up and provide to the student. It will be the responsibility of the driving school to replace the student's school-issued instruction permit with the department-issued permit. Any school-issued instruction permit made invalid and picked up by the school must be retained in the student's instruction records. If the driver training school makes an attempt to pick up the invalid school-issued instruction permit but is unable because the student no longer has the school-issued instruction permit (lost it, etc.), this will be noted on the student instruction record. No authority is given to any driver training school to take from a student an instruction permit issued by the department.]

[(e) An instruction permit issued by a driving school is valid until the student's next date of birth.]

(b) [(f)] Any application for a duplicate learner license [instruction permit issued by the department] must be made to a Driver License office and will require a duplicate fee [of \$10]. [When an instruction permit expires, or if the "Licensed Operator in the Front Seat" (LOFS) restriction is to be removed, another instruction permit may NOT be issued. An instruction permit which expires, or where a restriction is to be removed, must be issued at a Driver License office.] The renewal or removal of restrictions will require a statutory fee be paid to the department. Upon application for a Texas learner license, the [The] student's photograph, signature, and thumbprints will be taken and made part of the student's permanent driving record as maintained by the department [at the time the LOFS restriction is removed or when a phototype learner's license is issued]. Texas law requires any person who changes their name or address to report the change to the department and apply for a duplicate within 30 days of such change.

(c) [(g)] Upon successful completion of the entire course of study, the driving school will complete the FOR DRIVER [DRIVER'S] LICENSE ONLY part of the DE-964 certificate and provide the student with the department, TEA, and insurance copies of the certificate. The student will present the department and TEA copies at the Driver License office for removal of the LOFS restriction and issuance of a driver license. The insurance copy of the certificate will be for the student's use in obtaining insurance discounts. The school copy should remain in the school's permanent instruction record for the student.

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 July 24, 2009.
TRD-200903071

Lamar Beckworth
Director
Texas Department of Public Safety
Earliest possible date of adoption: September 6, 2009
For further information, please call: (512) 424-2135

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**SUBCHAPTER B. PARENT TAUGHT DRIVER
EDUCATION**

37 TAC §§18.21 - 18.25

The Texas Department of Public Safety proposes amendments to Subchapter B, §§18.21 - 18.25, concerning Parent Taught Driver Education. Amendments to the sections are necessary in order to reduce the processes and paperwork required for the issuance of learner licenses. Modification is also made to the rules to change the term "instruction permit" to "learner license" and to align additional terms with industry standards, i.e., "driver's" to "driver."

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government or local economies.

Mr. Ybarra also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the sections as proposed. There are no anticipated economic costs to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be a reduction in paperwork for persons participating in a commercial driver training school for testing and issuance of learner license and simplifies the procedures for learner licenses.

The Department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The Department has determined that Chapter 2007 of the Texas Government Code does not apply to these rules. Accordingly, the Department is not required to complete a takings impact assessment regarding these rules.

Comments on the proposal may be submitted to Ron Coleman, Program Specialist IV, Driver License Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78765-0300, (512) 424-7652.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the Department's work; and Texas Transportation Code, §521.165.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.165 are affected by this proposal.

§18.21. Obtaining Materials for Parent Taught Course.

(a) Prior to teaching a department approved course, an instructor must send a completed Request for Parent Taught Driver Education Packet form with a non-refundable fee which is set by the department. The request must be sent to the License Issuance Bureau of the Texas Department of Public Safety. Upon receipt of the request, a Parent Taught Driver Education Packet will be mailed to the address given on the request form.

(b) The department will not do a background check into the instructor's eligibility to teach under the parent taught program prior to providing the parent taught packet. It is the responsibility of the instructor to determine whether they meet the qualifications.

(c) The instructor will be required to designate the local Driver License office where tests will be administered. A numbered Texas Driver Education Certificate, form DE-964, will be forwarded to that office or will be electronically generated and will be available for the instructor to complete the required sections upon completion of each phase of the training.

(d) The Parent Taught Driver Education packet does not contain all required materials (i.e., lesson plans and other resources) necessary to provide the driver training course. It is the responsibility of the instructor to obtain these items as necessary.

(e) The parent taught program includes both the classroom and laboratory phase instruction. The instructor may teach both or utilize a driving school, driver training school or driver education school for either phase. However, a student cannot transfer hours between the parent taught program and a driving school. Each phase, classroom or laboratory, must be instructed in its entirety under one program. If there is a desire to change programs prior to the completion of either phase all previous education or training hours must be repeated. Under the concurrent method of instruction, all 32 hours of the classroom instruction must be taught under one program; either parent taught or driver training school. The 14 hours of laboratory instruction must be taught under one program; either parent taught or driver training school.

§18.22. Classroom Training.

(a) After obtaining all necessary materials, the 32 hours of classroom instruction required in the classroom phase of a driver training program may be taught either as an entire block prior to any portion of the laboratory phase or concurrently with the laboratory phase. If taught as part of the Concurrent Program, the student must complete the first six hours of the classroom instruction as required under §18.31 of this title (relating to Requirements for Approval of Course) prior to the instruction of any of the laboratory phase of the Driver Education Course, and prior to the issuance of a learner license [~~an instruction permit~~].

(b) There are no requirements that the location used as a classroom have any particular characteristics or equipment. It is recommended that the location be comfortable and the atmosphere be conducive to the learning experience. No more than 640 minutes of the required 32 clock hours of classroom instruction may be film or videotape. More may be used but may not be counted as part of the 32 clock hours.

(c) Texas law provides that an applicant must be at least 14 years of age to be eligible to take the classroom phase of a driver training course. A driver training course will not be approved by the department if any portion of either the classroom phase or the laboratory

phase was provided to an applicant younger than 14 years of age. The student must be at least 15 years of age to be eligible for a learner license [an instruction permit] and must have the license [permit] before taking any part of the laboratory phase of the course.

(d) The department approved course should be taught in sequential order. It is recommended that, if the Concurrent Program is used, the behind-the-wheel classes coincide with the related classroom instruction.

§18.23. Application for a Learner License [an Instruction Permit].

(a) A learner license [An instruction permit] must be obtained by the student prior to beginning any portion of the behind-the-wheel phase of a driver training program. The department shall not issue any license, including a learner license [an instruction permit], to any person who is under 15 years of age. The department may issue a learner license [an instruction permit] without photograph to any person 15 years of age or older but younger than 18 years of age who has:

(1) satisfactorily completed and passed the classroom phase of an approved driver training course or has completed the first six hours of the classroom instruction required under §18.31 of this title (relating to Requirements for Approval of Course);

(2) obtained a high school diploma or its equivalent; or is a student enrolled in a public, home, or private school who attended school for at least 80 days in the fall or spring semester preceding the date of application; or has been enrolled for at least 45 days, and is currently enrolled in a program to prepare persons to pass the high school equivalency exam; and

(3) successfully passed all parts of the driver examination required in the Driver License Law other than the driving test.

(b) When an instructor has taught the required hours of either the block or concurrent classroom phase of a driver education program, the instructor and the student must make application for a learner license [an instruction permit] at the Driver License office [indicated on the Request for Driver Education Packet form]. When making application, the following items must be presented:

(1) a completed Texas Driver License Application (DL-14A);

(2) a completed and notarized Parental Driver Education Affidavit (DL-90A);

(3) a fee of \$5.00;

(4) a high school diploma or its equivalent, or acceptable certification of high school/GED enrollment and attendance, Texas Education Agency (TEA) form CDD-104, or the equivalent;

(5) if utilizing the Model Program, Program 101, the instructor must present written instructional outlines or satisfactory evidence that the TEA Instructional Modules were used for student instruction;

(6) if previously licensed (including an instruction permit or learner license) in another state, the out-of-state license must be surrendered or a Department of Public Safety affidavit must be executed certifying the out of state license has been lost, stolen, or is expired;

(7) if the student owns a vehicle for which proof of financial responsibility is required, evidence of liability insurance must be presented;

(8) an original social security card or other acceptable proof of social security number or SSN affidavit;

(9) an original or certified copy of the birth certificate or other acceptable proof of name, date of birth, and place of birth; and

(10) other information as required by the department.

(c) A Driver License Division employee will review the items presented. If these items are satisfactory, department personnel will provide the assigned DE-964 form for completion by the instructor indicating that the student has completed the classroom phase of the course or is taking the course in the concurrent mode. The remaining portion of the form will be filed in the driver license office, or kept in an electronic format until completion of the course. The student will pay the required application fee and be given the vision, and other required tests. If the applicant passes the tests, a learner license [an instruction permit] will be issued. Applicants have three opportunities to pass each test or a maximum of 90 days to successfully pass all tests. Failure to do so will result in loss of the application fee. A new fee will then be required.

(d) The department requires the use of the DPS DL-90A form.

(e) At the time of application for the learner license [instruction permit] the department will check the driver record of the instructor. If the instructor is found to be ineligible to teach the program due to a disqualifying conviction, or for failing to have a valid Texas driver license the learner license [instruction permit] will be denied and all prior instruction time is forfeited.

§18.24. Behind-the-Wheel Instruction.

(a) In-car instruction may be taught in any motor vehicle which may be legally operated with a Class C driver [driver's] license in Texas. The vehicle must have valid registration, have a currently valid motor vehicle inspection certificate, and be properly insured with proof of such liability insurance available in the vehicle. The vehicle is not required to have dual brakes but it is recommended that the vehicle have a second rear-view mirror for use of the instructor.

(b) After a student has received a learner license [an instruction permit], an instructor may begin in-car instruction. The curriculum must be followed with a minimum of 7 hours behind-the-wheel instruction and 7 hours supervised practice instruction given.

§18.25. Obtaining Provisional License.

(a) Upon completion of all course material, classroom and behind-the-wheel, the instructor must apply to the same Driver License office [where the DE-964 form is filed] to obtain a provisional driver license.

(b) The student must have reached their 16th birthday and must have held a learner license [an instruction permit] or hardship license for a minimum of six months. Calculation for the six-month period will not include any time in which the license [instruction permit] is suspended, revoked, expired or canceled.

(c) The applicant must provide the following at a Driver License office [where the DE-964 form is filed]:

(1) applicant's instruction permit or learner's license;

(2) a completed and notarized Parental Driver Education Affidavit (DL-90B);

(3) a completed student instruction record;

(4) if utilizing the Model Program, Program 101, the instructor must present written instructional outlines or satisfactory evidence that the TEA Instructional Modules were used for student instruction;

(5) a fee of \$5.00;

(6) a high school diploma or its equivalent, or acceptable certification of high school/GED enrollment and attendance, Texas Education Agency (TEA) form CDD-104, or equivalent; and

(7) other information as required by the department.

(d) Upon acceptance of the above documentation, Driver License Service personnel will provide the form DE-964 for completion by the instructor indicating successful completion of the course. The department copy and the TEA copy of the form will be surrendered to the department. The school copy and the insurance copy of the form will be given to the applicant. If an electronic version of the DE-964 is used, one copy will be printed and given to the applicant.

(e) The department requires the use of DPS DL-90B form.

(f) For the first six months after issuance of the provisional license the individual will be subject to a traffic violation if found to be operating a motor vehicle while using a wireless communication device, between the hours of midnight and 5:00 a.m. or operating with more than one unrelated passenger in the vehicle unless a license operator over 21 years of age is occupying the front seat with the driver.

Exceptions for operating between midnight and 5:00 a.m. are to and from work, school related activity, or a medical emergency.

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 July 24, 2009.

TRD-200903072

Lamar Beckworth

Director

Texas Department of Public Safety

Earliest possible date of adoption: September 6, 2009

For further information, please call: (512) 424-2135



ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER D. REIMBURSEMENT METHODOLOGY FOR INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION (ICF/MR)

1 TAC §355.455

The Texas Health and Human Services Commission (HHSC) adopts amendments to §355.455, concerning Payments to Non-State Operated Facilities in its Reimbursement Rates Chapter. The proposed amendments are adopted without changes to the proposed text as published in the May 15, 2009, issue of the *Texas Register* (34 TexReg 2863) and will not be republished.

Background and Justification

The amendment exempts augmentative communication devices (ACDs) from existing requirements that limit reimbursement to Intermediate Care Facilities for Persons with Mental Retardation (ICF/MRs) for durable medical equipment purchased for Medicaid-eligible residents to \$5,000 per resident per year. Instead, the amended rule refers to the new 40 TAC §9.228, regarding ACDs, which the Department of Aging and Disability Services (DADS) developed concurrently with this rule and which was published for adoption in the July 17, 2009, issue of the *Texas Register* (34 TexReg 4741). New §9.228 describes requirements that an ICF/MR must follow to obtain reimbursement from DADS for the purchase of an ACD for a Medicaid recipient. Under the adopted amendments to §355.455 and new 40 TAC §9.228, ICF/MRs will be reimbursed at cost for the purchase of ACDs for Medicaid-eligible residents.

The adopted amendments to §355.455 also delete repetitive language and replace references to the legacy Texas Department of Mental Health and Mental Retardation (MHMR) with references to the Health and Human Services Commission (HHSC) or its designee. The amendments also update terminology by replacing references to "clients" with the term "residents."

Comments

The 30-day comment period ended June 14, 2009. During this period, HHSC received no comments regarding the proposed amendments to §355.455.

Statutory Authority

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

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

Chief Counsel

Texas Health and Human Services Commission

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Proposal publication date: May 15, 2009

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



CHAPTER 372. TEXAS WORKS

The Texas Health and Human Services Commission (HHSC) adopts the repeals of Chapter 372, Texas Works, consisting of Subchapter A, §§372.1 - 372.6, concerning overview and purpose; Subchapter B, Eligibility, consisting of Division 1, §§372.101 - 372.107, concerning TANF certified groups; Division 2, §§372.151 - 372.153, concerning food stamp households; Division 3, §§372.201 - 372.205, concerning citizenship; Division 4, §372.251 and §372.252, concerning residency; Division 5, §372.301, concerning domicile; Division 6, §§372.351 - 372.358, concerning resources; Division 7, §§372.401 - 372.410, concerning income; Division 8, §§372.451 - 372.459, concerning time limits; and Division 9, §372.501, concerning criminal activity; Subchapter C, Associated Programs, consisting of Division 1, §372.601, concerning food stamps in disaster situations; Division 2, §§372.651 - 372.656, concerning the Simplified Nutritional Assistance Program (SNAP); Division 3, §372.701 and §372.702, concerning the TANF Non-Cash Program; Division 4, §§372.751 - 372.754, concerning the TANF State Program; and Division 5, §372.801 and §372.802, concerning One-Time TANF (OTTANF); Subchapter D, Application Process, consisting of Division 1, §§372.901 - 372.906, concerning application; Division 2, §§372.951 - 372.958, concerning interview; and Division 3, §§372.1001 - 372.1003, concerning case disposition; Subchapter E, Participation Requirements, consisting of Division 1, §372.1101, concerning social security numbers; Division 2, §§372.1151 - 372.1156, concerning the

TANF Personal Responsibility Agreement (PRA); Division 3, §§372.1201 - 372.1204, concerning finger imaging; Division 4, §§372.1251 - 372.1253, concerning TANF workforce orientation; Division 5, §§372.1301 - 372.1304, concerning third-party resources; Division 6, §§372.1351 - 372.1353, concerning work; and Division 7, §§372.1401 - 372.1404, concerning reporting changes; Subchapter F, Benefits, consisting of Division 1, §§372.1501 - 372.1529, concerning benefits in general; Division 2, §§372.1551 - 372.1554, concerning overpayments; and Division 3, §§372.1601 - 372.1603, concerning restoration; and Subchapter G, §§372.1701 - 372.1720, concerning retailer requirements, without changes to the proposal as published in the May 22, 2009, issue of the *Texas Register* (34 TexReg 3086) and will not be republished.

HHSC also adopts new Chapter 372, Temporary Assistance for Needy Families and Supplemental Nutrition Assistance Programs, consisting of Subchapter A, §§372.1 - 372.6, concerning overview and purpose; Subchapter B, Eligibility, consisting of Division 1, §§372.101 - 372.108, concerning TANF certified groups; Division 2, §§372.151 - 372.153, concerning SNAP households; Division 3, §§372.201 - 372.205, concerning citizenship; Division 4, §§372.251 and §372.252, concerning residency; Division 5, §372.301, concerning domicile; Division 6, §§372.351 - 372.356, concerning resources; Division 7, §§372.401 - 372.411, concerning income; Division 8, §§372.451 - 372.457, concerning time limits; and Division 9, §372.501, concerning criminal activity; Subchapter C, Associated Programs, consisting of Division 1, §372.601, concerning SNAP benefits for disaster victims; Division 2, §§372.651 - 372.655, concerning SNAP-Combined Application Project (SNAP-CAP); Division 3, §372.701 and §372.702, concerning the TANF Non-Cash Program; Division 4, §§372.751 - 372.753, concerning the TANF State Program (TANF-SP); and Division 5, §372.801 and §372.802, concerning One-Time TANF (OTTANF); Subchapter D, Application Process, consisting of Division 1, §§372.901 - 372.906, concerning application; Division 2, §§372.951 - 372.958, concerning interview; and Division 3, §§372.1001 - 372.1003, concerning case disposition; Subchapter E, Participation Requirements, consisting of Division 1, §372.1101, concerning social security numbers; Division 2, §§372.1151 - 372.1156, concerning the TANF Personal Responsibility Agreement (PRA); Division 3, §§372.1201 - 372.1204, concerning finger imaging; Division 4, §§372.1251 - 372.1253, concerning TANF workforce orientation; Division 5, §§372.1301 - 372.1303, concerning third-party resources; Division 6, §§372.1351 - 372.1353, concerning work; and Division 7, §§372.1401 - 372.1404, concerning reporting changes; Subchapter F, Benefits, consisting of Division 1, §§372.1501 - 372.1521, concerning benefits in general; Division 2, §372.1551 and §372.1552, concerning overpayments; and Division 3, §372.1601, concerning restoration; and Subchapter G, §§372.1701 - 372.1716, concerning retailer requirements. New §§372.2, 372.3, and 372.201 are adopted with changes to the proposed text as published in the May 22, 2009, issue of the *Texas Register* (34 TexReg 3086). The text of the rules will be republished. New §§372.1, 372.4 - 372.6, 372.101 - 372.108, 372.151 - 372.153, 372.202 - 372.205, 372.251, 372.252, 372.301, 372.351 - 372.356, 372.401 - 372.411, 372.451 - 372.457, 372.501, 372.601, 372.651 - 372.655, 372.701, 372.702, 372.751 - 372.753, 372.801, 372.802, 372.901 - 372.906, 372.951 - 372.958, 372.1001 - 372.1003, 372.1101, 372.1151 - 372.1156, 372.1201 - 372.1204, 372.1251 - 372.1253, 372.1301 - 372.1303, 372.1351 - 372.1353, 372.1401 - 372.1404, 372.1501 - 372.1521, 372.1551, 372.1552, 372.1601, and 372.1701 -

372.1716 are adopted without changes to the proposed text as published in the May 22, 2009, issue of the *Texas Register* (34 TexReg 3086) and will not be republished.

Background and Justification

The repeals and new sections are adopted to allow for a complete rewrite of Chapter 372, which governs the Temporary Assistance for Needy Families Program (TANF) and the Supplemental Nutrition Assistance Program (SNAP). The new rules are adopted to update agency names and rule cross-references made obsolete during the consolidation of health and human services agencies in 2004; to eliminate the question-and-answer format; to incorporate necessary updates, including changing the name of the Food Stamp Program to the SNAP to reflect the new name established by Congress; and where possible, to cite the appropriate federal law or regulation and explain that HHSC follows the federal law or regulation. The rules primarily clarify existing policies and incorporate changes resulting from the federal Food, Conservation, and Energy Act of 2008.

Unless otherwise indicated as follows, the new rules do not impose any new requirements that are not already in policy and in use:

(1) New §372.301 is adopted to allow HHSC to make an exception to the TANF domicile requirement, if HHSC determines that a person in the household is temporarily absent.

(2) New §372.652 is adopted to lower the minimum age requirement for SNAP-Combined Application Project (SNAP-CAP) from 65 to 50 years of age, in compliance with the federal Food, Conservation, and Energy Act of 2008.

(3) New §372.802 is adopted to clarify that, for One-Time TANF eligibility requirements, loss of employment does not include voluntary quit without good cause.

(4) New §372.957 is adopted to establish a SNAP eligibility period of 36 months for a categorically eligible SNAP household in which all members receive Supplemental Security Income (SSI), as approved by the United States Department of Agriculture, Food and Nutrition Service.

(5) New §372.1156 is adopted to add good cause for noncooperation with school attendance requirements of the TANF Personal Responsibility Agreement.

(6) New §372.1203 is adopted to clarify the reasons a person may be exempt from the finger-imaging requirement if the person is temporarily unable to travel to the finger-imaging site.

(7) New §372.1601 is adopted to implement a new policy in which TANF benefits will be restored following the same requirements as restoration of SNAP benefits, except TANF households that do not receive benefits for the month of application due to proration are not eligible for restoration of benefits back to the application date, as they are with restoration of SNAP benefits.

Texas Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Texas Government Code, Chapter 2001 (the Administrative Procedure Act). HHSC has reviewed all sections in Chapter 372 and has determined that the reasons for adopting rules governing TANF and SNAP continue to exist; however, the rules were in need of updating. As a result of this review, HHSC is adopting these repeals and new sections.

Comments

HHSC received no comments regarding adoption of the repeals and new sections, including at a public hearing held in Austin on June 22, 2009.

However, HHSC made minor, nonsubstantive editorial changes to clarify and improve the accuracy of the sections as follows:

(1) In §372.2, HHSC added a definition for the *Texas Works Handbook* and renumbered the remaining paragraphs to conform to that addition.

(2) In §372.3(g), HHSC revised the referenced title of Chapter 813 to "Supplemental Nutrition Assistance Program Employment and Training" to mirror the Texas Workforce Commission's proposed change to the name of Chapter 813 in the May 8, 2009, issue of the *Texas Register*.

(3) In §372.201(3)(D) and (E), HHSC clarified that Chart C, A-343, and A-354 can be found in the *Texas Works Handbook*.

SUBCHAPTER A. OVERVIEW AND PURPOSE

1 TAC §§372.1 - 372.6

The repeals are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, Chapter 31, which authorizes HHSC to administer financial assistance programs, and Chapter 33, which authorizes HHSC to administer nutritional assistance programs.

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

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Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

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



SUBCHAPTER B. ELIGIBILITY

DIVISION 1. TANF CERTIFIED GROUPS

1 TAC §§372.101 - 372.107

The repeals are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, Chapter 31, which authorizes HHSC to administer financial assistance programs, and Chapter 33, which authorizes HHSC to administer nutritional assistance programs.

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

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Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

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DIVISION 2. FOOD STAMP HOUSEHOLDS

1 TAC §§372.151 - 372.153

The repeals are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, Chapter 31, which authorizes HHSC to administer financial assistance programs, and Chapter 33, which authorizes HHSC to administer nutritional assistance programs.

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Chief Counsel

Texas Health and Human Services Commission

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DIVISION 3. CITIZENSHIP

1 TAC §§372.201 - 372.205

The repeals are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, Chapter 31, which authorizes HHSC to administer financial assistance programs, and Chapter 33, which authorizes HHSC to administer nutritional assistance programs.

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Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

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DIVISION 4. RESIDENCY

1 TAC §§372.251, §372.252

The repeals are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of

HHSC with rulemaking authority; and Texas Human Resources Code, Chapter 31, which authorizes HHSC to administer financial assistance programs, and Chapter 33, which authorizes HHSC to administer nutritional assistance programs.

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

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DIVISION 5. DOMICILE

1 TAC §§372.301

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DIVISION 6. RESOURCES

1 TAC §§372.351 - 372.358

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DIVISION 7. INCOME

1 TAC §§372.401 - 372.410

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DIVISION 8. TIME LIMITS

1 TAC §§372.451 - 372.459

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DIVISION 9. CRIMINAL ACTIVITY

1 TAC §372.501

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SUBCHAPTER C. ASSOCIATED PROGRAMS

DIVISION 1. FOOD STAMPS IN DISASTER SITUATIONS

1 TAC §372.601

The repeal is adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, Chapter 31, which authorizes HHSC to administer financial assistance programs, and Chapter 33, which authorizes HHSC to administer nutritional assistance programs.

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DIVISION 2. SIMPLIFIED NUTRITIONAL ASSISTANCE PROGRAM (SNAP)

1 TAC §§372.651 - 372.656

The repeals are adopted under Texas Government Code, 531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, Chapter 31, which authorizes HHSC to administer financial assistance programs, and Chapter 33, which authorizes HHSC to administer nutritional assistance programs.

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DIVISION 3. TANF NON-CASH PROGRAM

1 TAC §372.701, §372.702

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DIVISION 4. TANF STATE PROGRAM

1 TAC §§372.751 - 372.754

The repeals are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, Chapter 31, which authorizes HHSC to administer financial assistance programs; Chapter 33, which authorizes HHSC to administer nutritional assistance programs; and Chapter 34, which authorizes HHSC to administer a state temporary assistance and support services program.

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DIVISION 5. ONE-TIME TANF (OTTANF)

1 TAC §372.801, §372.802

The repeals are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, Chapter 31, which authorizes HHSC to administer financial assistance programs, and Chapter 33, which authorizes HHSC to administer nutritional assistance programs.

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SUBCHAPTER D. APPLICATION PROCESS

DIVISION 1. APPLICATION

1 TAC §§372.901 - 372.906

The repeals are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, Chapter 31, which authorizes HHSC to administer financial assistance programs, and Chapter 33, which authorizes HHSC to administer nutritional assistance programs.

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DIVISION 2. INTERVIEW

1 TAC §§372.951 - 372.958

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DIVISION 3. CASE DISPOSITION

1 TAC §§372.1001 - 372.1003

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SUBCHAPTER E. PARTICIPATION REQUIREMENTS

DIVISION 1. SOCIAL SECURITY NUMBERS

1 TAC §372.1101

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DIVISION 2. THE TANF PERSONAL RESPONSIBILITY AGREEMENT (PRA)

1 TAC §§372.1151 - 372.1156

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DIVISION 3. FINGER IMAGING

1 TAC §§372.1201 - 372.1204

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DIVISION 4. TANF WORKFORCE ORIENTATION

1 TAC §§372.1251 - 372.1253

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DIVISION 5. THIRD-PARTY RESOURCES

1 TAC §§372.1301 - 372.1304

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DIVISION 6. WORK

1 TAC §§372.1351 - 372.1353

The repeals are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, Chapter 31, which authorizes HHSC to administer financial assistance programs, and Chapter 33, which authorizes HHSC to administer nutritional assistance programs.

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DIVISION 7. REPORTING CHANGES

1 TAC §§372.1401 - 372.1404

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SUBCHAPTER F. BENEFITS

DIVISION 1. BENEFITS IN GENERAL

1 TAC §§372.1501 - 372.1529

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DIVISION 2. OVERPAYMENTS

1 TAC §§372.1551 - 372.1554

The repeals are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, Chapter 31, which authorizes HHSC to administer financial assistance programs, and Chapter 33, which authorizes HHSC to administer nutritional assistance programs.

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DIVISION 3. RESTORATION

1 TAC §§372.1601 - 372.1603

The repeals are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, Chapter 31, which authorizes HHSC to administer financial assistance programs, and Chapter 33, which authorizes HHSC to administer nutritional assistance programs.

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SUBCHAPTER G. RETAILER REQUIREMENTS

1 TAC §§372.1701 - 372.1720

The repeals are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; Texas Human Resources Code, Chapter 31, which authorizes HHSC to administer financial assistance programs, and Chapter 33, which authorizes HHSC to administer nutritional assistance programs.

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CHAPTER 372. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES AND SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAMS SUBCHAPTER A. OVERVIEW AND PURPOSE 1 TAC §§372.1 - 372.6

The new sections are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, Chapter 31, which authorizes HHSC to administer financial assistance programs, and Chapter 33, which authorizes HHSC to administer nutritional assistance programs.

§372.2. *Definitions.*

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

- (1) Authorized representative--In the TANF Program, a person whom the certified group authorizes to apply for or manage the TANF benefits on behalf of the certified group but who is not included in the certified group. In SNAP, a person whom the household authorizes to apply for or manage the SNAP benefits on behalf of the household. References in this chapter to a certified group, client, or household include an authorized representative, unless the context indicates otherwise.
- (2) Budgetary needs amount--In the TANF Program, a set dollar amount that represents the monthly amount needed by the certified group to pay for food, clothing, housing, utilities, and incidental expenses (which include day-to-day transportation, telephone, laundry, unreimbursed medical expenses, recreation, and household supplies).
- (3) Caretaker--In the TANF Program, a person who cares for a dependent child, who meets relationship requirements in §372.108 of this chapter (relating to Relationship Requirement), whom the Texas Health and Human Services Commission (HHSC) includes in the certified group, and who ordinarily receives and manages the TANF benefits for the certified group.
- (4) Certified group--The person or group of relatives whose needs HHSC includes together in a TANF case.
- (5) CFR--The Code of Federal Regulations.
- (6) Child--A person under 18 years of age. In the TANF Program, a child also includes a person under 19 years of age as long as the person is a full-time student in a secondary school (or participant in an equivalent vocational or technical training program) and the person is reasonably expected to complete the school (or the training) before the person's 19th birthday.
- (7) Choices--The TANF employment and training program administered by the Texas Workforce Commission.
- (8) Client--In the TANF Program, the member of the certified group who receives benefits for the certified group. In SNAP, the member of the household who receives benefits for the household.
- (9) Dependent child--In the TANF Program, a child as described in the Texas Human Resources Code, §31.002(b). The term also means a child who has been deprived of parental support because of the death, absence, or incapacity of a parent who does not have enough income or resources for a reasonable subsistence compatible with health and safety, and who is living with a caretaker.
- (10) Fair market value--The amount of money an item would bring if sold in the current local market.
- (11) Family--A group of relatives living together who meet the relationship requirements in §372.108 of this chapter.
- (12) Federal Poverty Guidelines--The household income guidelines issued annually and published in the Federal Register by the U.S. Department of Health and Human Services. Percentages of these guidelines are used to determine income eligibility for TANF, SNAP, and certain other public assistance programs.
- (13) Household--The person or persons whose needs HHSC includes in a SNAP case for benefits. In the TANF Program, the family members who live together.
- (14) Parent--A mother or father, as established through biological relationship or legal process.
- (15) Payee--In the TANF Program, a person who receives and manages the TANF benefits for a certified group and who otherwise qualifies as a caretaker, except HHSC does not include the person in the certified group. HHSC designates a payee when no one in the household qualifies or wants to be caretaker.
- (16) Personal Responsibility Agreement (PRA)--In the TANF Program, a written agreement that defines the responsibilities of participants.
- (17) Protective payee--In the TANF Program, a person whom HHSC selects to receive and manage benefits for the certified group instead of the caretaker. HHSC may designate a protective payee whenever HHSC determines that the caretaker has failed to comply with one or more program requirements.
- (18) Recognizable needs amount--In the TANF Program, a set dollar amount that is 25% of the budgetary needs amount for the certified group.
- (19) Representative payee--In the TANF Program, a person designated to receive and manage the household's benefits for a client who is incapacitated or incompetent.
- (20) Sibling--A brother, sister, half brother, or half sister, as established by biological relationship or legal process. A sibling does not include a stepbrother or stepsister.
- (21) SNAP--Supplemental Nutrition Assistance Program, formerly known as the Food Stamp Program.
- (22) TANF--Temporary Assistance for Needy Families.
- (23) TANF Non-Cash Program--A component of the TANF Program providing TANF-funded services relating to matters such as education, employment, and the prevention and treatment of substance abuse, but that does not provide benefits (for example, cash assistance).
- (24) TANF Program--A program providing temporary benefits (cash assistance) and work opportunities to families with needy dependent children. References in this chapter to the TANF Program also include the TANF State Program (TANF-SP), unless the context clearly indicates otherwise.

(25) TANF State Program (TANF-SP)--The state-created and state-funded program that is the same as the TANF Program, except limited to certain Texas counties and two-parent households. References in this chapter to TANF include TANF-SP, unless the context clearly indicates otherwise.

(26) Texas Health and Human Services Commission (HHSC)--The state agency that administers the TANF Program and SNAP in Texas.

(27) *Texas Works Handbook*--An HHSC manual containing policies and procedures used to determine eligibility for SNAP, TANF, and Medicaid programs for children and families. The *Texas Works Handbook* is found on the Internet at www.hhsc.state.tx.us/Programs/Programs.shtml#handbooks.

(28) U.S.--The United States of America.

(29) U.S.C.--United States Code.

§372.3. *Legal Basis.*

(a) For the TANF Program, the federal law basis is:

(1) Title IV of the Social Security Act (42 U.S.C. §601 et seq.); and

(2) the federal regulations in 45 CFR, Parts 260 through 265.

(b) To the extent the regulations described in subsection (a) of this section impose federal mandates that apply to Texas, HHSC incorporates the regulations by reference for administration of TANF in Texas. If the regulations provide options from which Texas may choose, or if Texas is granted a waiver from a federal mandate, the rules of this chapter and other applicable state administrative rules and policy describe the options Texas has chosen and the waivers Texas has been granted.

(c) For the TANF Program, the state law basis is:

(1) the Texas Human Resources Code, Chapter 31, which authorizes the Texas Health and Human Services Commission (HHSC) to administer the TANF Program in Texas;

(2) the Texas Human Resources Code, Chapter 34, which authorizes HHSC to administer the TANF State Program; and

(3) the rules of this chapter, as well as other applicable HHSC rules.

(d) For SNAP, the federal law basis is:

(1) 7 U.S.C. §2011 et seq.; and

(2) the federal regulations in 7 CFR, Parts 271 through 283.

(e) To the extent the regulations described in subsection (d) of this section impose federal mandates that apply to Texas, HHSC incorporates the regulations by reference for administration of SNAP in Texas. If the regulations provide options from which Texas may choose, or if Texas is granted a waiver from a federal mandate, the rules of this chapter and other applicable state administrative rules and policy describe the options Texas has chosen and the waivers Texas has been granted.

(f) For SNAP, the state law basis is:

(1) the Texas Human Resources Code, Chapter 33, which authorizes HHSC to administer SNAP in Texas; and

(2) the rules of this chapter, as well as other applicable HHSC rules.

(g) The Texas Workforce Commission provides TANF and SNAP employment and hiring activities and support services as described in Title 40 of the Texas Administrative Code, Chapter 811 (relating to Choices) and Chapter 813 (relating to Supplemental Nutrition Assistance Program Employment and Training).

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SUBCHAPTER B. ELIGIBILITY

DIVISION 1. TANF CERTIFIED GROUPS

1 TAC §§372.101 - 372.108

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DIVISION 2. SNAP HOUSEHOLDS

1 TAC §§372.151 - 372.153

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DIVISION 3. CITIZENSHIP

1 TAC §§372.201 - 372.205

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§372.201. TANF Citizenship Requirements.

To be eligible for TANF benefits, a person must be:

- (1) a citizen of the U.S.;
- (2) an alien who legally entered the U.S. before August 22, 1996, and who meets the eligibility criteria in 8 U.S.C. §1641(b) or (c); or
- (3) an alien who legally entered the U.S. on or after August 22, 1996, and who meets the eligibility criteria in 8 U.S.C. §1612(b) and §1613, except that a legal permanent resident alien is eligible after residing in the U.S. for five years only if the alien meets one of the following eligibility requirements:

(A) the alien is an honorably discharged veteran or active duty military personnel;

(B) the alien is a spouse, unmarried surviving spouse, or minor unmarried child of an honorably discharged veteran or active duty military personnel (if a surviving spouse of a deceased veteran or active duty military person, the surviving spouse must not have remarried);

(C) the alien entered the U.S. before August 22, 1996, and remained continuously present in the U.S. (a single absence from the U.S. of more than 30 days or a combined absence of more than 90 days interrupts the "continuous presence") since at least August 21, 1996, until obtaining qualifying immigrant status (an alien who entered the U.S. without proper documents or overstayed his or her visa, is treated the same as an alien who entered and remained in the U.S. with valid immigration documents);

(D) the alien entered the U.S. with a status described in the *Texas Works Handbook*, Item A-342, Chart C and meets those eligibility criteria, or meets the criteria in the *Texas Works Handbook*, Item A-343, How to Determine Eligibility for Battered Aliens; or

(E) the alien meets the 40 qualifying quarters requirements in the *Texas Works Handbook*, Item A-354, Verifying 40 "Qualifying Quarters," and five years have passed since the alien's legal date of entry.

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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DIVISION 4. RESIDENCY

1 TAC §372.251, §372.252

The new sections are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, Chapter 31, which authorizes HHSC to administer financial assistance programs, and Chapter 33, which authorizes HHSC to administer nutritional assistance programs.

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DIVISION 5. DOMICILE

1 TAC §372.301

The new section is adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, Chapter 31, which authorizes HHSC to administer financial assistance programs.

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

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DIVISION 6. RESOURCES

1 TAC §§372.351 - 372.356

The new sections are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources

Code, Chapter 31, which authorizes HHSC to administer financial assistance programs, and Chapter 33, which authorizes HHSC to administer nutritional assistance programs.

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

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DIVISION 7. INCOME

1 TAC §§372.401 - 372.411

The new sections are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, Chapter 31, which authorizes HHSC to administer financial assistance programs, and Chapter 33, which authorizes HHSC to administer nutritional assistance programs.

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DIVISION 8. TIME LIMITS

1 TAC §§372.451 - 372.457

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DIVISION 9. CRIMINAL ACTIVITY

1 TAC §372.501

The new section is adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, Chapter 31, which authorizes HHSC to administer financial assistance programs, and Chapter 33, which authorizes HHSC to administer nutritional assistance programs.

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SUBCHAPTER C. ASSOCIATED PROGRAMS

DIVISION 1. SNAP BENEFITS FOR DISASTER VICTIMS

1 TAC §372.601

The new section is adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, Chapter 33, which authorizes HHSC to administer nutritional assistance programs.

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DIVISION 2. SNAP-COMBINED APPLICATION PROJECT (SNAP-CAP)

1 TAC §§372.651 - 372.655

The new sections are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, Chapter 33, which authorizes HHSC to administer nutritional assistance programs.

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

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DIVISION 3. TANF NON-CASH PROGRAM

1 TAC §372.701, §372.702

The new sections are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, Chapter 31, which authorizes HHSC to administer financial assistance programs.

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

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DIVISION 4. TANF STATE PROGRAM (TANF-SP)

1 TAC §§372.751 - 372.753

The new sections are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, Chapters 31 and 34, which authorize HHSC to administer financial assistance programs.

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

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DIVISION 5. ONE-TIME TANF (OTTANF)

1 TAC §372.801, §372.802

The new sections are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, Chapter 31, which authorizes HHSC to administer financial assistance programs.

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SUBCHAPTER D. APPLICATION PROCESS

DIVISION 1. APPLICATION

1 TAC §§372.901 - 372.906

The new sections are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, Chapter 31, which authorizes HHSC to administer financial assistance programs, and Chapter 33, which authorizes HHSC to administer nutritional assistance programs.

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DIVISION 2. INTERVIEW

1 TAC §§372.951 - 372.958

The new sections are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, Chapter 31, which authorizes HHSC to administer financial assistance programs, and Chapter 33, which authorizes HHSC to administer nutritional assistance programs.

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DIVISION 3. CASE DISPOSITION

1 TAC §§372.1001 - 372.1003

The new sections are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, Chapter 31, which authorizes HHSC to administer financial assistance programs, and Chapter 33, which authorizes HHSC to administer nutritional assistance programs.

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SUBCHAPTER E. PARTICIPATION REQUIREMENTS

DIVISION 1. SOCIAL SECURITY NUMBERS

1 TAC §372.1101

The new section is adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, Chapter 31, which authorizes HHSC to administer financial assistance programs, and Chapter 33, which authorizes HHSC to administer nutritional assistance programs.

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DIVISION 2. THE TANF PERSONAL RESPONSIBILITY AGREEMENT (PRA)

1 TAC §§372.1151 - 372.1156

The new sections are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, Chapter 31, which authorizes HHSC to administer financial assistance programs.

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DIVISION 3. FINGER IMAGING

1 TAC §§372.1201 - 372.1204

The new sections are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, Chapter 31, which authorizes HHSC to administer financial assistance programs, and Chapter 33, which authorizes HHSC to administer nutritional assistance programs.

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**DIVISION 4. TANF WORKFORCE
ORIENTATION**

1 TAC §§372.1251 - 372.1253

The new sections are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, Chapter 31, which authorizes HHSC to administer financial assistance programs.

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DIVISION 5. THIRD-PARTY RESOURCES

1 TAC §§372.1301 - 372.1303

The new sections are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, Chapter 31, which authorizes HHSC to administer financial assistance programs, and Chapter 33, which authorizes HHSC to administer nutritional assistance programs.

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DIVISION 6. WORK

1 TAC §§372.1351 - 372.1353

The new sections are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, Chapter 31, which authorizes HHSC to administer financial assistance programs, and Chapter 33, which authorizes HHSC to administer nutritional assistance programs.

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DIVISION 7. REPORTING CHANGES

1 TAC §§372.1401 - 372.1404

The new sections are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, Chapter 31, which authorizes HHSC to administer financial assistance programs, and Chapter 33, which authorizes HHSC to administer nutritional assistance programs.

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SUBCHAPTER F. BENEFITS

DIVISION 1. BENEFITS IN GENERAL

1 TAC §§372.1501 - 372.1521

The new sections are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, Chapter 31, which authorizes HHSC to administer financial assistance programs, and Chapter 33, which authorizes HHSC to administer nutritional assistance programs.

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DIVISION 2. OVERPAYMENTS

1 TAC §372.1551, §372.1552

The new sections are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, Chapter 31, which authorizes HHSC to administer financial assistance programs, and Chapter 33, which authorizes HHSC to administer nutritional assistance programs.

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DIVISION 3. RESTORATION

1 TAC §372.1601

The new section is adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, Chapter 31, which authorizes HHSC to administer financial assistance programs, and Chapter 33, which authorizes HHSC to administer nutritional assistance programs.

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SUBCHAPTER G. RETAILER REQUIREMENTS

1 TAC §§372.1701 - 372.1716

The new sections are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, Chapter 31, which authorizes HHSC to administer financial assistance programs, and Chapter 33, which authorizes HHSC to administer nutritional assistance programs.

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TITLE 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 511. ELIGIBILITY

SUBCHAPTER C. EDUCATIONAL REQUIREMENTS

22 TAC §511.58

The Texas State Board of Public Accountancy adopts an amendment to §511.58, concerning Definitions of Related Business Subjects, without changes to the proposed text as published in the June 12, 2009, issue of the *Texas Register* (34 TexReg 3907) and will not be republished.

The section clarifies courses that the Board may consider in meeting the definition of business coursework for the CPA examination.

The amendment attempts to insure that individuals teaching college level ethics courses not have a history of having been disciplined by the Board or other state or federal licensing agencies.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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J. Randel (Jerry) Hill
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Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

SUBCHAPTER B. CONTINUING PROFESSIONAL EDUCATION RULES FOR INDIVIDUALS

22 TAC §523.120

The Texas State Board of Public Accountancy adopts an amendment to §523.120, concerning Standards for CPE Reporting, without changes to the proposed text as published in the June 12, 2009, issue of the *Texas Register* (34 TexReg 3909) and will not be republished.

The section clarifies for licensees when and how they obtain credit for courses from sponsors that are not registered.

The amendment will modify the rule to reflect that the licensee is responsible for retaining documentation.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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Texas State Board of Public Accountancy

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SUBCHAPTER C. ETHICS RULES: INDIVIDUALS AND SPONSORS

22 TAC §523.132

The Texas State Board of Public Accountancy adopts an amendment to §523.132, concerning Board Contracted Ethics Instructors, without changes to the proposed text as published in the June 12, 2009, issue of the *Texas Register* (34 TexReg 3910) and will not be republished.

This section establishes a waiver for disciplined licensees to teach ethics courses.

The amendment will permit the public to be taught ethics courses when the disciplinary violation is a minor infraction.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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SUBCHAPTER D. STANDARDS FOR CONTINUING PROFESSIONAL EDUCATION PROGRAMS AND RULES FOR SPONSORS

22 TAC §523.143

The Texas State Board of Public Accountancy adopts an amendment to §523.143, concerning Sponsor's Record, without changes to the proposed text as published in the June 12, 2009, issue of the *Texas Register* (34 TexReg 3911) and will not be republished.

The section requires the sponsor of a continuing professional education program to provide and retain notice of the course and its promotional materials.

The amendment will assure the integrity of the continuing professional education program.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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CHAPTER 527. PEER REVIEW

22 TAC §527.10

The Texas State Board of Public Accountancy adopts an amendment to §527.10, concerning Peer Review Report Committee, without changes to the proposed text as published in the June

12, 2009, issue of the *Texas Register* (34 TexReg 3912) and will not be republished.

The amendment will update the rule to reflect the new pass rating for firms.

The section informs licensees and the public of the standards for reviewing attest work.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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PART 40. ADVISORY BOARD OF ATHLETIC TRAINERS

CHAPTER 871. ATHLETIC TRAINERS SUBCHAPTER A. GENERAL GUIDELINES AND REQUIREMENTS

22 TAC §§871.4, 871.7 - 871.9, 871.14

The Advisory Board of Athletic Trainers (board) adopts amendments to §§871.4, 871.7 - 871.9, and 871.14 concerning the licensure and regulation of athletic trainers. The amendment to §871.7 is adopted with a change to the proposed text as published in the February 20, 2009, issue of the *Texas Register* (34 TexReg 1177). Sections 871.4, 871.8, 871.9, and 871.14 are adopted without changes and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The amendments clarify and streamline licensure requirements and procedures for persons who apply to become licensed athletic trainers in Texas. The addition of a jurisprudence examination is designed to educate and to ensure the proper practice of licensed athletic trainers.

Specifically, the adopted amendments remove the references to the board's mailing address; establish the requirement of a jurisprudence examination; restrict the setting at which a student athletic trainer shall accumulate apprenticeship hours; eliminate the requirement of an applicant to take both the written and oral exams if the applicant has failed either portion three times; and

set a time limit in which an applicant must apply for examination after the applicant's degree has been conferred.

SECTION-BY-SECTION SUMMARY

The amendments to §871.4 and §871.14 remove the references to the board's mailing address, which has changed.

The amendment to §871.7 establishes the requirement that applicants for a license must complete a jurisprudence examination.

The amendment to §871.8 establishes the requirement that a student athletic trainer who has graduated cannot accumulate apprenticeship hours at the same setting where the student athletic trainer is employed.

Amendments to §871.9 remove the requirement of an applicant to take the written and oral exams if the applicant has failed either portion three times, and set a time limit in which an applicant must apply for examination after the applicant's degree has been conferred.

COMMENTS

The board did not receive any public comments regarding the proposed rules during the comment period. However, board staff provided comments and the board has reviewed and adopts the following change that will clarify the rules.

Change: Concerning §871.7(j), the date of January 1, 2010 was added as an implementation date for the board's requirement of the applicant to provide proof of completing the jurisprudence examination prior to application for a license.

STATUTORY AUTHORITY

The amendments are adopted under Occupations Code, §451.103, which authorizes the board to adopt rules necessary for the performance of its duties.

§871.7. *Qualifications.*

(a) Applicants qualifying under the Act, §451.153(a)(1) shall hold a baccalaureate or post-baccalaureate degree and one of the following:

(1) current licensure, registration, or certification as an athletic trainer issued by another state, jurisdiction, or territory of the United States; or

(2) current national certification as an athletic trainer issued by the National Athletic Trainers Association Board of Certification (NATABOC).

(b) In place of the requirements in subsection (a) of this section, applicants qualifying under the Act, §451.153(a)(1) shall have:

(1) a baccalaureate or post-baccalaureate degree which includes at least 24 hours of combined academic credit from each of the following course areas:

(A) human anatomy;

(B) health, disease, nutrition, fitness, wellness, emergency care, first aid, or drug and alcohol education;

(C) kinesiology or biomechanics;

(D) physiology of exercise;

(E) athletic training, sports medicine, or care and prevention of injuries;

(F) advanced athletic training, advanced sports medicine, or assessment of injury; and

(G) therapeutic exercise or rehabilitation or therapeutic modalities; and

(2) an apprenticeship in athletic training meeting the following requirements:

(A) the program shall be under the direct supervision of and on the same campus as a Texas licensed athletic trainer, or if out-of-state, the college or university's certified or state licensed athletic trainer;

(B) the apprenticeship must be a minimum of 1,800 hours. It must be based on the academic calendar and must be completed during at least five fall and/or spring semesters. Hours in the classroom do not count toward apprenticeship hours;

(C) the hours must be completed in college or university intercollegiate sports programs. A maximum of 600 hours of the 1,800 hours may be accepted from an affiliated setting which the college or university's athletic trainer has approved. No more than 300 hours may be earned at one affiliated setting. These hours must be under the direct supervision of a licensed physician, licensed or certified athletic trainer, or licensed physical therapist;

(D) 1,500 hours of the apprenticeship shall be fulfilled while enrolled as a student at a college or university; and

(E) the apprenticeship must offer work experience in a variety of sports. It shall include instruction by the college or university's athletic trainer in prevention of injuries, emergency care, rehabilitation, and modality usage.

(c) In place of the requirements in subsections (a) and (b) of this section, applicants qualifying under the Act, §451.153(a)(1) shall have a baccalaureate or post-baccalaureate degree in athletic training from a college or university which held accreditation, during the applicants matriculation at the college or university and at the time the degree was conferred, from a nationally recognized accrediting organization that is approved by the board.

(d) Applicants qualifying under the Act, §451.153(a)(2) or §451.153(a)(3) shall have a baccalaureate or post-baccalaureate degree or a state issued certificate in physical therapy or a baccalaureate or post-baccalaureate degree in corrective therapy with at least a minor in physical education or health. Applicants who hold such degrees must complete three semester hours of a basic athletic training course from an accredited college or university. An applicant shall also complete an apprenticeship in athletic training meeting the following requirements.

(1) The program shall be a minimum of 720 hours. It must be based on the academic calendar and must be completed during at least three fall and/or spring semesters. The hours must be under the direct supervision of a college or university's Texas licensed athletic trainer or if out-of-state, the college or university's certified or state licensed athletic trainer. The apprenticeship includes a minimum of 360 hours per year. Hours in the classroom do not count toward apprenticeship hours.

(2) Actual working hours shall include a minimum of 20 hours per week during each fall semester. A fall semester includes pre-season practice sessions. The apprenticeship must offer work experience in a variety of sports.

(3) The apprenticeship must be completed in a college or university's intercollegiate sports program. A maximum of 240 hours of the 720 hours may be earned at a collegiate, secondary school, or professional affiliated setting which the college or university's athletic trainer has approved. No more than 120 hours may be earned at one affiliated setting.

(e) Certification required. An applicant must have:

(1) a current adult cardiopulmonary resuscitation certificate; or

(2) current certification for emergency medical services (EMS) with the Department of State Health Services.

(f) The relevance to the licensing requirements of academic courses, the titles of which are not self-explanatory, must be substantiated through course descriptions in official school catalogs or bulletins or by other means acceptable to the board.

(g) The board shall not accept courses which an applicant's transcript indicates were not completed with a passing grade for credit.

(h) Documentation of the apprenticeship program must be provided by completion of the proper forms prescribed by the board.

(i) Each applicant must have a baccalaureate or post-baccalaureate degree from a college or university which held accreditation, at the time the degree was conferred, from an accepted regional educational accrediting association reported by the American Association of Collegiate Registrars and Admissions Officers.

(j) Beginning January 1, 2010, applicants for a license must complete the board's jurisprudence examination and submit proof of completion at the time of application. The jurisprudence examination must have been completed no more than six months prior to the date of application.

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 July 27, 2009.

TRD-200903167

David Weir
Chair

Advisory Board of Athletic Trainers

Effective date: August 16, 2009

Proposal publication date: February 20, 2009

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

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 9. EXPLORATION AND LEASING OF STATE OIL AND GAS

The Texas General Land Office (GLO) adopts amendments to §9.11, relating to Geophysical and Geochemical Exploration Permits; §9.22, relating to Leasing Procedures; §9.31, relating to General Provisions; §9.35 relating to Producing the State Lease; §9.37 relating to Offset Well Obligations and Compensatory Royalties; §9.81 relating to Pooling and Unitizing of State Property; §9.91 relating to General Provisions; §9.92 relating to Release; and §9.93 relating to Assignments. The amendments are adopted without changes to the proposal as published in the May 15, 2009, issue of the *Texas Register* (34 TexReg 2878) and will be not be republished.

BACKGROUND, REASONED JUSTIFICATION, AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The purpose of the amendments is to clarify the rules, delete redundant language found in the rules, change certain permissive rules to mandatory rules and conform the rules to other existing rules located in Chapter 9. The amendments will enable the GLO to administer the energy rules more concisely, fairly and efficiently.

§9.11 Geophysical and Geochemical Exploration Permits

The amendments to §9.11 (relating to Geophysical and Geochemical Exploration Permits) incorporate nonsubstantive amendments to §9.11(c)(6).

§9.22 Leasing Procedures

The amendments to §9.22 (relating to Leasing Procedures) incorporate nonsubstantive amendments to §§9.22(2)(E)(iv), 9.22(2)(F)(xii), and 9.22(5)(C)(ii)(IV).

§9.31 General Provisions

The amendments to §9.31 (relating to General Provisions) incorporate the deletion of §9.31(a)(3) because this portion of the rule is no longer applicable due to subsequently amended rules. The amendment to §9.31(b)(2) clarifies the definition of "drilling operations". The amendment to §9.31(b)(6) clarifies the definition of "producing in paying quantities".

§9.35 Producing The State Lease

The amendments to §9.35 (relating to Producing The State Lease) incorporate the deletion and replacement of §9.35(a)(2), which would permit the use of full well stream meters in lieu of separators with the submittal of appropriate data and the approval of GLO staff and the deletion and replacement of §9.35(a)(3), which would clarify when GLO staff approval for surface commingling is required.

§9.37 Offset Well Obligations and Compensatory Royalties

The amendment to §9.37 (relating to Offset Well Obligations and Compensatory Royalties) mandates that §9.37(b)(1) of this rule is no longer permissive but is now mandatory. A person obligated to drill an offset well, who is certain that an encroaching well cannot be draining state property, must send a written explanation to the GLO. The amendment to §9.37(b)(3) would allow the Land Commissioner to appoint a designee to send an agreement letter to a person complying with §9.37(b)(1).

§9.81 Pooling and Unitizing of State Property

The amendments to §9.81 (relating to Pooling and Unitizing of State Property) incorporate nonsubstantive amendments.

§9.91 General Provisions

The amendments to §9.91 (relating to General Provisions) incorporate the deletion of §9.91(c)(3) in order to eliminate redundant language from this portion of the rule. The amendment to §9.91(c)(5)(C) clarifies the Commissioner's legal authority to act when an operator does not comply with lease requirements.

§9.92 Release

The amendments to §9.92 (relating to Release) incorporate nonsubstantive amendments to §9.92(b)(2).

§9.93 Assignments

The amendments to §9.93 (relating to Assignments) incorporate nonsubstantive amendments to §9.93(a)(2).

FISCAL IMPACTS

Larry Laine, Deputy Land Commissioner and Chief Clerk, has determined that for each year of the first five years that the adopted amendments will be in effect, there will be no fiscal implications for state government as a result of enforcing or administering the amendments.

PUBLIC BENEFIT/COST ANALYSIS

Larry Laine has determined that for each year of the first five years the adopted amendments are to be in effect, the public benefit will be improved operation of the GLO and better conservation of state resources. The GLO does not anticipate incurring any additional costs as a result of administering the adopted rule amendments. There will be no fiscal implications for local governments.

SMALL BUSINESS ANALYSIS

There may be some economic cost to small businesses, micro-businesses, and individuals based on the adopted amendments. The total costs for an individual, small business, or micro-business associated with compliance will vary depending on the different situations and choices made by each individual, small business, or micro-business. Further, the GLO does not have information on these businesses' gross receipts, sales revenues, or labor costs. Therefore, the GLO is not able to determine the exact cost of compliance.

EMPLOYMENT IMPACT

Larry Laine does not anticipate any employment impact as a result of administering the adopted rule amendments.

PUBLIC COMMENT

The GLO did not receive any comments on the amendments.

SUBCHAPTER B. ISSUING EXPLORATION PERMITS AND OIL AND GAS LEASES

31 TAC §9.11, §9.22

STATUTORY AUTHORITY

The amendments are adopted under the Texas Natural Resources Code, §§31.051(3), 32.062(a), 32.205, and 33.064, which give the Commission and the board the authority to make, adopt and enforce suitable rules consistent with the law.

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 July 20, 2009.

TRD-200902968

Trace Finley

Deputy Commissioner, Policy and Governmental Affairs

General Land Office

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Proposal publication date: May 15, 2009

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



SUBCHAPTER C. MAINTAINING A STATE OIL AND GAS LEASE

31 TAC §§9.31, 9.35, 9.37

STATUTORY AUTHORITY

The amendments are adopted under the Texas Natural Resources Code, §§31.051(3), 32.062(a), 32.205, and 33.064, which give the Commission and the board the authority to make, adopt and enforce suitable rules consistent with the law.

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. POOLING AND UNITIZING STATE PROPERTY

31 TAC §9.81

STATUTORY AUTHORITY

The amendments are adopted under the Texas Natural Resources Code, §§31.051(3), 32.062(a), 32.205, and 33.064, which give the Commission and the board the authority to make, adopt and enforce suitable rules consistent with the law.

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. DISCONTINUING THE LEASEHOLD RELATIONSHIP

31 TAC §§9.91 - 9.93

STATUTORY AUTHORITY

The amendments are adopted under the Texas Natural Resources Code, §§31.051(3), 32.062(a), 32.205, and 33.064, which give the Commission and the board the authority to make, adopt and enforce suitable rules consistent with the law.

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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Trace Finley

Deputy Commissioner, Policy and Governmental Affairs

General Land Office

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PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

SUBCHAPTER A. FEES

The Texas Parks and Wildlife Commission adopts the repeal of §53.18 and amendments to §§53.2 - 53.17 and 53.30, concerning Fees. The amendment to §53.16, concerning Vessel, Motor, and Marine Licensing Fees, is adopted with changes to the proposed text as published in the April 24, 2009, issue of the *Texas Register* (34 TexReg 2581). The repeal of §53.18 and the amendments to §§53.2 - 53.15, 53.17, and 53.30 are adopted without changes and will not be republished.

The change to §53.16, concerning Vessel, Motor, and Marine Licensing Fees, establishes a registration fee of \$150 for Class 3 vessels. As proposed, the fee would have increased to \$200.

The repeal of §53.18 and the amendments to §§53.10, 53.14 - 53.17 and 53.30 are either wholly or in part necessary as a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires a state agency to review each of its regulations no less frequently than every four years and to readopt, adopt with changes, or repeal each rule as a result of the review. The remaining portions of the rulemaking increase fees for a number of commercial and recreational licenses and permits, as well as for boat registration and titling.

The amendments that implement fee increases are necessary because the department has determined additional funds are needed to maintain current levels of service to the public. Fees for the majority of the license and permits have not been increased since 2003. An analysis of operational expenses since the last fee increase indicates that aggregate major expenses (Salaries and Wages, Other Personnel Costs, Professional Fees and Services, Fuels and Lubricants, Consumable Supplies, Utilities, Travel, Building Rentals, Machine Rentals, Other Operating Expense, and Capital Expenditures) have increased at approximately 6.1% per year. Therefore, the department has determined that a fee increase is necessary. The fees as adopted, except where noted, have been increased by 5%, rounded up to the nearest whole dollar. This calculation is intended to provide the department with the minimum amount of revenue necessary to maintain current operations.

The repeal of §53.18, concerning Other Fees, is necessary because the contents of §53.18 have been transferred to §53.16, concerning Vessel, Motor, and Marine Licensing Fees. The repeal is nonsubstantive in nature and does not remove, create, alter, or increase any fees.

The amendment to §53.2, concerning License Issuance Procedures, Fees, Possession, and Exemption Rules, establishes a fee of \$100 for reinstatement or re-issuance of a license or permit that has been denied or revoked by the department. The

amendment is necessary because the department incurs a cost in maintaining systems to document and track the status of persons who are not eligible for licensure or permit issuance because of criminal convictions, civil penalties, or failure to pay child support. At the current time there are 7,415 license and permit restrictions being tracked by the department. The fee will help to offset the cost to the department of maintaining those systems and will have the additional benefit of encouraging people to avoid activities that could lead to license or permit denial or revocation.

The amendment to §53.3, concerning Combination Hunting and Fishing License Packages, increases the fee for the resident combination hunting and freshwater fishing package (from \$47 to \$50), the resident combination hunting and saltwater fishing package (from \$52 to \$55), the resident combination hunting and "all-water" fishing package (from \$57 to \$60), the resident senior combination hunting and freshwater fishing package (from \$15 to \$16), the resident senior combination hunting and saltwater fishing package (from \$20 to \$21), the resident senior combination hunting and "all-water" fishing package (from \$25 to \$26); the resident super combination hunting and "all-water" fishing package (from \$64 to \$68), and the resident senior super combination hunting and "all-water" fishing package (from \$30 to \$32).

The amendment to §53.4, concerning Lifetime Licenses, changes the name of the license from the "lifetime resident hunting and fishing license" to the "lifetime resident super combination hunting and all-water fishing license package." The amendment increases the fee for the lifetime resident combination hunting and fishing license (from \$1,000 to \$1,800), the lifetime resident hunting license (from \$600 to \$1,000), the lifetime resident fishing license (from \$600 to \$1,000), and the upgrade from a lifetime resident hunting or fishing license to the lifetime resident super combination hunting and all-water fishing license (from \$400 to \$800). The fee increase is necessary because the department has determined that at current fee values, the sales of lifetime licenses result in long-term revenue loss for the department. For instance, the fees for a hunting license and all required stamps would currently total \$44. The lifetime hunting license (\$600) therefore represents approximately 13.6 years of license purchases. Thus, when a person purchases a lifetime hunting license under the current fee, the department loses revenue beginning the 14th year following purchase, since that person will never purchase another license or stamp. For the lifetime fishing license, this figure is 15.8 years, and for the lifetime combination license, the figure is 15.6 years. The fee increases will delay revenue loss to the department by extending the average time period to approximately 25 years. Also, the fees for the lifetime licenses were not increased in 2003 during the last fee increase, and have not been increased since 1996. The amendment also implements eligibility requirements and a fee for entering a computerized drawing for a lifetime hunting and fishing super combination license package that includes a one-year subscription to the Texas Parks and Wildlife Magazine. Participation is limited to persons 16 years of age or older, and each entry is \$5. Winners may transfer the license to another person, who must be a Texas resident, within 30 days of being notified of winning. The lifetime license drawing is intended to generate additional revenue to defray the operating expenses of the department.

The amendment to §53.5, concerning Recreational Hunting Licenses, Stamps, and Tags, increases the fee for the resident hunting license (from \$23 to \$25), the senior resident hunting license (from \$6 to \$7), the youth hunting license (from \$6 to \$7),

the general nonresident hunting license (from \$300 to \$315), the nonresident special hunting license (from \$125 to \$132), the nonresident five-day special hunting license (from \$45 to \$48), the nonresident spring turkey hunting license (from \$120 to \$126), and the nonresident banded bird hunting license (from \$25 to \$27).

The amendment to §53.6, concerning Recreational Fishing Licenses, Stamps, and Tags, increases the fee for the resident fishing license (from \$23 to \$25), the special resident "all-water" fishing license (from \$6 to \$7), the senior resident fishing license (from \$6 to \$7), the "year-from-purchase" resident fishing license (from \$30 to \$32), and the non-resident fishing license (from \$50 to \$53), the resident freshwater fishing package (from \$28 to \$30), the resident saltwater fishing package (from \$33 to \$35), the resident "all-water" fishing package (from \$38 to \$40), the senior resident freshwater fishing package (from \$11 to \$12), the senior resident saltwater fishing package (from \$16 to \$17), the senior resident "all-water" fishing package (from \$21 to \$22), the resident "year-from-purchase all-water" fishing package (from \$45 to \$47), the resident one-day "all-water" fishing license (from \$10 to \$11), the non-resident freshwater fishing package (from \$55 to \$58), the non-resident saltwater fishing package (from \$60 to \$63), the non-resident "all-water" fishing package (from \$65 to \$68), the non-resident one-day "all-water" fishing license (from \$15 to \$16), the individual bait-shrimp trawl tag (from \$35 to \$37) and the saltwater trotline tag (from \$4 to \$5). Although the amendment to §53.6 provides for an increase in the resident and non-resident fishing licenses, these licenses are only sold as part of freshwater, saltwater, or "all water" fishing license packages. The freshwater fishing packages include the fishing license and the \$5 freshwater stamp. The saltwater fishing packages include the fishing license and the \$10 saltwater stamp. "All-water" license packages consist of the fishing license, the freshwater stamp, and the saltwater stamp. The freshwater stamp and the saltwater stamp fees are not being increased by this proposal.

The fees in §53.6 for the senior resident "all-water" fishing package, the resident "year-from-purchase all-water" fishing package, and the non-resident "all-water" fishing package represent an increase of 5%, but were rounded down to the nearest dollar rather than up to the nearest dollar. The price of a fishing license package must be the sum of the individual items in the package. Since the department did not raise the fees for stamps, the 5% fee increase on the license portion of the package, rounded up to the next whole dollar amount, yields a price in excess of the sum of the individual items; therefore, the fee amounts were rounded down.

The amendment to §53.7, concerning Furbearing Animal Licenses and Permits, increases the fee for the resident trapper's license (from \$18 to \$19), the non-resident trapper's license (from \$300 to \$315), the resident wholesale fur dealer's permit (from \$180 to \$189), the non-resident wholesale fur dealer's permit (from \$250 to \$263), and the furbearing animal propagation permit (from \$90 to \$95).

The amendment to §53.8, concerning Alligator Licenses, Permits, Stamps, and Tags, increases the fee for the wild-caught alligator hide tag (from \$20 to \$21), the alligator import permit (from \$100 to \$105), the alligator management tag (from \$5 to \$6), the alligator export fee (from \$4 to \$5), the farm-raised alligator hide tag (from \$4 to \$5), the commercial WMA alligator hide tag (from \$120 to \$126), the alligator farmer's permit (from \$240 to \$252), the alligator nest stamp (from \$60 to \$63), the resident

retail alligator dealer's permit (from \$120 to \$126), the non-resident retail alligator dealer's permit (from \$480 to \$504), the resident wholesale alligator dealer's permit (from \$240 to \$252), and the non-resident wholesale alligator dealer's permit (from \$960 to \$1,008).

The amendment to §53.9, concerning Falconry Permits, increases the fee for the apprentice falconer's permit and renewal (one-year: from \$20 to \$21; two-year: from \$40 to \$42; three-year: from \$60 to \$63); the general falconer's permit and renewal (from \$120 to \$126); master falconer's permit and renewal (from \$180 to \$189); the nonresident raptor trapper's permit (from \$360 to \$378); and the raptor propagator permit (from \$60 to \$63). Falconry permits may be issued on a one-year, two-year, or three-year basis. At the current time, only the apprentice falconry permits are issued on other than a three-year basis.

The amendment to §53.10, concerning Public Hunting and Fishing Permits and Fees, adds new §53.10(a)(5) to relocate the fee for the mentored hunting permit from current §53.17(c). The amendment is necessary in order to ensure that all fees affecting public hunting permits are located in the same section. This change is nonsubstantive; however, the amendment also increases the fees for the special standard-period hunting permit (from \$75 to \$80), the daily (regular) hunting permit (from \$15 to \$20), the special extended period hunting permit (from \$125 to \$130), the competitive hunting dog field trial permit fees (10 or less participants: from \$100 per day to \$105 per day, 11-25 participants: from \$200 per day to \$210 per day, 26-50 participants: from \$300 per day to \$315 per day, 51-75 participants: from \$400 to \$420 per day, 76 or more participants: from \$500 per day to \$525 per day. The fees for the special standard-period hunting permit, the daily (regular) hunting permit and the special extended period hunting permit diverge from the 5% increase (rounded up to the nearest whole dollar) formula. Because many of these permits are issued manually at wildlife management areas and state parks, it is not always possible for department staff to make change, which is also a fiscal control issue. Therefore, the fees in question were rounded up or down to the nearest ten-dollar increment.

The amendment to §53.11, concerning Commercial Hunting Licenses and Permits, increases the fee for hunting lease licenses as follows: less than 500 acres (from \$75 to \$79), more than 500 acres but less than 1,000 acres (from \$140 to \$147), and 1,000 acres or more (from \$240 to \$252). The amendment also increases the fee for the wildlife management association area hunting lease licenses as follows: less than 10,000 acres (from \$36 plus \$5 per participating landowner to \$38 plus \$6 per participating landowner), between 10,000 and 50,000 acres (from \$72 plus \$5 per participating landowner to \$76 plus \$6 per participating landowner), over 50,000 acres (from \$144 plus \$5 per participating landowner to \$152 plus \$6 per participating landowner). The amendment would increase the fee for the private bird hunting area license (from \$80 to \$84) and the field trial permit (from \$60 to \$63).

The amendment to §53.12, concerning Commercial Fishing Licenses and Tags, increases the fees in §53.12(b)(1) for the resident commercial oyster boat license (from \$420 to \$441), the resident sport oyster boat license (from \$12 to \$13), the resident commercial oyster boat captain's license (from \$30 to \$32), the resident commercial oyster fisherman's license (from \$120 to \$126), the non-resident commercial oyster boat license (from \$1,680 to \$1,764), the non-resident sport oyster boat license

(from \$48 to \$51), the non-resident commercial oyster boat captain's license (from \$120 to \$126), and the non-resident commercial oyster fisherman's license (from \$300 to \$315).

The amendment to §53.12 alters subsection (a)(1) and (3) to increase the fees for the resident commercial bait-shrimp boat license/transfer (from \$348 to \$366), the nonresident commercial bait-shrimp boat license/transfer (from \$750 to \$788), the resident commercial shrimp boat captain's license (from \$30 to \$50), and the non-resident commercial shrimp boat captain's license (from \$120 to \$126). The amendment to §53.12 also alters subsection (c)(1) to increase the resident commercial fishing boat license (from \$25 to \$27), the nonresident commercial fishing boat license (from \$25 to \$100), the resident general commercial fisherman's license (from \$24 to \$26), the resident commercial mussel and clam fisherman's license (from \$36 to \$38), the resident shell buyer's license (from \$120 to \$126), the non-resident general commercial fisherman's license (from \$180 to \$189), the non-resident commercial mussel and clam fisherman's license (from \$960 to \$1,008), the non-resident shell buyer's license (from \$1,800 to \$1,890). The amendment to §53.12 alters subsection (d) to increase the resident commercial crab fisherman's license/transfer (from \$600 to \$630), and the non-resident commercial crab fisherman's license/transfer (from \$2,400 to \$2,520).

The fee increase in §53.12(c)(1)(A) for the nonresident commercial fishing boat licenses is greater than 5% (rounded upward to the nearest whole dollar). Parks and Wildlife Code, §47.007(e), requires a fee of not less than \$60 for the nonresident commercial fishing boat license; however the commercial fishing boat license was inadvertently eliminated in 2007 as a result of a license simplification initiative. At the time, the nonresident commercial fishing boat license was \$72. Because the fee is required by statute, the license and the fee have been reinstated. The fee amount, however, has been increased to \$100 rather than at a 5% increase (rounded upward to the nearest whole dollar) because the department has determined that this license is underpriced in comparison to other, similar commercial vessel fees.

The fee increase in §53.12(a)(1)(D) for the resident commercial shrimp boat captain's license is also greater than 5%. Prior to 1995, deckhands on commercial shrimp boats were required to possess a general commercial fisherman's license. Senate Bill 814, enacted by the 74th Texas Legislature in 1995, created the commercial shrimp boat captain's license in Parks and Wildlife Code §77.0351 and amended Parks and Wildlife Code §47.002 to remove the requirement that deckhands possess a commercial fisherman's license. This change resulted in a loss of revenue for the department because multiple people (who formerly were required to purchase a license individually) could work under a single license. At that time, the fee for the resident commercial shrimp boat captain's license was \$25. The current fee of \$30 was implemented in 2002. Under Parks and Wildlife Code, §77.0351, the department may not establish a fee of greater than \$50 for the resident commercial shrimp boat captain's license. The amendment to §53.12(a)(1)(D) implements the statutory maximum fee, and is necessary to replace a portion of the revenue lost since 1995 as a result of the removal of the requirement that deckhands possess a commercial fisherman's license.

The amendment to §53.12 does not increase the fee amounts for the resident and nonresident commercial gulf shrimp boat licenses in §53.12(a)(1)(A) and (E), or the resident and nonresident commercial bay shrimp boat licenses in §53.12(a)(1)(B) and

(F), but does adjust those fees to reflect the total price paid by the purchaser. Purchasers of resident and nonresident commercial gulf shrimp boat licenses and resident and nonresident commercial bay shrimp boat licenses are required to pay a shrimp marketing account surcharge imposed by Parks and Wildlife Code, §77.002(c). The shrimp marketing account surcharge is 10% of the fee amounts in effect for those licenses in 1995. The shrimp marketing account surcharge, which is set out for informational purposes in §53.12(a)(2), is not increased by this rulemaking. Although the amendment does not alter the fees for the resident and nonresident commercial gulf shrimp boat licenses or the resident and nonresident commercial bay shrimp boat licenses, the amendment does reflect the total fee paid by license purchasers, which includes the shrimp marketing account surcharge.

The amendment to §53.13, concerning Business Licenses and Permits (Fishing), increases the fee for the wholesale fish dealer's truck license (from \$510 to \$590), the individual bait dealer's license (from \$36 to \$38), the bait dealer's place of business/building license (from \$36 to \$38), the bait dealer's place of business/vehicle license (from \$36 to \$38), the bait shrimp dealer's license (from \$204 to \$215), the finfish import permit (from \$90 to \$95), the freshwater fishing guide license (from \$125 to \$132), the resident all-water fishing guide license (from \$200 to \$210), and the non-resident all-water fishing guide license (from \$1,000 to \$1,050). The retail fish dealer, retail fish dealer's truck, wholesale fish dealer, and the wholesale fish dealer's truck licenses are required to include the shrimp marketing account surcharge, discussed previously in connection with the amendments to §53.12(a)(1). The shrimp marketing account surcharge for these licenses, which is set out for informational purposes in §53.13(b), is not increased by the rulemaking. The amendment increases the fee for the wholesale fish dealer's truck license, but \$51 of that increase is to reflect the shrimp marketing account surcharge. The amendment does not increase the base fee amounts for the retail fish dealer's, the retail fish dealer's truck, and wholesale fish dealer's licenses, but adjusts the retail fish dealer, retail fish dealer's truck, wholesale fish dealer, and the wholesale fish dealer's truck licenses to reflect the current total price paid by the purchaser, including the shrimp marketing account surcharge imposed by Parks and Wildlife Code, §77.002(c).

The amendment to §53.14, concerning Deer Management and Removal Permits, eliminates subsection (b) because the Trap, Transport, and Transplant permit is not restricted to deer. The contents of subsection (b) have been relocated to §53.15, concerning Miscellaneous Fisheries and Wildlife Licenses and Permits. The amendment also updates terminology to reflect legislative changes. House Bill 1308, enacted by the 80th Texas Legislature, amended Parks and Wildlife Code, Chapter 43, Subchapter L, to change the term "scientific breeder" to "deer breeder." These changes are nonsubstantive; however, the amendment also increases the antlerless and spike buck deer control permit application processing fee (from \$360 to \$378).

The amendment to §53.15, concerning Miscellaneous Fisheries and Wildlife Licenses and Permits, adds new subsection (a) to contain the fees associated with the Trap, Transport, and Transplant Permit, which was relocated from §53.14, concerning Deer Management and Removal Permits. The amendment is necessary because the Trap, Transport, and Transplant permit is not restricted to deer. These changes are nonsubstantive. However, the amendment to §53.15 also increases the fees for the game animal breeder's license (from \$75 to \$79), the Class 1 commercial game bird breeder's license (from \$180 to \$189), and

the Class 2 commercial game bird breeder's license (from \$25 to \$27), the resident nongame permit (from \$18 to \$19), the nonresident nongame permit (from \$60 to \$63), the resident nongame dealer permit (from \$60 to \$63); the nonresident nongame dealer permit (from \$240 to \$252), the nongame species sales permit (from \$200 to \$210); the nongame species sales permit renewal (from \$200 to \$210), the zoological collection permit application (from \$150 to \$158), the scientific research permit application (from \$50 to \$53), the educational display permit application (from \$50 to \$53), the exotic species permit fee for new, renewed or amended application requiring facility inspection (from \$250 to \$263), the exotic species permit fee for renewed or amended application not requiring facility inspection (from \$25 to \$27), the exotic species permit fee for renewal application received more than one year after renewal date (from \$250 to \$263), the triploid grass carp permit application (from \$15 to \$16, but does not alter the \$2 fee per triploid grass carp requested), the exotic species interstate transport permit application fee--individual (from \$25 to \$27), the exotic species interstate transport permit application fee--annual (from \$100 to \$105), the aerial management permit (from \$200 to \$210), the offshore aquaculture permit or renewal--from \$1,500 to \$1,575, and the double-crested cormorant control permit (from \$12 to \$13).

The amendment to §53.16, concerning Vessel, Motor, and Marine Licensing Fees, incorporates the contents of former §53.18, which has been repealed. The amendment also eliminates current §53.16(d)(1), which has expired on its own terms and is no longer necessary. These changes are nonsubstantive; however, the amendment also would increase the registration fee for a Class A livery vessel (from \$30 to \$32), a Class A vessel (from \$30 to \$32), a Class 1 vessel (from \$50 to \$53), a Class 2 vessel (from \$70 to \$110) and a Class 3 vessel (from \$90 to \$150). The amendment also increases the titling fee for a certificate of title (from \$25 to \$27), a bonded certificate of title (from \$35 to \$37), an expedited certificate of title for a vessel or motor (from \$35 to \$37), a certified ownership history report for a vessel or motor (from \$10 to \$11), a party boat annual inspection (from \$125 to \$132), a party boat operator's license (from \$125 to \$132), the party boat operator's license renewal (from \$50 to \$53), the party boat operator's replacement/update license (from \$50 to \$53), the marine dealer, distributor or manufacturer's license/license transfer (from \$500 to \$525), an additional marine dealer, distributor or manufacturer's decal/card (from \$120 to \$126), a marine, dealer or manufacturer's change of location transfer (from \$10 to \$11), an update or correction to current license information (from \$3 to \$4), and duplicate/transfer fees for vessel transfer of ownership, vessel duplicate certificate of number, and vessel duplicate decals (from \$10 to \$11). The increase for registration fees (two-year period of validity) would implement a 5% (rounded upward to the nearest whole dollar) increase for Class A and Class 1 vessels, which is consistent with other fee increases in this rulemaking; however, the fee increases for registering Class 2 and Class 3 vessels would implement larger fee increases. The fee for registering a Class 2 vessel (a vessel 26-40 feet in length) increases from \$70 to \$110 (57%), and the fee for registering a Class 3 vessel (a vessel of greater than 40 feet in length) increases from \$90 to \$150 (66.7%). The fee increases for Class 2 and Class 3 vessels are necessary because although Class 2 and Class 3 vessels constitute only 3.2% of the vessels registered in Texas, the department has determined that registration fees for larger vessels in Texas have been underpriced compared to the registration fees paid in the other states on the Gulf of Mexico (all of which are similar to Texas in terms of the type of boating opportunity available) for similar, smaller ves-

sels. For instance, in Florida the two-year registration fee for the equivalent of a Class 2 vessel is \$166. In Louisiana, the fee for an equivalent vessel is \$128. In Alabama, the fee is \$150. For the equivalent of a Class 3 vessel, these fees are \$325, \$192, and \$200, respectively.

The amendment to §53.17, concerning Miscellaneous Fees, removes current subsection (c), which has been relocated to §53.10, concerning Public Hunting and Fishing Permits and Fees. The amendment is necessary to locate all fees for public hunting permits in a single section.

The amendment to §53.30, concerning Facility Admissions and Fees, nonsubstantively redesignates the fees listed in paragraph (1) in order to make the structure of the rule consistent with other rules.

The purpose of the amendments is to generate additional revenue sufficient to allow the department to continue to maintain current levels of service to the public. The department considered several alternatives to achieve the purpose of the rules while minimizing adverse impacts. The department considered leaving current fee amounts as they are; however, the department would be unable to maintain current levels of service and would be forced to reduce or eliminate programs and personnel. The department also considered the possibility of additional revenue sources, such as the fee to enter a drawing for a free resident lifetime super combination hunting and fishing license package implemented by this rulemaking, but concluded that such approaches do not come close to achieving the purpose of the rule, and in fact produce additional revenue at a very modest level. Although the amendment includes a fee to enter a drawing for a free resident lifetime super combination hunting and fishing license package, that revenue source alone is insufficient to maintain current levels of service to the public. Another alternative the department considered was to restrict fee increases to recreational licenses only, but since all users--including commercial licensees and permittees--benefit from the resource management and enforcement activities provided by the department, the department concluded that not only would restricting fee increases to recreational licenses not produce the desired result of the rulemaking, which is to generate revenue sufficient to maintain current operations and services, but it would also be unfair to other users who also pay for department services.

The department received comments from 151 persons opposing adoption of the proposed amendments that increased recreational license fees. The 151 commenters articulated 185 specific reasons or rationales for oppositions. Those reasons and rationales, accompanied by the department's response to each, follow.

Forty-four commenters opposed adoption and stated that fees should not be raised because of the state of the economy. The department agrees that the present economic climate is difficult for many people, but disagrees that the increases to recreational license fees (most of which are less than \$5) create financial hardship for users. The department notes as well that it is not immune to the current economic downturn. The fee increase is necessary to allow the department to continue to provide current levels of service. No changes were made as a result of the comments.

Forty-one commenters opposed adoption and stated that the department should stop waste/impose austerity measures to reduce operating expenses, rather than increase fees. The department agrees with the comment and responds that it has imple-

mented a 2.5 per cent budget cut and eliminated popular events such as the annual Wildlife Expo. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the department should recover money that was used by the legislature to fund other state agencies. The department disagrees that the legislature has used revenue that was or otherwise would have been in department accounts for any other purpose, and responds that the legislature, not the department, establishes the budget for state government. No changes were made as a result of the comments.

Seven commenters opposed adoption and stated that people don't need more taxes. The department disagrees with the comments and responds that fees for licenses and permits are not taxes. License fees are paid by the users of the resources and thus reduce the need to fund agency activities through taxes. No changes were made as a result of the comments.

Three commenters opposed adoption and stated that fees should not be increased as long as the legislature does not appropriate all sporting goods tax revenue to the department. The department disagrees with the comment and responds that the legislature, not the department, establishes the budget for state government and appropriates funds from various revenue sources to the various state agencies. No changes were made as a result of the comments.

Three commenters opposed adoption and stated that the department should not recoup budget shortfalls at the expense of sportsmen. The department disagrees with the comment and responds that the fee increases are intended to offset increased costs associated with providing services and programs to the public. The department also notes that sportsmen are not the only constituents impacted by the fee increase. No changes were made as a result of the comments.

Nineteen commenters opposed adoption and stated that fees should not be increased because of the high cost of gas, leases, food, ammunition, boat ramp fees, trailer titling, and other expenses related to hunting and fishing. The department disagrees that the adoption is inappropriate and responds that the department has also experienced increased costs. If license fees remained constant while costs increased, the department at some point would be unable to effectively discharge its duties. Also, for all but a few of the increases, the amount of the increase is modest. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that the department should raise additional revenue by increasing nonresident fees rather than resident fees. The department disagrees with the comments and responds that the rule as adopted increases fees for nonresidents. However, even a significant increase in nonresident fees, without an increase to other fees, would not generate sufficient revenue to meet the goals of the fee increase. No changes were made as a result of the comments.

One commenter opposed adoption and stated that rather than raising fees for hunting licenses, fees should be imposed on "ranches that charge extreme prices for animals that belong to the people." The department disagrees with the comment and responds that the department has only the revenue mechanism created for it by the legislature, which, at the current time, does not include the authority to impose fees based on the prices charged by private landowners for hunting access. The department also notes that several of the fee increase will impact ranch owners, such as the amendment to §53.11 which increases the

fees for hunting lease licenses. No changes were made as a result of the comment.

One commenter opposed adoption and stated that fees have increased disproportionately and should "only be increased where specific benefits are designated." The department disagrees with the comment and responds that fees have not increased disproportionately. There have been two fee increases since 1987. In 1995, the fee for a hunting or fishing license was increased from \$13 to \$19 and the discounted super-combination license was instituted at \$49; in 2003, the fees were increased from \$19 to \$23 for the individual licenses and the super combo was increased to \$64. In each case, fees were increased only to the extent necessary for the department to deliver programs and activities expected by the public or required by law. The department does not believe that present or previous fee increases are disproportionate either in the magnitude of the increase or the effect on users. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that higher license fees drive people away from hunting and fishing. The department disagrees with the comment and responds that although it is mindful that fee increases may lead to non-participation in some cases, the department is careful to raise license fees only when necessary and only to the degree that is necessary. Since the fees on the most popular licenses will increase by only a few dollars, the department does not believe that the fee increase will have a significant impact on hunting and fishing license sales. No changes were made as a result of the comment.

Nine commenters opposed adoption and stated that fees should be lowered. The department disagrees with the comment and responds that if the department were to reduce fee amounts, it would be unable to continue to provide services and programs expected by the public. No changes were made as a result of the comments.

One commenter opposed adoption and stated that fees have gone up dramatically, particularly with the implementation of special stamps. The department disagrees with the comment and responds that there have been two fee increases since 1987. In 1995, the fee for a hunting or fishing license was increased from \$13 to \$19 and the discounted super-combination license was instituted at \$49; in 2003, the fees were increased from \$19 to \$23 for the individual licenses and the super combo was increased to \$64. In each case, fees were increased only to the extent necessary for the department to deliver programs and activities expected by the public or required by law. Stamp fees have remain unchanged since 2003. The department points out that the current fee increase does not include stamp fees. The department does not believe that present or previous fee increases qualify as "dramatic," and notes that fees have increased at a rate less than inflation over the last 20 years. No changes were made as a result of the comment.

One commenter opposed adoption and stated that fee increases should be paid by persons who lease more than 100 acres for deer hunting. The department disagrees with the comment and responds that even a significant increase to hunting lease license fees, in the absence of increases to license fees, would not generate sufficient the revenue necessary to meet the goals of the fee increase. The department also notes that the amendment to §53.11, concerning Commercial Hunting Licenses and Permits, does increase the fee for hunting lease licenses. No changes were made as a result of the comment.

One commenter opposed adoption and stated that he resented having to acquire an upland game bird stamp to hunt quail on his own property. The department disagrees with the comment and responds that the fee for the upland game bird stamp is not affected by this rulemaking. No changes were made as a result of the comment.

One commenter opposed adoption and stated that he resented having to by a saltwater fishing stamp when he goes to the coast. The department disagrees with the comment and responds that the fee for the saltwater fishing stamp is not affected by this rulemaking. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the excessive number of special permits "makes it dramatically more expensive and confusing to sportsmen and is counter to the idea of expanding hunting and fishing to potential sportsmen." The department responds that the proposal does not impact the number or types of stamps required for hunting and fishing. No changes were made as a result of the comment.

One commenter opposed adoption and stated that fee increases only encourage people to engage in activities without purchasing a license. The department disagrees with the comment and responds that a person who makes a decision to engage in an activity without acquiring a required license is violating the law. Since the fees on the most popular licenses will increase by only a few dollars, the department does not believe that the fee increase will have a significant impact on hunting and fishing license sales or will result in an increase in persons engaging in activities without purchasing the required license. The department does not encourage anyone to violate the law. No changes were made as a result of the comment.

One commenter opposed adoption and stated that fees for the super-combo license should not be increased. The department disagrees with the comment and responds that the philosophy behind the fee increase is that a uniform increase, borne by all users equally, is the most efficient and equitable manner of increasing revenue, since all users benefit equally from the services and activities provided to and for them. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the increases should be larger, especially for nonresident licenses and permits. The department disagrees with the comment and responds that the intent of the department is to raise fees only to the extent that is necessary, including fees for nonresidents. No changes were made as a result of the comment.

Three commenters opposed adoption and stated the legislature diverts funds intended for the department. The department disagrees with the comments and responds that revenue that is legally dedicated to the department continues to be dedicated to the department. No changes were made as a result of the comments.

Twelve commenters opposed adoption and stated that the department should charge landowners for Managed Lands Deer Permits (MLDs) instead of raising license fees. The department disagrees with the comment and responds that the MLD program is an incentive-based program designed to encourage landowners and land managers to learn about and engage in good habitat management. In exchange for accepting a harvest quota established by the department and agreeing to conduct specific management practices, landowners are offered an extended season and enhanced bag limits. The department issued approximately 225,000 MLD permits last year. Participation in the MLD pro-

gram is not mandatory, so the imposition of a fee for MLD permits could lead to reduced participation. Also, the intent of the fee increase is to increase fees for current permits and licenses. Except for the license reinstatement fee and the fee to enter the lifetime license drawing, no new fees are being added by the rules. No changes were made as a result of the comment.

One commenter opposed adoption and stated that he could not support a fee increase because he is unhappy with public hunting opportunity. The department disagrees with the comment and responds that the rules as adopted do not affect public hunting opportunity. No changes were made as a result of the comment.

One commenter opposed adoption and stated that nonresidents should be required to buy a license in order to participate in drawings for public hunts. The department disagrees with the comment and responds that the rules as adopted affect the fees charged for various licenses and permits, not the administration of the public hunting program. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department should "close state parks and wildlife management areas until the governor gets the message." The department disagrees with the comment and responds that closure of state parks and wildlife management areas is not feasible or necessary and that the purpose of the rulemaking is to generate additional revenue needed by the department to maintain current levels of service. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the legislature should "stop robbing our Pitman Robert and stamp fees for special projects and the general fund." The department disagrees with the comment and responds that Pittman-Robertson funds and stamp funds are only expended on projects and activities that legally qualify for the expenditure of such funds. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the non-resident raptor trapping permit fee far exceeds all other recreational permits, and that combined with the required nonresident hunting license, it is cost-prohibitive for nonresidents to travel to Texas to trap a raptor. The department disagrees with the comments and responds that the nonresident raptor trapping permit was increased five per cent, rounded upwards to the nearest whole dollar, which is the same formula that was used for most of the other licenses. No changes were made as a result of the comments.

One commenter opposed adoption and stated that there should be a discount license for nonresident seniors. The department disagrees with the comment and responds that in establishing the minimum fees for nonresident licenses, the legislature established a system with higher license fees for nonresidents than for residents and did not provide a discount for senior nonresidents. The proposed rulemaking continues that system. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the current super combination license fee "should more than cover the funds necessary to maintain current levels of service to the public." The department disagrees with the comment and responds that the revenue generated by a super combination license alone is insufficient to cover the department's increased costs. Unless the department generates additional revenue, it will not be able to continue to deliver current levels of service and will be forced to

eliminate programs and/or employees. No changes were made as a result of the comment.

One commenter opposed adoption and stated that falconry permits are too high and that the fees support a permit program rather than a management program. The department disagrees with the comment and responds that falconry permit fees are used to fund both the administration of the permitting office that issues them and the various research and management initiatives undertaken by the wildlife diversity program that directly or indirectly benefit native birds of prey. No changes were made as a result of the comment.

Seven commenters opposed adoption and stated that the non-resident raptor trapping permit fee should be \$70, which is comparable to the national average. The department disagrees with the comment and responds that the national average for raptor trapping permits is substantially higher than \$70. A quick check of nine states (CA, WI, UT, WY, NV, CT, KY, ID, and OK) indicates an average fee of \$158 for a nonresident raptor trapping permit, and many states do not allow the practice at all. Texas operates one of the largest, if not the largest, falconry permit programs in the country and thus incurs a significant cost for program administration and enforcement, which is recouped through fees. The department also notes that the primary target species in Texas for nonresident trappers is the Harris' hawk. Since Texas is one of the very few states that allows nonresidents to trap Harris' hawks, it is a popular destination for out-of-state breeders/trappers. Although sale of wild-caught raptors is illegal, captive-bred offspring can be sold in most states and countries. First-generation captive-bred Harris' hawks can bring \$700 or more at sale. The department therefore maintains that the fee as adopted is appropriate. No changes were made as a result of the comments.

One commenter opposed adoption and stated that he was opposed to government spending. The department disagrees with the comment and responds that the fee increase is intended to allow the department to continue to carry out its mission. Also, the department notes that it has undertaken some cost-cutting measures as described above. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the fee increases will cause an increase in poaching. The department disagrees with the comment and responds that a person who makes a decision to violate hunting or angling laws is liable to be cited and prosecuted. Since the fees on the most popular licenses will increase by only a few dollars, the department does not believe that the fee increase will have a significant impact on hunting and fishing license sales or will result in an increase in persons engaging in illegal activities. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department spends too much money on steel shot studies. The department disagrees with the comment and responds that conducting scientific studies regarding wildlife is a component of the department's responsibilities. Also, eliminating or reducing the funds dedicated to a single study would not provide sufficient savings to enable the department to effectively discharge its duties. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the proposed fee increases will drive hunters and anglers to other states. The department disagrees with the comment and responds that out-of-state hunting and fishing license fees are more expensive for

Texas residents than in-state licenses are, and that the fee increases. Since the fees on the most popular licenses will increase by only a few dollars, the department does not believe that the fee increase will result in Texas residents choosing to hunt or fish in other states. No changes were made as a result of the comment.

One commenter opposed adoption and stated that he is opposed to federal encroachment. The department disagrees that the rules as adopted are a result of federal requirements or result in federal control of state affairs. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department should cut its payroll by five per cent. The department disagrees with the comment and responds that although a payroll reduction could result in significant savings, such a reduction would have a significant negative impact on the department's ability to deliver critical services and carry out its statutory obligations. However, the department has undertaken cost-cutting measures, including a reduction of its budget by 2.5%, cancellation of the annual Wildlife Expo, and other austerity measures, but a fee increase is still necessary to maintain current levels of service. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the fee increases should not apply to seniors. The department disagrees with the comment and responds that the fee increase for recreational licenses is distributed equitably across user groups. The department is cognizant of the financial pressures faced by license buyers. However, since most fees for seniors are already discounted, the overall increase for seniors in most cases is less than two dollars. No changes were made as a result of the comment.

One commenter opposed adoption and stated that hunting and fishing are God-given rights that the state has turned into a privilege. The department disagrees with the comment and responds that under Texas law, hunting and fishing licenses are considered privileges. The department is charged by state law with regulating hunting and fishing and is authorized to establish fees for hunting and fishing licenses. The amendments merely adjust these fees as authorized by law. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that license fees have skyrocketed. The department disagrees with the comments and responds that there have been two fee increases since 1987. In 1995, the fee for a hunting or fishing license was increased from \$13 to \$19 and the discounted super-combination license was instituted at \$49; in 2003, the fees were increased from \$19 to \$23 for the individual licenses and the super combo was increased to \$64. In each case, fees were increased only to the extent necessary for the department to deliver programs and activities expected by the public or required by law. Stamp fees have remain unchanged since 2003. The department points out that the current fee increase does not include stamp fees. The department does not believe that present or previous fee increases qualify as "dramatic," and in fact would point out that fees have increased at a rate less than inflation over the last 20 years. No changes were made as a result of the comments.

One commenter opposed adoption and stated that rather than increase fees on people who cannot afford it, the department should impose a fee of \$50 on all hunters and anglers who travel

farther than 75 miles to hunt or fish. The department disagrees with the comment and responds that not only does it not have the statutory authority to impose fees on the basis of distance traveled to hunt or fish, the administrative and infrastructure costs of operating such a system would be greater than revenue benefits. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the current fee amounts are more than adequate to conduct department operations. The department disagrees with the comment and responds that an analysis of department operational expenses since the last fee increase indicates that aggregate major expenses have increased at approximately 6.1% per year since the last fee increase. Therefore current fee amounts are not adequate to continue to conduct department operations. As a result, the fee increases included in the amendments are necessary. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department should impose fees on organizers of and participants in fishing tournaments, because they exploit a public resource at no cost, introduce exotic species that harm native fish and cost money to eradicate, and mistreat fish. The department disagrees with the comment and responds that it does not have the statutory authority to regulate fishing tournaments. No changes were made as a result of the comment.

The department received 37 comments supporting adoption of the proposed amendments increasing the recreational license fees.

The department received 68 comments opposing adoption of the fee increases for lifetime licenses. Of those commenters, 35 articulated specific reasons or rationales for oppositions. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the lifetime license fees should remain as they are, because people pay a large amount up front for them. The department disagrees with the comment and responds that the intent of the lifetime licenses is to offer the consumer who intends to hunt and fish for many years an attractive, one-time opportunity to purchase lifetime privileges at a potential discount. At the current time, the payoff point for the various lifetime licenses is 15 years or less, after which the department loses revenue, since the person never purchases another license. The department believes that the payoff point should be between 20 and 25 years. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department should cut its budget rather than raise fees. The department agrees with the comment and responds that it has implemented a 2.5 per cent budget cut and eliminated popular events such as the annual Wildlife Expo. No changes were made as a result of the comments.

One commenter opposed adoption and stated that a 25-year payoff would discourage people older than 30 from buying one. The department disagrees with the comment and responds that the average life expectancy of an American is 77.7 years of age; thus, the purchaser of a lifetime super combination license at age 30 would save \$494 versus purchases of an annual super combination hunting and fishing license. No changes were made as a result of the comment.

Seven commenters opposed adoption and stated that fees should not be increased because of the economy. The depart-

ment agrees that the present economic climate is difficult for many people, but disagrees that the increases to lifetime license fees create a financial hardship for users, since the license is not mandatory and if purchased will result in a lower cost for hunting and/or fishing privileges over time. The department notes as well that it is not immune to the current economic downturn. The fee increase is necessary to allow the department to continue to provide current levels of service. No changes were made as a result of the comments.

Fourteen commenters opposed adoption and stated that the increase was too large. The department disagrees with the comments and responds that the increases as adopted are the minimum necessary to allow the department to continue to provide current levels of service to the public. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the increase for the lifetime licenses was inconsistent with the increases for other licenses and that the increase as proposed would "result in only about eight years of "free" licenses." The department disagrees with the comment and responds that the department believes that the payoff point for a lifetime license should be between 20 and 25 years. After the payoff point, the license purchaser has reaped a benefit in excess of the cost of the license. The number of "free" years will depend on the license purchaser's age at the time of purchase and the purchaser's life span. To achieve a 20-25 year payoff, the department has determined that fees must be increased by greater than the five per cent increase (rounded up to the nearest dollar) applied to most other licenses, primarily because the fees for lifetime licenses have not been increased in 13 years. No changes were made as a result of the comment.

One commenter opposed adoption of the increase in lifetime licenses and stated that fee increases only encourage people to engage in activities without purchasing license. The department disagrees with the comment and responds that a person who makes a decision to engage in an activity without acquiring a required license is violating the law. The decision to purchase a lifetime license, as opposed to an annual license is a choice to be made by the individual license purchaser. Although the percentage increase in the lifetime license fees is greater than other licenses, the fees on the most popular licenses will increase by only a few dollars. Therefore, the department does not believe that the fee increase will have a significant impact on hunting and fishing license sales or will result in an increase in persons engaging in activities without purchasing the required license. The department does not encourage anyone to violate the law. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the fees should be established at a 20-year payoff. The department responds that the rule as adopted accomplishes a payoff point of between 20-25 years. No changes were made as a result of the comment.

One commenter opposed adoption and stated that "the fact that the state would not get it is irrelevant because the state would have the funds to use for years." The department disagrees and notes that the revenue generated by the sale of a lifetime license, in most instances, is less than the revenue that would have been generated if the lifetime license purchaser had instead purchased a license each year during the purchaser's lifetime. The department believes that the payoff point for a lifetime license should be between 20 and 25 years. After the payoff

point, the license purchaser has reaped a benefit in excess of the cost of the license. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department should be investing the initial purchase price, as well as realizing that some people who purchase lifetime licenses will move out of state and not hunt here anymore, or stop hunting (and therefore purchasing annual licenses). The commenter stated that the department shouldn't have to rely on such language as "revenue loss" to define a person who supports the state by purchasing a lifetime license. The department disagrees with the comment and responds that all revenue from the sale of lifetime licenses is in fact deposited in the lifetime license endowment account. The department also responds that the revenue generated by the sale of a lifetime license, in most instances, is less than the revenue that would have been generated if the lifetime license purchaser had instead purchased a license each year during the purchaser's lifetime. Therefore, it is not inaccurate to state that the department loses revenue on lifetime licenses. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that a 25-year payoff is not reasonable. The department disagrees with the comment and responds that a 25-year payoff is reasonable. The average life expectancy of an American is 77.7 years of age. Therefore, a 25 year payout would cover roughly one-half of an average person's expected adult years. After the payoff point, the license purchaser has reaped a benefit in excess of the cost of the license. The amount of that benefit will depend on the license purchaser's age at the time of purchase and the purchaser's life span. No changes were made as a result of the comment.

One commenter opposed adoption and stated that if the department is that worried about revenue loss, it should stop selling lifetime licenses. The department disagrees with the comment and responds that the intent of the lifetime licenses is to offer the consumer who intends to hunt and fish for many years an attractive, one-time opportunity to purchase lifetime privileges at a potential discount. At the current time, the payoff point for the various lifetime licenses is 15 years or less, after which the department loses revenue, since the person never purchases another license. The department believes that the payoff point should be between 20 and 25 years, or roughly half of a normal adult lifespan. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the lifetime licenses should not exist. The department disagrees with the comment and responds that the lifetime license is expressly authorized by the Parks and Wildlife Code. Also, there are good reasons to offer lifetime licenses, including convenience, economic savings, and above all, the opportunity to ensure that youth will be able to afford to hunt and fish. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the lifetime license fees should not be increased because of the high cost of gas, leases, food, ammunition, and other expenses related to hunting and fishing. The department disagrees with the comment and responds that the department has also experienced increased costs. If license fees remained constant while costs increased, the department at some point would be unable to effectively discharge its duties. No changes were made as a result of the comments.

One person opposed adoption of the lifetime license fee increase and stated that the entire reason for offering the lifetime licenses is for people to save money. The department agrees with the comment and notes that the fee increase will provide for a 20-25 year payout. After the payoff point, the license purchaser has reaped a benefit in excess of the cost of the license. No changes were made as a result of the comment.

The department received 15 comments supporting adoption of the proposed amendments to the lifetime license.

The department received 24 comments opposing fee increases for commercial licenses and permits. Of those commenters, 11 articulated specific reasons or rationales for oppositions. Those comments, accompanied by the department's response to each, follow.

One person opposed adoption and stated that more taxes are not needed. The department disagrees with the comments and responds that fees for licenses and permits are not taxes, because payment is not mandatory and there is a privilege granted. No changes were made as a result of the comments.

One commenter opposed adoption and stated that fees should not be increased because of the economy. The department agrees that the present economic climate is difficult for many people, but disagrees that the increases to commercial license fees will create financial hardship for users, since commercial licenses allow the use of public resources for profit. The increase to any given commercial license is relatively small. The department notes as well that it is not immune to the current economic downturn. The fee increase is necessary to allow the department to continue to provide current levels of service. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that the department should cut the budget instead of raising fees. The department agrees with the comment and responds that it has implemented a 2.5 per cent budget cut and eliminated popular events such as the annual Wildlife Expo. However, the savings realized by cost reduction measures are insufficient to enable the department to effectively discharge its duties. No changes were made as a result of the comments.

One commenter opposed adoption and stated that rather than raising fees for hunting licenses, fees should be imposed on "ranches that charge extreme prices for animals that belong to the people." The department disagrees with the comment and responds that the department has only the revenue mechanism created for it by the legislature, which, at the current time, does not include the authority to impose fees based on the prices charged by private landowners for hunting access. The department also notes that the amendments to §53.11, concerning Commercial Hunting Licenses and Permits, does increase the fee for hunting lease licenses. No changes were made as a result of the comment.

Three commenters opposed adoption and stated that commercial license fees were too low. The department disagrees with the comment and responds that at the current time, fees for commercial licenses are believed to be equitable. No changes were made as a result of the comment.

One commenter opposed adoption and stated that fee increases only encourage people to engage in activities without purchasing a license. The department disagrees with the comment and responds that a person who makes a decision to engage in an activity without acquiring a required license is violating the law.

Since the fees on the most popular licenses will increase by only a few dollars, the department does not believe that the fee increase will have a significant impact on hunting and fishing license sales or will result in an increase in persons engaging in activities without purchasing the required license. The department does not encourage anyone to violate the law. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there are too many laws on the books, and that for every new law introduced, two old laws should have to be removed. The commenter stated that by reducing the number of laws the department "can save money by not carrying out regulatory demands." The department disagrees with the comment and responds that number of laws imposing regulatory obligations on the department is within the purview of the Texas Legislature and beyond the scope of these rules. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the cormorant depredation permit should be free. The commenter stated that because the department does not perform a service or management, the fee is really a tax. The department disagrees with the comment and responds that the department incurs a cost in providing the cormorant depredation permit. The department also responds that fees for licenses and permits are not taxes, because payment is not mandatory and there is a privilege granted. No changes were made as a result of the comment.

The department received 29 comments supporting adoption of the amendments to commercial license fees, as proposed.

The department received 43 comments opposing the proposed fee increases for boat registration and titling. Of those commenters, 13 articulated specific reasons or rationales for oppositions. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the department should recover money that was used by the legislature to fund other state agencies. The department disagrees and responds that the legislature, not the department, establishes the appropriations to state agencies. Also, each biennium, the department does seek funding from the legislature by submitting a Legislative Appropriations Request. However, appropriations from the legislature are dependent on fund balances and revenues. The fee increase will help ensure that the department's fund balances and revenue are sufficient to carry out the agency's responsibilities. No changes were made as a result of the comments.

Three commenters opposed adoption and stated that the department should cut its budget rather than increase fees. The department agrees with the comment and responds that it has implemented a 2.5 per cent budget cut and eliminated popular events such as the annual Wildlife Expo. However, the savings realized by cost reduction measures are insufficient to enable the department to effectively discharge its duties. No changes were made as a result of the comments.

One commenter opposed adoption of the boat fee increases and stated that rather than raising fees for hunting licenses, fees should be imposed on "ranches that charge extreme prices for animals that belong to the people." The department disagrees with the comment and responds that the department has only the revenue mechanism created for it by the legislature, which, at the current time, does not include the authority to impose fees based on the prices charged by private landowners for hunting access. The department also notes that the amendments to

§53.11, concerning Commercial Hunting Licenses and Permits, does increase the fee for hunting lease licenses. No changes were made as a result of the comment.

Three commenters opposed adoption of the boat fee increases and stated that fees should not be increased because of the economy. The department agrees that the present economic climate is difficult for many people, but disagrees that the increases to boat titling and licensing fees create financial hardship for users, since the fee increases represent a small fraction of the operational cost of a vessel. The department notes as well that it is not immune to the current economic downturn. The fee increase is necessary to allow the department to continue to provide current levels of service. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the department has not justified "increased recordkeeping" fees. The department disagrees with the comment and responds that amendments do not include an "increased recordkeeping" fee. No changes were made as a result of the comment.

One commenter opposed adoption and stated that boat titling and registration fees should be higher. The department disagrees with the comment and responds that at the current time it believes that the fees as adopted are appropriate to fund continued operations with regard to boat titling and registration. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the proposed fee increases are excessive and there should be a fair, across-the-board increase. Another commenter opposed adoption and stated that the proposed fee increase for large boats was excessive. The department disagrees that the fee increases are excessive. The department notes that most classes of vessels are subject to an across-the-board 5% increase (rounded up to the nearest dollar). However, the proposed fee increase for the largest vessels is greater. The fee increases for Class 2 and Class 3, which are larger vessels, are 57% and 66.7%, respectively. The department has determined that registration fees for larger vessels in Texas have been underpriced compared to the registration fees paid in the other states on the Gulf of Mexico (all of which are similar to Texas in terms of the type of boating opportunity available) for similar, smaller vessels. For instance, in Florida the two-year registration fee for the equivalent of a Class 2 vessel is \$166. In Louisiana, the fee for an equivalent vessel is \$128. In Alabama, the fee is \$150. For the equivalent of a Class 3 vessel, these fees are \$325, \$192, and \$200, respectively. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department does not enforce current titling rules, so an increase is unnecessary. The department disagrees with the comment and responds that titling regulations are enforced. No changes were made as a result of the comment.

The department received 23 comments supporting adoption of the proposed amendment to the boat titling and registration fee rules.

The department received 11 comments opposing the proposed special drawing for a lifetime special super combination license package. Of those commenters, four articulated specific reasons or rationales for oppositions. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the proposal was "a cheap lottery scheme." The department disagrees with

the comment and responds that the department is authorized by §11.0271 and §11.0272, Parks and Wildlife Code to conduct such drawings without violating the gambling prohibitions in §47.02 of the Penal Code. The intent of the rule is to generate additional revenue by creating an affordable opportunity for people to potentially acquire lifetime license privileges. No changes were made as a result of the comment.

One commenter opposed adoption and stated that nonresidents should be allowed to participate. The department disagrees with the comment and responds that under Parks and Wildlife Code, there is no provision for a nonresident lifetime license. No changes were made as a result of the comment.

One commenter opposed adoption and stated that transfers should not be allowed. The department disagrees with the comment and responds that intent of the rule is to generate additional revenue by creating an affordable opportunity for people to potentially acquire lifetime license privileges, and to be able to make a gift of those privileges, if they so desire, provided the gift is made within 30 days after the winner is notified by the department. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department was initiating a lottery for a lifetime license at the same time it is increasing fees for the lifetime license. The department agrees with the comment, but notes that the drawing is authorized by the Parks and Wildlife Code and the Penal Code. No changes were made as a result of the comment.

The department received 48 comments supporting adoption of the proposed amendment creating a special drawing for a lifetime special super combination license package.

The department received 16 comments opposing the proposed new application fee for reinstatement of license privileges that have been revoked or denied. Of those commenters, five articulated specific reasons or rationales for oppositions. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the rule is not necessary. The department disagrees with the comment and responds that the department incurs an expense in excluding people from and reinstating them to the licensing system as a consequence of court orders. The department believes that law-abiding hunters and anglers should not have to bear the cost of a system that monitors offenders and that it is only fair that offenders bear that burden. No changes were made as a result of the comment.

One commenter opposed adoption and stated that persons who have had license privileges revoked or denied should not be allowed to have those privileges reinstated. The department disagrees with the comment and responds that a person who has discharged all requirements of the court related to penalties should be allowed to purchase a license. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the proposed rule was an interference with peoples' lives and that failure to pay child support has nothing to do with deer hunting. The department disagrees with the comment and responds that under the Texas Family Code, Chapter 232, upon notification from the court or the Attorney General that a license suspension is in effect for a person's failure to pay child support, the department

may not issue a license to that person. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the fee for reinstatement of a license should be 100 times the cost of the license. The department disagrees with the comment and responds that the intent of the reinstatement application fee is not punitive, but simply to address the administrative cost for reinstating licenses. No changes were made as a result of the comment.

One commenter opposed adoption and stated that people who are subject to license revocation or denial should have the opportunity to go before an independent board for an appeal process. The department disagrees that a separate appeal process is necessary. The department denies or revokes a license only as a consequence of a court order or as otherwise provided by law. In most instances, the denial or revocation has been the result of some sort of process. The department also notes that the process for denial or revocation of a license is not the subject of the amendment. No changes were made as a result of the comment.

The department received 47 comments supporting adoption of the proposed amendment regarding a reinstatement fee.

DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §§53.2, 53.3, 53.5 - 53.17

The amendments are adopted under the authority of Parks and Wildlife Code:

Chapter 11: §11.027, which authorizes the commission to establish a fee to cover costs associated with the review of an application for a permit required by the code; to sell any item in the possession of the department in which the state has title, or acquire and resell items if a profit can be made, to charge a fee for the use of a credit card to pay a fee assessed by the department in an amount reasonable and necessary to reimburse the department for the costs involved in the use of the card, and a fee for entering, reserving, or using a facility or property owned or managed by the department; §11.0271, which authorizes the department to establish participation fees, not to exceed \$25 per species for each participant on an application, in drawings for special hunting programs, packages, or events that exceed the costs of operating the drawing only if the fees charged are designated for use in the management and restoration efforts of the specific wildlife program implementing each special hunting program, package, or event; §11.0272, which authorizes the commission to approve participation fees, not to exceed \$25 per species or event for each participant on an application, in drawings for special fishing or other special programs, packages, or events the costs of which exceed the costs of operating the drawing only if the receipts from fees charged are designated for use in the management and restoration efforts of the specific fishery or resource program implementing each special fishing or other special program, package, or event;

Chapter 31; §31.026, which authorizes the department to charge a fee for an original or renewal certificate of number for a vessel; §31.030, which authorizes the department to impose a fee for duplicate certificates and decals; §31.039, which authorizes the commission to charge a fee for access to ownership and other records; §31.0412, which authorizes the commission to adopt fees for dealer's, distributor's, and manufacturer's licenses, duplicates of those licenses, and transfers of those licenses;

§31.048, which authorizes the commission to establish fees for the issuance of a title for a boat or motor or notation of a security interest, lien, or other encumbrance; and §31.177, which requires the commission to establish fees party boat licenses and inspections;

Chapter 42: §42.012, which authorizes the commission to establish a fee for a resident hunting license; §42.0121, which authorizes the commission to establish a fee for a lifetime resident hunting license; §42.014, which authorizes the commission to establish a fee for a nonresident special hunting license; §42.0141, which authorizes the commission to establish a fee for a general nonresident hunting license; §42.0142, which authorizes the commission to establish a fee for banded bird hunting licenses; §42.0143, which authorizes the commission to establish a fee for a nonresident five-day special hunting license; and §42.0144, which authorizes the commission to establish a fee for a nonresident spring turkey hunting license;

Chapter 43: §43.022, which authorizes the commission to establish a fee for permits for scientific, educational, and zoological permits; §43.044, which authorizes the commission to establish a fee for hunting lease licenses; §43.0722, which authorizes the commission to establish a fee for a private bird hunting area license; §43.0764, which authorizes the commission to establish a fee for a field trial permit; §43.110, which authorizes the commission to establish a fee for a permit that authorizes the management of wildlife or exotic animals by the use of aircraft; §43.554, which authorizes the commission to establish a fee for a permit to allow a licensed fish farmer to take a specified quantity of fish brood stock from specified public water;

Chapter 44: §44.003, which authorizes the commission to establish a fee for a game breeder's license;

Chapter 45: §45.003, which authorizes the commission to establish a fee for commercial game bird breeder's licenses;

Chapter 46: §46.004, which authorizes the commission to establish fees for a resident fishing license, a nonresident fishing license, and a lifetime resident fishing license; §46.005, which authorizes the commission to establish the period of validity and a fee for resident and nonresident temporary sportfishing licenses; §46.006, which authorizes the commission to establish a fee for duplicate fishing licenses and tags; §46.007, which authorizes the commission to establish a period of validity for fishing licenses and tags; and §46.0085, which authorizes the commission to issue tags for finfish;

Chapter 47: §47.002, which authorizes the commission to establish a fee for a resident or nonresident general commercial fisherman's license; §47.004, which authorizes the commission to establish a fee for a fishing guide license; §47.007, which authorizes the commission to establish a fee for a commercial fishing boat license; §47.009, which authorizes the commission to establish a fee for a wholesale fish dealer's truck license; §47.014, which authorizes the commission to establish a fee for bait dealer's licenses; and §47.075, which authorizes the commission to establish a fee for a commercial finfish fisherman's license;

Chapter 49: §49.014, which authorizes the commission to establish a fee for any falconry, raptor propagation, or nonresident trapping permit;

Chapter 50: §50.001, which authorizes the commission to establish combination licenses and packages and the fees for each;

Chapter 65: §65.003, which authorizes the commission to establish a fee for permits that govern the taking, possession, propagation, transportation, exportation, importation, sale, and offering for sale of alligators, alligator eggs, or any part of an alligator;

Chapter 66: §66.007, which authorizes the commission to establish rules governing permits to import, possess, sell, or place into water of this state exotic harmful or potentially harmful fish, shellfish, or aquatic plants; §66.017, which authorizes the commission to establish the period of validity for licenses, permits, and tags issued under the authority of Chapter 66; §66.018, which authorizes the commission to establish a fee for a crab trap tag; §66.020, which authorizes the commission to establish a fee for permits authorizing the sale and purchase of protected fish; §66.206, which authorizes the commission to establish a fee for tags for trotlines used in public salt water;

Chapter 67: §67.0041, which authorizes the commission to establish a fee for permits for the taking, possession, propagation, transportation, sale, importation, or exportation of a nongame species of fish or wildlife;

Chapter 71: §71.002, which authorizes the commission to establish a fee for a resident or nonresident trapper's license, a resident or nonresident wholesale fur dealer's license, and a fur-bearing animal propagation permit;

Chapter 76: §76.104, which authorizes the commission to establish a fee for a commercial oyster boat license, a sport oyster boat license, a commercial oyster fisherman's license, a commercial oyster boat captain's license, a commercial oyster boat license for a boat that is not numbered under Chapter 31 or does not have a certificate of documentation issued by the United States Coast Guard that lists an address in Texas for the boat owner, a sport oyster boat license for a boat that is not numbered under Chapter 31 or does not have a certificate of documentation issued by the United States Coast Guard that lists an address in Texas for the boat owner, a fee for a nonresident commercial oyster fisherman's license, and a nonresident commercial oyster boat captain's license; §76.1041, which authorizes the commission to establish requirements for the design and display of a commercial oyster boat license;

Chapter 77: which authorizes the commission to establish a fee for a resident or nonresident commercial shrimp boat captain's license issued by the department; §77.043, which authorizes the commission to establish a fee for a bait-shrimp dealer's license; §77.048, which authorizes the commission to establish a fee for an individual bait-shrimp trawl; §77.033, which authorizes the commission to establish fees for commercial bait shrimp licenses; and §77.115, which authorizes the commission to establish fees for the transfer of commercial bait shrimp licenses;

Chapter 78: §78.002, which authorizes the commission to establish a fee for a resident or nonresident commercial mussel and clam fisherman's license; §78.003, which authorizes the commission to establish a fee for a resident or nonresident shell buyer's license; §78.004, which authorizes the commission to establish a fee for the export of mussels or clams or mussel or clam shells; and §78.105, which authorizes the commission to establish a fee for a crab boat license;

Chapter 81: §81.403, which authorizes the commission to establish a fee for a permit for the hunting of wildlife or for any other use in wildlife management areas; and

Penal Code, §47.02, which provides a defense to prosecution for actions consisting entirely of participation in a drawing for the op-

portunity to participate in a hunting, fishing, or other recreational event conducted by the department.

§53.16. Vessel, Motor, and Marine Licensing Fees.

(a) Registration fees. After the initial registration of a vessel, the vessel may be registered electronically by credit card by agreeing to pay an applicable credit card handling or convenience fee in addition to the normal registration fee.

- (1) livery vessel-Class A--\$32;
- (2) vessel-Class A--\$32;
- (3) vessel-Class 1--\$53;
- (4) vessel-Class 2--\$110;
- (5) vessel-Class 3--\$150;

(b) Titling fees:

- (1) certificate of title--\$27;
- (2) administrative surcharge for expedited title to a vessel (in addition to applicable fee)--\$37;
- (3) administrative surcharge for expedited title to a motor (in addition to applicable fee)--\$37; and
- (4) bonded certificate of title--\$37.

(c) Duplicate/transfer fees:

- (1) vessel-transfer of ownership--\$11;
- (2) vessel-duplicate certificate of number--\$11;
- (3) vessel-duplicate decals--\$11.

(d) Marine dealer/distributor/manufacture fees:

- (1) marine dealer, distributor or manufacturer license (includes licensee validation card (with decal) for recreational purposes or participation in contests or events)--\$525;
- (2) marine dealer, distributor or manufacturer ownership transfer of license--\$525;
- (3) marine dealer, distributor or manufacturer location transfer--\$11;
- (4) marine dealer, distributor or manufacturer information update/license correction--\$4;
- (5) additional marine dealer, manufacturer, or distributor's licensee validation card (with decal) for recreational purposes or participation in contests or events--\$126; and
- (6) replacement card marine dealer, manufacturer, or distributor's licensee validation card (with decal)--\$11.

(e) Report fees:

- (1) certified history report of ownership for vessel or outboard motor--\$11;
- (2) accident/water fatality report up to five pages in length--\$5; and
- (3) accident/water fatality report over five pages in length--\$10.

(f) Party boat fees:

- (1) annual party boat inspection--\$132 (if the inspection is performed by a department-approved entity, \$60 may be retained by the inspecting entity);
- (2) initial application for party boat operator license--\$132;

(3) party boat operator license renewal application--\$53;

(4) replacement party boat operator license to for lost, damaged, destroyed, or stolen license--\$53.

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 July 21, 2009.

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Ann Bright

General Counsel

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



31 TAC §53.4

The amendment is adopted under Parks and Wildlife Code, §11.0271, which authorizes the department to establish participation fees, not to exceed \$25 per species for each participant on an application, in drawings for special hunting programs, packages, or events that exceed the costs of operating the drawing only if the fees charged are designated for use in the management and restoration efforts of the specific wildlife program implementing each special hunting program, package, or event; §11.0272, which authorizes the commission to approve participation fees, not to exceed \$25 per species or event for each participant on an application, in drawings for special fishing or other special programs, packages, or events the costs of which exceed the costs of operating the drawing only if the receipts from fees charged are designated for use in the management and restoration efforts of the specific fishery or resource program implementing each special fishing or other special program, package, or event; and §42.0121, which authorizes the commission to establish a fee for a lifetime resident hunting license.

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

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Ann Bright

General Counsel

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



31 TAC §53.18

The repeal is adopted under Parks and Wildlife Code, Parks and Wildlife Code, §11.027, which authorizes the commission to establish and provide for the collection of a fee to cover costs associated with the review of an application for a permit required by the code, and to set and charge a fee for the use of a credit card to pay a fee assessed by the department in an amount reasonable and necessary to reimburse the department for the costs

involved in the use of the card; and under Parks and Wildlife Code, §31.0412, which authorizes the commission to establish rules concerning the issuance and price of validation cards permitting the limited and temporary use of vessels for recreational purposes or participation in contests or events and to adopt rules regarding dealer's, distributor's, and manufacturer's licenses, including application forms, application and renewal procedures, and reporting and recordkeeping requirements.

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

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Ann Bright

General Counsel

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



DIVISION 2. FACILITY ADMISSION AND USE FEES

31 TAC §53.30

The amendment is adopted under Parks and Wildlife Code, §11.027, which authorizes the commission to establish and provide for the collection of a fee for entering, reserving, or using a facility or property owned or managed 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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Ann Bright

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For further information, please call: (512) 389-4775



CHAPTER 59. PARKS

The Texas Parks and Wildlife Commission adopts the repeal of §59.75 and §59.134, amendments to §§59.41 - 59.47, 59.61 - 59.64, and 59.131 - 59.133, and new 59.134, concerning State Parks. New §59.134 is adopted with changes to the proposed text as published in the February 20, 2009, issue of the *Texas Register* (34 TexReg 1187). The repeal of §59.75 and §59.134 and the amendments to §§59.41 - 59.47, 59.61 - 59.64, and 59.131 - 59.133 are adopted without changes and will not be republished.

The change to §59.134, concerning Rules of Conduct, alters subsections (j) and (q). As proposed, subsection (j) prohibited unaccompanied overnight visitation by "a person older than 15 years, but younger than 17 years." The provision is intended to apply to 15 and 16-year olds. The change would make this

clear by referring to persons "15 years or older, but less than 17 years." As proposed, subsection (q)(2) prohibits the use of certain water supplies at state parks (water bodies, fountains, etc., intended for recreational use) for bathing, laundering, and washing dishes, pets, or vehicles. The change makes clear that this prohibition applies to trailers, as well.

The repeals, amendments, and new section are necessary as a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires a state agency to review each of its regulations no less frequently than every four years and to readopt, adopt with changes, or repeal each rule as a result of the review.

The repeal of §59.75, concerning Coastal Management Program, is necessary because it is duplicative of other department rules. The department is already required by the Coastal Coordination Act and other department regulations, as well as General Land Office regulations to perform the activities listed in the rule. Texas Natural Resources Code §§33.201 - 33.212; see 31 Texas Administrative Code §§69.91, 69.93, 501.1 - 501.34;

The repeal of §59.134, concerning Rules of Conduct, is necessary because the department is restructuring and reorganizing its contents in new §59.134.

The amendment to §59.41, concerning General Statement, alters subsection (c) to acknowledge that other state agencies also acquire and manage historic sites. Specifically, in accordance with House Bill 12, as enacted by the 80th Texas Legislature (2007), 18 State Historic Sites were transferred from the department of the Texas Historical Commission. Similarly, Senate Bill 1659, also enacted by the 80th Texas Legislature, transferred the Texas State Railroad to the Texas State Railroad Authority. Previously, by House Bill 2025, enacted by the 79th Texas Legislature (2005), the National Museum of the Pacific War, formerly known as the Fleet Admiral Chester W. Nimitz Memorial Naval Museum was transferred to the Texas Historical Commission.

The amendment to §59.42, concerning Chronology and Thematic Organization, alters subsection (a) to replace the word "balanced" with the word "full" with respect to interpretation of the heritage of Texas. The amendment is necessary because "full" better describes the goal of department interpretive programs that all aspects of Texas heritage will be addressed.

The amendment to §59.43, concerning Acquisition Guidelines, alters subsection (a)(4) to remove the term "aboriginal" and replace it with a reference to "pre-European contact inhabitants." The amendment is necessary to replace obsolete terminology with modern terminology.

The amendment to §59.44, concerning Development Guidelines, alters subsection (c)(1) to eliminate a reference to the General Services Commission, which no longer exists, and replace it with a reference to the Texas Comptroller of Public Accounts and the Texas Facilities Commission, which assumed duties formerly performed by the General Services Commission.

The amendment to §59.45, concerning Methods of Additional Funding Other Than Departmental, eliminates subsection (b), which required the executive director to present applications for non-departmental sources of funding to the commission for consideration prior to department acceptance of such funds. The provision is being eliminated as duplicative. Commission approval and/or acknowledgment of donations over \$500 is required by statute and by other department regulations. Texas

Government Code §575.003; Texas Parks and Wildlife Code §13.001(b); 31 Texas Administrative Code §51.70 and §51.71.

The amendment to §59.46, concerning Maintenance Guidelines, adds the phrase "and other professional standards" to subsection (a) to acknowledge that the standards of the U.S. Department of the Interior concerning treatment of historic properties are not the sole source of department information concerning the subject. For example, Texas Antiquities Code, Texas Administrative Code, and department procedures also apply.

The proposed amendment to §59.47, concerning Personnel Selection and Training Guidelines, would replace the word "prehistory" with the word "archeology" in paragraph (4) to replace an obsolete term with a more accurate reference to a professional discipline.

The proposed amendment to §59.61, concerning General Objectives (regarding administration of the state parks system), would replace the phrase "purpose and scope" with the term "mission," replace a reference to "public lands" with a reference to the "state park system," and revise the section to qualify that the department's stewardship of the state parks system is based on sustainability and best management practices in the interest of encouraging the citizens of the state to understand and appreciate the state's cultural, historical and natural heritage. The proposed amendment also eliminates archaic capitalization conventions in the word "state." The amendment is necessary to specifically identify the state park system as the entity being addressed in the rule, to acknowledge modern developments in state park system management, and to eliminate obsolete grammatical usage.

The proposed amendment to §59.62, concerning Parks and Wildlife Land Classification--Policy, would alter paragraph (1) to refer to lands "managed or operated as state parks" rather than lands "owned or leased by Texas Parks and Wildlife Department, except coastal preserves, scientific areas, fish hatcheries, boat ramps and administrative properties" with respect to the classification policy. The department is required by Parks and Wildlife Code to "establish a classification system for state parks and wildlife management areas that categorizes wildlife management areas, parks, or a portion of parks as wildlife management areas, recreational areas, natural areas, or historical sites." Texas Parks and Wildlife Code §13.001(b). The subject of Chapter 59 is state parks. Therefore, the applicability of the section is being narrowed to primarily focus on those lands managed or operated as unites of the state parks. However, to ensure that the required department property classifications are included, the amendment includes a reference to department properties classified as wildlife management areas, as addressed in Chapter 65, Subchapter H.

The amendment to §59.62 also clarifies that management and operation of units of the state park system will be in accordance with the classification system and appropriate management plans developed for each unit of the state park system. The amendment also eliminates language concerning public input regarding park management plans and public hunting that is duplicative of the Parks and Wildlife Code and other department regulations. Parks and Wildlife Code, §13.020, requires a public hearing before the commission approves a park master development plan. Similarly, rules regarding hunting on public lands, including state parks, are addressed in Chapter 65, Subchapter H. Also, state parks are scheduled for public hunting activities by action of the commission on an annual basis in a public meeting

conducted in accordance with the Texas Open Meetings Act (Government Code, Chapter 551).

The amendment to §59.62(3) adds "cultural resource preservation" to the items addressed by management plans. Cultural resource preservation has always been an important consideration, and the amendment is intended to make this explicit.

The amendment to §59.62 also eliminates former paragraph (5), which is an unnecessary explanation of terms such as "may" and "shall" that are commonly understood without elaboration. It is the department's intent that such phrases be interpreted in accordance with rules of statutory construction, including those contained in Government Code, Chapters 311 and 312.

The amendment to §59.63, concerning Definitions, modernizes and clarifies the definitions in the section. The word "title" is replaced with the word "chapter" to clarify that the terms defined are for the purpose of Chapter 59, rather than the entirety of Title 31 of the Texas Administrative Code.

The amendment eliminates former paragraph (1) because the term "ecoregions" is not used in the rules.

The amendment alters former paragraph (2), redesignated as paragraph (1), to clarify that "low impact use" in some instances may result in irreversible impacts that are within acceptable limits of change.

The amendment to former paragraph (3), redesignated as paragraph (2) amends the definition of a "management plan" to replace the reference to "Parks and Wildlife lands" with a narrower reference to lands "within the state park system" which is a more accurate description of applicability.

The amendment to former paragraphs (4) and (5), redesignated as paragraphs (3) and (4), respectively, clarifies that "natural biodiversity" and "natural communities" are understood to mean plants and animals indigenous to Texas and the interaction of those plants and animals.

The amendment to former paragraph (6), redesignated as paragraph (5), replaces a reference to "Public Hunting Lands Hunting and Fishing Proclamation" with a reference to the "Public Lands Proclamation," which is the correct title of that document.

The amendment to former paragraph (7), redesignated as paragraph (6), implements a broad definition of "public use." The former definition simply lists a number of common activities, giving the impression that "public use" is constituted by those activities irrespective of the individual management priorities of individual units of the state parks system. The new definition simply states that public use is resource-oriented recreation under the operational rules of the department.

The amendment to former paragraph (8), redesignated as paragraph (7), clarifies that "resource-oriented recreation" must be consistent with applicable rules and policies, which acknowledges that recreational activity on state parks is managed.

The amendment to former paragraph (9), redesignated as paragraph (8), clarifies that "sound biological management" must be science-based and incorporate best management practices. The amendment affirms the department's commitment to the management of biological resources in a responsible manner.

The amendment to former paragraph (10), redesignated as paragraph (9) amends the definition of "sustainability" to expressly acknowledge that the department's intent is to measure the ef-

fect of management regimes on the "sustainability" of natural assets in the state park system.

The amendment to former paragraph (11), redesignated as paragraph (10), clarifies that "wilderness-type experience" is meant to be a true experience in a natural setting and insert a hyphen in the term.

The amendment to §59.64, concerning Classification and Guidelines, modernizes the section. Classification of department lands is required by Parks and Wildlife Code, §13.001(b). The amendment eliminates former subsection (a) and all other references to "game management areas," which is an archaic term. The department does not operate any game management areas. The department does operate wildlife management areas, which are governed under Parks and Wildlife Code, Chapter 81, and 31 TAC Chapter 65, Subchapter H.

The amendment to former subsection (b), redesignated as subsection (a), replaces the term "recreational area" with the term "State Park." Under the classification system required by statute, areas under the administration of the state park system are classified as state parks, state natural areas, state historic sites, or state park and historic sites. The term "recreational area" is no longer used. The amendment also alters former subsection (b)(2)(B), redesignated as subsection (a)(2)(B), to remove the general guideline establishing a ratio of one developed acre to four undeveloped acres with respect to development intensity on state parks. The ratio in the former rule is identified as a guideline, and the management goals of state parks currently address development intensity on a park-specific basis and generally exceed the ratio. The amendment to former subsection (b)(3)(A), redesignated as (a)(3)(A), qualifies that the department's goals in any park experience, in addition to recreational enjoyment, should also be aimed at educating users about park resources. The amendment to former subsection (b)(3)(B), redesignated as subsection (a)(3)(B), clarifies that economic efficiency includes cost-recovery, which allows the department to incorporate fees that are consistent with the cost to the department of providing recreational opportunities for users. The amendment also modifies paragraph (5) to acknowledge that recreational activity on any given park must be appropriate to the natural, cultural and scenic features of the park.

The amendment to former subsection (c), redesignated as subsection (b), replaces the term "natural areas" with the term "State Natural Areas," which is the term used in the names of these types of facilities under the jurisdiction of the department.

The amendment to former subsection (d), redesignated as subsection (c), replaces the term "historic area" with the term "State Historic Site" to more appropriately address the fact that the state operates specific sites, rather than areas and to more closely align this term with Parks and Wildlife Code, §13.0053(b), which prohibits the reference to historic sites as "historic parks." References to state historic sites are added throughout the subsection to ensure clarity. The amendment also replaces an outdated reference to statutory law with a reference to the Parks and Wildlife Code in former subsection (d)(1)(A), redesignated as (c)(1)(A).

The amendment to former subsection (d)(3)(A), redesignated as (c)(3)(A), removes the term "all," which is unnecessary. The amendment to paragraph (3)(A) also removes the term "representation," which is redundant because the term "interpretation" by definition includes representation.

The amendment to former subsection (d)(3)(B), redesignated as (c)(3)(B), clarifies that aesthetic integrity is an important consid-

eration in the operation of a state historic site, as the aesthetic characteristics of a site are an inherent component of historical importance. The amendment also replaces the term "design intent" with the term "character defining elements" in order to more completely describe the nature of elements that should not be obscured in the development and operation of historic sites. The amendment also replaces the term "resource oriented" with "sustainability" and "resource oriented" which are terms that are altered under the amendment to §59.63, concerning Definitions.

The amendment to §59.64 adds new subsection (d) to delineate guidelines for the selection, development, operation, use, and management of sites that are operated as hybrid state parks and historic sites. A state park and historic site is an area established for the preservation, interpretation and public use of prehistoric and historic resources of statewide or national significance that also offers substantial recreational opportunities for visitors.

New subsection (d)(1) establishes that state parks and historic sites be designated by the Parks and Wildlife Commission, using criteria established for state park and historic site classification.

New subsection (d)(2) addresses development of facilities classified as a state park and historic site. New subsection (d)(2)(A) establishes that development of recreational features within a state park and historic site should only be provided when there is a demonstrated demand for these facilities and/or when such features facilitate additional appreciation of the historic resource. Such features should be located where they are not detrimental to the overall historical significance of the site, and the natural environment. The department's intent is to balance the historical significance of a site with recreational uses that would not obscure or detract from that significance. New subsection (d)(2)(B) provides that the intensity of recreational development at a state park and historic site should be within the carrying capacity of the resource. Similarly, facility design and construction materials should be aesthetically pleasing, and when feasible, consistent with the character of the historical feature. The amendment is intended to provide a broad guideline to ensure that development of a resource is consistent with its overall historical character and capacity for multiple uses.

New subsection (d)(3) addresses the operation of a state park and historic sites. New subsection (d)(3)(A) requires that preservation, interpretation, restoration, and/or reconstruction activities be in accord with documented historical, archeological and architectural information. In a similar vein, new subsection (d)(3)(B) specifies that the historical and aesthetic integrity of a historic site should be preserved, and encroachments from conflicting uses or facilities should be avoided. Original material and character-defining elements should not be obscured or destroyed to facilitate interpretation, or promote visitor convenience except when unavoidable to comply with rules or statutes pertaining to health, safety or architectural barriers. The intent of the new paragraph is to preserve to the greatest extent possible the unique aspects of a site that inform and define its cultural significance.

New subsection (d)(4) addresses use of state park and historic sites. New subsection (d)(4)(A) establishes that state park and historic sites provide for appropriate and sustainable resource-oriented recreation or public use that is not detrimental to the long-term stewardship of the cultural and natural resources. The intent of the new paragraph is to ensure that public use not degrade the essential qualities of the site that make it valuable and significant. New subsection (d)(4)(B) provides that state park and historic sites be used to provide public hunting opportunity

when such use is not detrimental to the primary goals and management of the area and as sound biological management, location, physical conditions, safety and other public uses permit. It is the policy of the commission that multiple use of department lands be afforded in order to maximize the value of those lands to the public.

New subsection (d)(5) addresses management of state park and historic sites. New subsection (d)(5)(A) stipulates that state park and historic sites be managed to insure the continued conservation of significant cultural features and natural resources. New subsection (d)(5)(B) stipulates that natural resource management should maintain and restore natural communities and biodiversity consistent with the primary goals of the site. New subsection (d)(5)(B) stipulates that sites be managed in accordance with a site management plan. The intent of the new subsection is to acknowledge that the department has a duty to provide for the continued availability of important cultural and natural sites for the future enjoyment of the public.

The amendments to §§59.131, 59.132 and 59.133 update state park system operational rules. The operational rules govern the required conduct of individuals enjoying state park system sites.

The amendment to §59.131, concerning Definitions, consists of several components. The term "chapter" is replaced with the term "subchapter" to reduce confusion regarding terms that may be used differently in other parts of Chapter 59.

The definition of "all terrain vehicle" in former paragraph (1) has been deleted and a modified definition has been included in the definition of "motor vehicle" in new paragraph (11).

A new definition of "bicycle" has been added as new paragraph (2). This definition is based on the definition in Transportation Code, §541.201.

A new definition for "camping" has been added as new paragraph (5) to describe the activities constituting camping in a state park facility.

A new definition of "equine" has been added as new paragraph (9).

The definition of "motorcycle" in former paragraph (1) has been deleted and a modified definition has been included in the definition of "motor vehicle" in new paragraph (11).

A new definition of "motor vehicle" has been added as new paragraph (11). In addition to a general reference to a "motor powered vehicle," the new definition references the Transportation Code definition for an all-terrain vehicle, a motorcycle, a golf cart, a moped, a neighborhood electric vehicle, a pocket bike or mini-motorbike, and a motor assistance scooter. An electric bicycle is also included in the definition. However, the definition clarifies that "motor vehicle" does not include a wheelchair, a motorized wheelchair or a motorized mobility device. A "motorized mobility device" is defined in new paragraph (12) based on the definition contained in Transportation Code, §542.009.

A definition of "pet" has been added as new paragraph (15) to refer to domesticated companion animals and to clarify that dangerous wild animals, wildlife, livestock, any species that is not normally domesticated, and any species that may not be legally possessed are not considered a "pet" under this subchapter.

The definition of "public place" in former paragraph (13) has been redesignated as new paragraph (17), and clarifies that "public place" does not include the interior spaces of cabins, shelters, and other enclosures reserved or used by visitors. The term

"public place" is used in new §59.134(b), which prohibits the consumption or display of an alcoholic beverage in a public place. The intent of the amended definition of "public place" is to more clearly delineate the areas in parks not considered to "public places." The department allows the responsible consumption of alcohol so long as there is no consumption or display of alcohol in a public place and such consumption does not disrupt the enjoyment of other park visitors.

The definition of "public nudity" in former paragraph (14) is being eliminated. The contents of this subsection are incorporated in new §59.134(n) to clarify the prohibited conduct.

The definition of "state park" in former paragraph (15), which has been redesignated as new paragraph (18), has been modified to conform with changes to §59.64, regarding classification of facilities within the state park system. The definition of "state park" in this subchapter now refers to all classifications of facilities in the state parks system, specifically, state parks, state historic sites, state natural areas and state park and historic sites.

The definition of "unattended pet" in former paragraph (16), which had been redesignated as new paragraph (19), clarifies that an "unattended pet" is a pet not under the control of the person responsible for the pet.

The definition of "wildlife" in former paragraph (17), which has been redesignated as new paragraph (20), has been revised based on the definition of "wild" in reference to animals as contained in Parks and Wildlife Code, §1.101.

The amendment to §59.132, concerning General Rules, modifies subsection (b) to clarify that department employees, peace officers and emergency personnel may be exempt from the requirements of Chapter 59, Subchapter F, rather than all of Chapter 59, as necessary to carry out their official duties.

The amendment adds new subsection (c) to clarify that the director may suspend state parks operational rules by written order in response to a natural disaster or similar emergency. In the event of a natural disaster or other emergency, such as the recent hurricanes along the Texas coast, it may be necessary to waive the requirements of this subchapter to protect persons and property, or provide assistance to dislocated persons or other similar assistance.

The amendment to former subsection (d), redesignated as subsection (c), corrects a grammatical error regarding pronoun agreement.

The amendment to §59.133, concerning Closing Hours and Overnight Use, alters subsection (a) to clarify that closing hours and opening hours on state parks must be established by written order of the executive director of the department. The intent of the amendment is to provide a record of established closing and opening hours to avoid confusion and misunderstandings. The amendment also alters subsection (b) to remove unnecessary language and add clarity. The change to subsection (b) is nonsubstantive.

New §59.134, concerning Rules of Conduct, retains many of the same elements contained in former §59.134, which has been repealed; however, new §59.134 makes a number of organizational changes to consolidate rules addressing similar subjects in an effort to make the rules more reader-friendly and intuitive. For example, the new rule consolidates into separate subsections rules regarding minors, animals, cultural and natural resources, motor vehicles and use of state park facilities. Similarly, the sub-

sections have been organized alphabetically to facilitate location of rules by subject matter.

Also, throughout the new section, the phrase "for any person" is added to the phrase "it is an offense." The change is necessary to clearly tie personal involvement to an action defined as an offense, which assists in law enforcement activities and prosecutions for alleged unlawful behavior.

New §59.134(a), regarding abandoned and unattended property, makes it an offense for any person to abandon a vehicle or other personal property, or to leave any type of property unattended in a manner that creates an unsafe condition or to leave property unattended or in an undesignated location after park closing hours. This provision is similar to former §59.134(w), which it replaces.

New §59.134(b), regarding alcoholic beverages, makes it an offense for any person to consume or display an alcoholic beverage in public or to sell alcoholic beverages in a state park. This provision is similar to former subsection (w), which it replaces; however, new subsection (b) prohibits a person from displaying any alcoholic beverage in public, regardless of whether the container is open. The definition of "public place" is addressed in the §59.131(16).

New §59.134(c), regarding animals, includes provisions regarding pets, equines, and wildlife, all of which are defined in the amendment to §59.131. New subsection (c) makes it an offense for any person to bring into or possess within a state park, or to release into a state park any animal, unless otherwise authorized by the subsection. New subsection (c)(1), regarding equines, requires that persons handle equines in a state park in a way that is safe for the person and the equine and to ensure protection of the state park's natural and cultural resources. New subsection (c)(2) requires persons possessing pets in a state park do so in a manner that does not harm the state park or interfere with other persons' enjoyment of the park. The department does not wish to ban pets from state parks, so staff has determined that it is necessary to create a provision to require persons who bring pets to state parks to take responsibility for cleaning up after them. Similarly, there are areas on many state parks where pets are inappropriate, such as dining facilities, swimming pools, and other areas where pets pose health threats or can be a danger. Such areas are clearly marked or identified in park literature, and it is necessary to clearly provide for an offense if pets are brought into such areas. Subsection (c)(2) does make an allowance for a trained assistance animal accompanying a person with a disability. This provision is similar to former subsections (e) and (bb), which it replaces.

New §59.134(d), regarding arms and firearms, makes it an offense for any person to display or discharge a firearm in a state park except in connection with a public hunting event in a state park or by order of the director. This provision is similar to former subsection (f), which it replaces; however, the new subsection eliminates provisions prohibiting possession of a firearm, which is intended to provide more consistency with the concealed weapon permit laws. Also, provisions regarding the discharge of a projectile into a park have been eliminated. Parks and Wildlife Code, §62.0121, as amended by the 79th Texas Legislature (2005) creates an offense for a person engaging in hunting or recreational shooting to discharge a firearm across a property line.

New §59.134(e), regarding closed areas, makes it an offense for any person to interfere with development, construction or man-

agement of a state park or to remain in a state park that has been closed. This provision is very similar to former subsection (i), which it replaces.

New §59.134(f), regarding entrance and user fees, makes it an offense for any person to enter a state park without satisfying the fee requirements. This subsection is unchanged from former subsection (a), which it replaces.

New §59.134(g), regarding facilities use, makes it an offense for any person to use state park facilities in an inappropriate manner. Specifically, this subsection prohibits keeping, using, or arranging motor vehicles, trailers, camping and other equipment except as otherwise authorized, exceeding the use limit of a facility, and remaining past the established check-out times. This provision is similar to former subsections (b) and (aa), which it replaces.

New §59.134(h), regarding fires, firewood, smoking and fireworks, makes it an offense for any person to build a fire, smoke, gather firewood, or possess fireworks in a state park, except where expressly authorized; however, portable gas-fueled camp stoves are permitted in designated areas. The new rule clearly states that portable gas-fueled camp stoves are lawful in designated campsites or picnic areas, which is necessary to provide allowances for fire sources that are highly controlled. The new rule also specifically allows park personnel to prohibit open fires when the department has determined that a fire danger exists or when a burn ban has been instituted by local government ordinance, which is necessary to address situations in which the temporary or persistent danger of open fires to a park, staff, or visitors necessitates the prohibition of their construction. The new section also creates a stipulation that the gathering of firewood is by permit only. Staff has attempted on an informal basis to discourage the collection of firewood by park visitors; however, there have been instances where such encouragement has been ignored, and the department therefore believes that the creation of an offense is justified. In many parks, firewood is simply not available and the collection of firewood is injurious to vegetative communities, the wildlife that uses vegetative communities, and the aesthetic value of vegetation to visitors. The new section also stipulates that it is an offense to leave a fire unattended. Unattended fires are a serious potential source of danger to parks, staff, and visitor, and the department believes it is necessary to prohibit them. This provision is similar to former subsection (d), which it replaces.

New §59.134(i), regarding metal detectors, makes it an offense for any person to operate a metal detector in a state park unless authorized by permit. This provision is similar to former subsection (l), which it replaces.

New §59.134(j), regarding minors, addresses supervision requirements for minors and the responsibilities of persons supervising minors. The department uses the provisions of Penal Code, §22.041, to require that all children under 15 years of age be supervised by a parent, legal guardian, or other responsible adult over the age of 17. For minors between the ages of 15 and 17, the department desires to allow entry and overnight privileges if the person is accompanied by a parent or guardian, if the person possesses written consent from a parent or legal guardian, if the person is part of a group that is supervised by a responsible adult, or if the person is legally married. This subsection provides that "overnight hours" is the time between the state parks' closing time and opening time. This subsection also clarifies that supervision of a minor requires at least one adult for every 15 persons required to be supervised. Also, the subsection clarifies that the person supervising a person under age 17 is

responsible for the conduct of the person under age 17. The department's intent is to allow minors to use and enjoy state parks, but only under safe and supervised conditions. This provision is similar to former subsections (u) and (m), which it replaces.

New §59.134(k), regarding motor vehicles, addresses prohibited conduct regarding operation of a motor vehicle, parking, speed limits, traffic and trail use. The new subsection requires vehicles and trailers to be confined to designated roads and parking areas and creates an offense for operating a vehicle in a state park if the vehicle is not licensed and inspected as required by Texas motor vehicle laws, except as specifically authorized by permit. The department has determined that vehicles that are not licensed or inspected as required by state law are a safety hazard to staff and visitors and should be prohibited except by permit, such as vehicle use by disabled persons during public hunting activities. The new subsection also requires compliance with applicable speed limits and the operation of a vehicle in a way that ensures safety and does not interfere with other users' enjoyment of a state park. The new subsection is intended to provide more explicit detail in the description of the sorts of places to which the rule applies. This provision is similar to former subsections (p), (n), (s), and (r), which it replaces.

New §59.134(l), regarding natural and cultural resources, makes it an offense for any person to disturb or destroy plant life, geological features or cultural features in a state park and prohibit the transplantation of plants in state parks. There have been incidents in which persons have attempted to plant various types of vegetation in state parks. In order to protect the environment in state parks, the department must prohibit introductions of plant life, which could be injurious by spreading pathogens or disease or pernicious by displacing or adversely affecting native vegetation. The department believes it is necessary to add additional detail to this definition in order to make completely clear that cultural resources include buildings, structures, cultural features, rock art, and artifacts. The new section allows the disturbance of cultural artifacts by written order of the executive director, which would be necessary only in rare instances in which such disturbance is an unavoidable consequence of some other necessary activity. This provision is similar to former subsections (c), (cc), and (dd), which it replaces.

New §59.134(m), regarding peace and quiet, makes it an offense for any person to create disturbances within a state park or to create excessive noise, which is noise that is capable of negatively affecting other park users. Additionally, the new subsection allows the department to establish specific allowable noise levels for specific parks or parts of parks by written order of the director. The new subsection is necessary because the enjoyment of park visitation can be ruined by loud, obnoxious, or unwanted intrusions of noise. To keep noise at a level that does not negatively affect other park users, the department has determined that it is necessary to provide for an offense for creating noise capable of negatively affecting other park users, and, if necessary, to establish noise levels in specific places by order of the executive director. This provision is similar to former subsection (v), which it replaces.

New §59.134(n), regarding public nudity, makes it an offense for any person to appear nude in a state park. This provision is similar to former subsection (h), and former §59.131(14) which it replaces.

New §59.134(o), regarding soliciting, makes it an offense for any person to solicit funds or sell items on a state park unless autho-

rized by the director. This provision is similar to former subsection (k), which it replaces.

New §59.134(p), regarding water recreation, makes it an offense for any person to swim, boat, or participate in other water recreation except in authorized areas at authorized times. This provision also prohibits glass containers in swimming areas. This provision is similar to former subsections (x) and (y), which it replaces.

New §59.134(q), regarding water, wastewater, sewage, and garbage, makes it an offense for any person to use or dispose of water or trash in a state park unless otherwise authorized. This provision is similar to former subsections (ee) and (ff), which it replaces.

The amendments to §§59.41 - 59.47 will function to correct and update terminology; eliminate unnecessary and obsolete references, and improve the accuracy and clarity of rules governing the acquisition and development of historic sites, buildings and structures.

The amendments to §§59.61 - 59.64 will function to eliminate unnecessary and obsolete references, correct inaccuracies, and standard terminology and structure for rules addressing the classification and development of lands within the state park system.

The amendments to §§59.131 - 59.133 and new 59.134 will function by updating, clarifying, and modernizing rules governing public conduct on state parks.

The department received five comments opposing adoption of the proposed amendments and new section. All five commenters offered a specific rationale or explanation for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that elimination of references to wildlife management areas in the proposed amendment to §59.64 should not occur because hunters and anglers fund wildlife management activities and non-consumptive users do not. The department disagrees with the comment and responds that the language being removed does not refer to "wildlife management areas," but to "game management areas," a term that is obsolete. The department does not operate any facilities referred to as game management areas. Also, a specific reference to wildlife management areas is included in §59.62(6). No changes were made as a result of the comment.

One commenter opposed adoption and stated that there is no need to remove the term "aboriginal" from the rules. The department disagrees with the comment and responds that the term "aboriginal" is no longer used in the professional literature to refer generally to indigenous peoples. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department should be split into two agencies, one for parks and one for fish and wildlife. The department disagrees with the comment and responds that the organization of the department is determined by the legislature and cannot be modified by the commission.

One commenter opposed adoption and stated that nudity should be allowed if others are not present. The department disagrees with the comment and responds that in the interest of having rules that respect the sensibilities of the majority of park users an absolute standard that prohibits nudity is necessary. No changes were made as a result of the comment.

One commenter opposed adoption and stated that proposed §59.64(c) and (d) permits staff to evade the intent of the rule, does not take into account mandatory provisions in the Parks and Wildlife Code or the role of the Texas Historical Commission, and does not provide a formal role for closely-related non-profit partners when decisions create adverse effects on the historic integrity of historic sites. The commenter recommended that the word "should" be replaced with the word "must" throughout the rules in order to provide the clarity that is necessary to ensure that the characteristics and values of historic sites that make them historic are protected and preserved under the department's stewardship without regard to competing objectives, agendas, and policies. The commenter stated that if the historic preservation objectives merely "should" be followed, then the regulations will allow the means for staff to evade the objectives at discretion when competing objectives intervene. The department disagrees with the comment and responds that the use of the word "should" is intended to convey that the guidelines for classification of sites (State Park, State Historic Site, State Natural Area or State Park and Historic Site) are intended as general guidelines since not all sites will neatly fit into a specific category. The classification of a site is based on the classification that is most suited to the qualities of a property. For example, a historic property should have the qualities noted. However, because these areas were often acquired by the department long after the notable events occurred, these qualities may not all be intact. Section 59.64 addresses classification of properties, not operational actions. No changes were made as a result of the comment.

One commenter stated that proposed §59.64 regarding classification of sites allows affected nonprofits the option of not complying with certain portions of the regulations that pertain to transparency and accountability obligations. The department disagrees and responds that the amendments are not intended to address the transparency and accountability obligations of TPWD's nonprofit partners. The department's nonprofit partner rules were not the subject of this rulemaking. Parks and Wildlife Commission, not nonprofit groups, determine the classification of a site. Also, as noted above, the intent of §59.64 is to address site classification, not operation. No changes were made as a result of the comment.

One commenter opposed adoption and stated that "the proposed regulations cite to Parks and Wildlife Code Section 13.005, but do not implement the mandatory provisions in subsections (b) and (c) thereof with respect to the use, development, operation, and management of historic sites by TPWD. This statute is not discretionary or qualified by what "should" occur, but instead provides directives on the development, operation, use, and management activities of historic sites by stating in part: "(b) The department shall restore and maintain each historical site acquired under this section for the benefit of the general public. . . . (c) The department shall formulate plans for the preservation and development of historical sites. Before formulating a plan for a specific site, the department shall conduct an archeological survey of the site. In formulating plans, the department shall: (1) consider the results from the archeological survey for the site if the plan is for a specific site; (2) consider the resources necessary to manage a site; and (3) meet with and consider comments made by the Texas Historical Commission." The commenter stated that to avoid any suggestion that the mandatory nature of this statute is discretionary, the historic preservation regulations must include language that incorporates these directives as mandatory staff policy." The department disagrees

with the comment and responds that because the statutory provisions to which the commenter refers are just that--statutory provisions--the department is required to obey them and there is no need to repeat those provisions in rule. No changes were made as a result of the comment.

One commenter opposed adoption and stated that although the proposed rules acknowledge that some historic sites are now under the jurisdiction of the Texas Historic Commission (THC), the proposed regulations ignore the critical role that THC is required to play in the selection, use, operation, development, and management of historic sites under TPWD's jurisdiction as mandated by Parks and Wildlife Code Sections 13.005(a) (c) and (d) (formulating preservation plans and the selection of historic sites) and 13.0051 (required coordination with THC regarding preservation plans). The commenter also stated that the proposed amendments ignore the role that THC plays with respect to the Texas Antiquities Code and Section 106. The department disagrees with the comment and responds that the provisions of the Texas Antiquities Code (Natural Resources Code, Chapter 191) and Section 106 (16 U.S.C. §470f) are set out in statute and it is therefore redundant and unnecessary to repeat those requirements in rule. No changes were made as a result of the comment.

SUBCHAPTER C. ACQUISITION AND DEVELOPMENT OF HISTORIC SITES, BUILDINGS AND STRUCTURES

31 TAC §§59.41 - 59.47

The amendments are adopted under the authority of Parks and Wildlife Code, §13.001, which requires the commission to establish a classification system for state parks; natural areas, or historical sites and to adopt rules governing the acquisition and development of recreational areas, natural areas, or historical sites; §13.011, which authorizes the commission to adopt reasonable rules for accepting or purchasing sites, for determining the suitability of sites, and for establishing the priority of accepting and marking the sites; §13.101 and §13.102, which authorizes the commission to promulgate regulations governing the health, safety, and protection of persons and property in state parks, historic sites, scientific areas, or forts under the control of the department, including public water within state parks, historic sites, scientific areas, and forts; §13.0145, which authorizes the commission to enforce speed limits.

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. ADMINISTRATION OF THE STATE PARK SYSTEM

31 TAC §§59.61 - 59.64

The amendments are adopted under the authority of Parks and Wildlife Code, §13.001, which requires the commission to establish a classification system for state parks; natural areas, or historical sites and to adopt rules governing the acquisition and development of recreational areas, natural areas, or historical sites; §13.011, which authorizes the commission to adopt reasonable rules for accepting or purchasing sites, for determining the suitability of sites, and for establishing the priority of accepting and marking the sites; §13.101 and §13.102, which authorizes the commission to promulgate regulations governing the health, safety, and protection of persons and property in state parks, historic sites, scientific areas, or forts under the control of the department, including public water within state parks, historic sites, scientific areas, and forts; §13.0145, which authorizes the commission to enforce speed limits.

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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Ann Bright

General Counsel

Texas Parks and Wildlife Department

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31 TAC §59.75

The repeal is adopted under the authority of 31 TAC §505.30, which requires the department to make consistency determinations regarding the Coastal Management Plan.

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SUBCHAPTER F. STATE PARK OPERATIONAL RULES

31 TAC §§59.131 - 59.134

The amendments and new section are adopted under the authority of Parks and Wildlife Code, §13.001, which requires the commission to establish a classification system for state parks; natural areas, or historical sites and to adopt rules governing the acquisition and development of recreational areas, natural areas, or historical sites; §13.011, which authorizes the commission to adopt reasonable rules for accepting or purchasing

sites, for determining the suitability of sites, and for establishing the priority of accepting and marking the sites; §13.101 and §13.102, which authorizes the commission to promulgate regulations governing the health, safety, and protection of persons and property in state parks, historic sites, scientific areas, or forts under the control of the department, including public water within state parks, historic sites, scientific areas, and forts; §13.0145, which authorizes the commission to enforce speed limits.

§59.134. *Rules of Conduct in Parks.*

(a) Abandoned and unattended property. It is an offense for any person to:

- (1) abandon a vehicle or other personal property;
- (2) leave a vehicle, boat, barge, or other property unattended in a unit of the state park system in such a manner as to create a hazardous or unsafe condition; or
- (3) leave property unattended in a state park without having received prior permission from the director or to leave a vehicle unattended after the closing hour, unless such person is legally in the park after closing, and unless he has parked the vehicle in a place designated by the director or he has prior permission from the director.

(b) Alcoholic beverages. It is an offense for any person to:

- (1) consume or display an alcoholic beverage in a public place; or
- (2) sell alcoholic beverages within a state park.

(c) Animals. Except as provided in this subsection, it is an offense for any person to bring into a state park, possess while in a state park, or release into a state park any species of animal. A pet or equine may be brought into and possessed within a state park as provided in this subsection.

(1) Equine. It is an offense for any person to:

- (A) ride, drive, lead, or keep equines, except in designated areas;
- (B) ride equines in a manner that is dangerous to a person or animal;
- (C) allow equines to stand unattended or insecurely tied; or
- (D) hitch equines to a tree, shrub, or structure in any manner that may cause damage.

(2) Pets. It is an offense for any person to:

- (A) bring into, possess, or permit to roam within a state park a pet, unless the pet is secured by a leash not exceeding six feet in length, confined in a vehicle, or confined in a suitable cage;
- (B) bring into or possess within a state park an unattended pet;
- (C) fail to immediately collect and properly dispose of fecal material deposited by a pet for which a person is responsible. For purposes of this paragraph, "properly dispose" means to deposit fecal material in an appropriate solid waste collection container;
- (D) bring a pet into an area where pets are prohibited;
- (E) permit a pet (except a trained assistance animal accompanying a person with a disability) to enter into or remain in any building or enclosure designated for public use including, but not limited to, a restaurant, snack bar, cabin, lodge room, restroom, park store, shelter, refectory building, amphitheater, administration building, or railroad coach;

(F) permit a pet in the water of a designated swimming area or to permit a pet animal (except a trained assistance animal accompanying a person with a disability) within the land or beach area adjacent to the water of a designated swimming area; or

(G) possess a noisy, vicious, or dangerous pet, or a pet which creates a disturbance to or hazard within a state park;

(3) Wildlife. It is an offense for any person to:

(A) harm, harass, disturb, trap, confine, catch, possess, or remove any wildlife, or portions of wildlife from a unit of the state park system, except by a permit issued by the director or as provided by the Parks and Wildlife Code, Chapter 62, Subchapter D;

(B) release any fish into the waters of any state park, except as authorized by the Parks and Wildlife Code; or

(C) feed or offer food to any wildlife or exotic wildlife, or to leave food unsecured in a manner that makes the food available to wildlife or exotic wildlife, unless specifically authorized by the department. The feeding of birds may be permitted on a park-by-park basis as prescribed by the department.

(d) Arms and Firearms. It is an offense for any person to display or discharge an arm or firearm in a state park, unless:

(1) the person is participating in a public hunting activity within the state park that has been authorized by written order of the director so long as the person is in compliance with the applicable public hunting rules and regulations; or

(2) the person has been authorized by written order of the director.

(e) Closed Area. It is an offense for any person to:

(1) prevent or interfere with development, construction, or management of a state park; or

(2) enter or remain in an area of a state park that has been closed by the director for any reason, including security, safety, preservation, or restoration.

(f) Entrance and User Fees: It is an offense for any person to enter, use, or occupy a facility in any portion of a state park for which a fee has been established, unless the person has first paid the fee or satisfied the requirements of the fee, has received an entrance/use permit issued by the department, and has attached the permit to their vehicle as and when required by the permit. If the office is closed, payment must be made according to posted instructions or signage.

(g) Facilities Use. It is an offense for any person to:

(1) use an area or facility for any purpose contrary to its designated purpose; or

(2) keep, use, or arrange a motor vehicle, trailer, camping, or other equipment except as specified by the director. All vehicles and trailers are restricted to designated roads and parking areas, unless otherwise specified by permit;

(3) enter into, or remain in, an area or facility for which a public use limit has been established when such action will have the effect of exceeding the established limitations;

(4) exceed the public use limit establishing a maximum number of persons and, if appropriate, the number and type of motor vehicles, trailers, and equipment permitted to enter into, or remain in, a designated area or facility at any time;

(5) continue to occupy a facility past check-out time when a check-out time has been established by the director; or

(6) engage in camping except as authorized by permit in areas designated or marked for that purpose.

(h) Fires, Firewood, Smoking and Fireworks. Portable gas-fueled camp stoves may be used in designated campsites or picnic areas; however, it is an offense for any person to:

(1) light, build, or maintain a fire within a state park except in a facility or device provided, maintained, or designated for such purposes or to smoke or build fires when an extreme fire hazard has been posted by the department or a burn ban has been instituted by local government ordinance;

(2) gather firewood except when authorized by permit;

(3) leave a fire unattended; or

(4) possess within a state park any fireworks, explosives, or similar devices capable of explosion, or to discharge, set off, or cause to be discharged in or into a state park any such device or substance, except with written authorization from the director.

(i) Metal detector. It is an offense for any person to operate or use a metal detector, except as authorized by permit.

(j) Minors and children.

(1) A person younger than 15 years who enters a state park, must be supervised by a parent, legal guardian, or other responsible adult over the age of 17 years at all times.

(2) A person 15 years or older, but younger than 17 years may not enter or remain in a state park during overnight hours unless:

(A) the person is supervised by a parent, legal guardian or other responsible person over the age of 17 years;

(B) the person furnishes written consent of a parent or legal guardian to park personnel at the state park headquarters. For purposes of this subsection, written consent consists of a statement from a parent or legal guardian authorizing the person to enter the park and stating the full name, residence address, and telephone number of the parent or legal guardian; or

(C) the person is legally married.

(3) For purposes of this subsection, a person who is required by this subsection to be supervised and is part of a group will be considered supervised by a parent, legal guardian or other responsible person if there is at least one supervising adult over the age of 17 years for every 15 persons for whom supervision is required by this subsection.

(4) For purposes of this subsection, "overnight hours" is the time between a state park's closing time and opening time.

(5) It is an offense for a parent, legal guardian or other responsible person charged with supervision of a person under 17 years of age to permit the person under 17 years of age to violate a regulation contained in this subchapter.

(k) Motor Vehicle Use, Possession and Operation.

(1) Operation. It is an offense for any person to:

(A) operate a motor vehicle in a state park except on roads, driveways, parking areas, and areas designated as open for motor vehicle use;

(B) operate a motor vehicle in a state park if the motor vehicle is not licensed and inspected as required by the Texas Transportation Code or other law regarding the operation of motor vehicles, except as specifically authorized by permit; or

(C) operate a motor vehicle in a state park in a manner not authorized by the Texas Transportation Code or other laws regarding the operation of motor vehicles.

(2) Parking. It is an offense for any person to:

(A) park a motor vehicle or trailer in a state park except in areas designed, constructed, or designated for that purpose; or

(B) park, store, or leave a motor vehicle or trailer in violation of this section when signs have been posted in the affected areas.

(3) Speed Limit. It is an offense for any person to drive a motor vehicle within a state park at a speed:

(A) greater than is reasonable or prudent, having due regard for the traffic and the road conditions then existing;

(B) that endangers the safety of persons or property; or

(C) that exceeds the posted speed limit in any portion of the state park system.

(4) Traffic. It is an offense for any person to:

(A) operate a motor vehicle in a state park between the park closing hour and 6 a.m. opening hour, except for emergency or necessary purposes; or

(B) operate a motor vehicle in an indiscriminate or unnecessary manner (cruising).

(5) Trail use. It is an offense for any person to operate or use a motor vehicle or a bicycle on an unpaved road, trail, or path not designated and posted for use by such a motor vehicle or bicycle or use the trail in a manner that is dangerous to a person or animal.

(l) Natural and Cultural Resources.

(1) Plant life. It is an offense for any person to willfully mutilate, injure, destroy, pick, cut, remove, or introduce any plant life except by permit issued by the director.

(2) Geological features. It is an offense for any person to take, remove, destroy, deface, tamper with, or disturb any rock, earth, soil, gem, mineral, fossil, or other geological deposit except by permit issued by the director.

(3) Cultural resources. It is an offense for any person to take, remove, destroy, deface, tamper with, disturb, or otherwise adversely impact any prehistoric or historic resource, including but not limited to, buildings, structures, cultural features, rock art, or artifacts, except by written order of the director.

(m) Peace and quiet. It is an offense for any person to:

(1) disturb other persons in sleeping quarters or in campgrounds between the hours of 10 p.m. and 6 a.m.;

(2) cause, create, or contribute to any noise which is broadcast, or caused to be broadcast, into sleeping quarters or campgrounds, or which emits sound beyond the person's immediate campsite, between the hours of 10 p.m. and 6 a.m., whether by shouting or singing, by using a radio, phonograph, television, or musical instrument, or by operating mechanical or electronic equipment;

(3) use electronic equipment, including electrical speakers, at a volume which emits sound beyond the immediate individual camp or picnic site at any time without specific permission of the director; or

(4) create a disturbance capable of negatively affecting other park users by causing excessive noise by any means. Specific

allowable noise levels for specific parks or parts of parks may be established by written order of the director.

(n) Public Nudity. It is an offense for any person to disrobe or appear nude in public. Females are considered to be disrobed when their breasts below the top of the areola are exposed except when nursing a baby.

(o) Soliciting. It is an offense for any person to solicit funds or donation of any item, or offer to sell any goods, wares, merchandise, liquid, or edibles, or render any service for hire, or distribute written material, in a state park, except by authority of a concession agreement approved by the director.

(p) Water Recreation. It is an offense for any person to:

(1) engage in water skiing, surf boarding while being towed, towing a person or a similar device, or operate a motorized ski device on lakes of less than 650 surface acres located in a state park;

(2) enter water or swim in an area closed for that activity;

(3) swim at night unless otherwise posted;

(4) introduce, carry into, or possess, use, break, dispose of, throw, or abandon any glass container in the water of a swimming area, swimming pool, or in the beach area adjacent to the water of a swimming area;

(5) moor, dock, or berth a boat or any other object between the hours of 10 p.m. and 6 a.m., except in mooring areas designated by the director; or

(6) moor, dock, or berth a commercial vessel at any part of a state park except by permit from the director.

(q) Water, Wastewater, Sewage, and Garbage. It is an offense for any person to:

(1) deposit waste water, sewage, or effluent from sinks, toilets, or other plumbing fixtures directly on the ground or into the water;

(2) use any water fountain, drinking fountain, pool, sprinkler, reservoir, lake or any other water body contained in the park for bathing, laundering, and washing dishes, pets, or vehicles (including trailers);

(3) deposit fish parts at any location except park fish cleaning facilities;

(4) discard, deposit, or dump garbage in a state park, except for:

(A) garbage generated inside the park during the course of park visitation; or

(B) an amount of garbage consistent with what ordinarily would accumulate in a vehicle in the course of a day's travel;

(5) dispose of garbage except in a receptacle provided for that use or as may otherwise be specifically authorized by department personnel; or

(6) use water provided by the state park for purposes other than drinking, washing or culinary uses.

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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31 TAC §59.134

The repeal is adopted under the authority of Parks and Wildlife Code, §13.001, which requires the commission to establish a classification system for state parks; natural areas, or historical sites and to adopt rules governing the acquisition and development of recreational areas, natural areas, or historical sites; §13.011, which authorizes the commission to adopt reasonable rules for accepting or purchasing sites, for determining the suitability of sites, and for establishing the priority of accepting and marking the sites; §13.101 and §13.102, which authorizes the commission to promulgate regulations governing the health, safety, and protection of persons and property in state parks, historic sites, scientific areas, or forts under the control of the department, including public water within state parks, historic sites, scientific areas, and forts; and §13.0145, which authorizes the commission to enforce speed limits.

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CHAPTER 65. WILDLIFE

SUBCHAPTER A. STATEWIDE HUNTING AND FISHING PROCLAMATION

DIVISION 1. GENERAL PROVISIONS

31 TAC §65.10

The Texas Parks and Wildlife Department Commission adopts an amendment to §65.10, concerning Possession of Wildlife Resources, without changes to the proposed text as published in the April 24, 2009, issue of the *Texas Register* (34 TexReg 2592).

The amendment modifies the current tagging and documentation requirements for deer and antelope. Under Parks and Wildlife Code, §42.018, a deer or antelope carcass must remain tagged until it reaches a final destination and is finally processed; however, this provision may be modified or eliminated by commission rule. Under Parks and Wildlife Code, §42.0177, the commission may modify or eliminate the tagging requirements established in Parks and Wildlife Code, §42.018.

Parks and Wildlife Code, §42.001 defines "carcass" as "the body of a dead deer or antelope . . . that has not been processed

more than by quartering;" "final destination" as a person's permanent residence or a cold storage or processing facility; "final processing" as the processing of a carcass more than by quartering; and "quartering" as "the processing of an animal into not more than two hindquarters each having the leg bone attached to the hock and two forequarters each having the leg portion to the knee attached to the shoulder blade. The term also includes removal of two back straps and trimmings from the neck and rib cage."

The department has become aware that the practice of freezing an entire bone-in quarter for later consumption is technically problematic, because under the current law, tagging requirements remain in effect until the carcass has been processed "beyond quartering," which means, among other things, the removal of bones. Therefore, a quarter with the bone still in it must remain tagged. Also problematic is the requirement to maintain tagging or documentation after a deer has reached a cold storage or processing facility where the pertinent information is recorded in a cold-storage record book. In order to remedy these anomalies the amendment modifies the statutory tagging requirements to provide that the tagging and documentation requirements for a carcass cease when the carcass is at a final destination other than a cold storage or processing facility that is required to maintain a record book under the provisions of Parks and Wildlife Code, §62.029 and the forequarters, hindquarters, and back straps have been completely severed from the carcass. For a cold storage or processing facility required to maintain a record book under the provisions of Parks and Wildlife Code, §62.029, tagging requirements cease when the forequarters, hindquarters, and back straps have been completely severed from the carcass and the information required by Parks and Wildlife Code, §62.029 has been entered into the required record book.

The rule as adopted will function by establishing an unambiguous standard for determining when tagging and documentation requirements for deer and antelope cease.

The department received six comments opposing adoption of the proposed amendment. None of the commenter elaborated a reason or rationale for oppositions. The department disagrees with the comments. No changes were made as a result of the comments.

The department received 73 comments supporting adoption of the proposed amendment.

No groups or associations commented in favor of or opposed to adoption of the proposed amendment.

The amendment is adopted under the authority of Parks and Wildlife Code, §42.0188, which authorizes the commission to modify or eliminate the tagging requirements of Parks and Wildlife Code, §42.018.

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 65. WILDLIFE

The Texas Parks and Wildlife Commission adopts amendments to §§65.190, 65.201, and 65.202, concerning Public Lands Proclamation, and §65.256, concerning the Bobcat Proclamation. Section 65.190, concerning Application, is adopted with changes to the proposed text as published in the February 20, 2009, issue of the *Texas Register* (34 TexReg 1219). Sections 65.201, 65.202, and §65.256 are adopted without changes and will not be republished.

The change to §65.190 corrects an inaccurate reference to the unit number indicated for the Justin Hearst WMA, which should be Unit 721, not Unit 731.

The amendments are necessary as a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires a state agency to review each of its regulations no less frequently than every four years and to readopt, adopt with changes, or repeal each rule as a result of the review.

The amendment to §65.190, concerning Application, adds the McGillvray and Leona McKie Muse Wildlife Management Area (WMA) to the list of named WMAs to which the provisions of the subchapter apply. The Muse WMA was donated to the department in 2008 and is named in honor of the donors. The amendment also would rename Peach Point WMA as the Justin Hurst WMA. Justin Hurst began his career with the department as a biologist, became a game warden, and was killed in the line of duty in 2008. Peach Point WMA has been renamed in his honor. See, Tex. H.B. 12, §53, 80th Tex. Leg., R.S. (2007).

The amendment to §65.201, concerning Motor Vehicles, alters subsection (d) to stipulate that persons using motor vehicles or off-road vehicles to assist a disabled hunter must remain within normal speaking distance of the person being assisted unless such use is otherwise authorized or the person is using the vehicle or off-road vehicle to return to a designated road or trail. The rules allowing the use of motor vehicles and off-road vehicles to assist disabled hunters are not intended to provide able-bodied persons a privilege that is not available to other able-bodied hunters. The amendment is necessary to ensure that motor vehicle and off-road vehicles use for assisting disabled hunters be confined to assisting the disabled hunter.

The amendment to §65.202, concerning Minors Hunting on Public Lands, replaces the word "minor" with the word "youth" and retitles the section to refer to "public hunting lands." The word "minor" is normally used to refer to a person below the age of 18, which is the age of legal majority. Tex. Fam. Code §101.003. Since the rules refer to individuals under the age of 12 years, the term "youth" is more accurate. The amendment requires youth under the age of 12 to be accompanied by a permitted adult when hunting. The amendment relaxes the supervision requirements for a youth age 12 or older who has completed hunter education, so long as a supervising adult is on the public hunting area. The

amendment is intended to allow some autonomy for responsible youths, while also ensuring appropriate supervision.

The amendment to §65.256, concerning Penalties, corrects an inaccurate reference to statutory provisions for penalties. The current rule refers to Parks and Wildlife Code, Chapter 71. Chapter 71 governs furbearing animals; however bobcats are classified by statute as nongame under Chapter 67.

The department received no comments concerning adoption of the proposed amendments.

SUBCHAPTER H. PUBLIC LANDS PROCLAMATION

31 TAC §§65.190, 65.201, 65.202

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 81, which authorizes the department to develop, maintain, and operate, wildlife management areas and public hunting lands and to prescribe the means, methods, and conditions for the taking of game or fish during an open season in wildlife management areas or public hunting lands.

§65.190. Application.

(a) This subchapter applies to all activities subject to department regulation on lands designated by the department as public hunting lands, regardless of the presence or absence of boundary markers. Public hunting lands are acquired by lease or license, management agreements, trade, gift, and purchase. Records of such acquisition are on file at the Department's central repository.

(b) On U.S. Forest Service Lands designated as public hunting lands (Alabama Creek, Bannister, Caddo, Lake McClellan Recreation Area, Moore Plantation, and Sam Houston National Forest WMAs) or any portion of Units 902 and 903, persons other than hunters are exempt from the provisions of this subchapter, except for the provisions of §65.199(15) of this title (relating to General Rules of Conduct).

(c) On U.S. Army Corps of Engineer Lands designated as public hunting lands (Cooper, Dam B, Granger, Pat Mayse, Ray Roberts, Somerville, and White Oak Creek WMAs), persons other than hunters and equestrian users are exempt from requirements for an access permit.

(d) On state park lands designated as public hunting lands, access for fishing and recreational use is governed by state park regulations.

(e) Public hunting lands include, but are not limited to, the following:

- (1) Alabama Creek WMA (Unit 904);
- (2) Alazan Bayou WMA (Unit 747);
- (3) Atkinson Island WMA;
- (4) Bannister WMA (Unit 903);
- (5) Big Lake Bottom WMA (Unit 733);
- (6) Black Gap WMA (Unit 701);
- (7) Caddo Lake WMA (Unit 730);
- (8) Caddo National Grasslands WMA (Unit 901);
- (9) Candy Abshier WMA;
- (10) Cedar Creek Islands WMA (includes Big Island, Bird Island, and Telfair Island Units);
- (11) Chaparral WMA (Unit 700);

- (12) Cooper WMA (Unit 731);
- (13) D.R. Wintermann WMA;
- (14) Dam B WMA--includes Angelina-Neches Scientific Area (Unit 707);
- (15) Designated Units of the Las Palomas WMA;
- (16) Designated Units of Public Hunting Lands Under Short-Term Lease;
- (17) Designated Units of the Playa Lakes WMA;
- (18) Designated Units of the State Park System;
- (19) Elephant Mountain WMA (Unit 725);
- (20) Gene Howe WMA (Unit 755)--includes Pat Murphy Unit (Unit 706);
- (21) Granger WMA (Unit 709);
- (22) Guadalupe Delta WMA (Unit 729)--includes Mission Lake Unit (720), Guadalupe River Unit (723), Hynes Bay Unit (724), and San Antonio River Unit (760);
- (23) Gus Engeling WMA (Unit 754);
- (24) James Daughtrey WMA (Unit 713);
- (25) J.D. Murphree WMA (Unit 783);
- (26) Justin Hurst WMA (Unit 721);
- (27) Keechi Creek WMA (Unit 726);
- (28) Kerr WMA (Unit 756);
- (29) Lake McClellan Recreation Area (Unit 906);
- (30) Lower Neches WMA (Unit 728)--includes Old River Unit and Nelda Stark Unit;
- (31) Mad Island WMA (Unit 729);
- (32) Mason Mountain WMA (Unit 749);
- (33) Matador WMA (Unit 702);
- (34) Matagorda Island WMA (Unit 722);
- (35) McGillvray and Leona McKie Muse WMA (Unit 750);
- (36) M.O. Neasloney WMA;
- (37) Moore Plantation WMA (Unit 902);
- (38) Nannie Stringfellow WMA (Unit 716);
- (39) North Toledo Bend WMA (Unit 615);
- (40) Old Sabine Bottom WMA (Unit 732);
- (41) Old Tunnel WMA;
- (42) Pat Mayse WMA (Unit 705);
- (43) Ray Roberts WMA (Unit 501);
- (44) Redhead Pond WMA;
- (45) Richland Creek WMA (Unit 703);
- (46) Sam Houston National Forest WMA (Unit 905);
- (47) Sierra Diablo WMA (Unit 767);
- (48) Somerville WMA (Unit 711);
- (49) Tawakoni WMA (Unit 708);

- (50) Walter Buck WMA (Unit 757);
- (51) Welder Flats WMA;
- (52) White Oak Creek WMA (Unit 727); and
- (53) Other numbered units of public hunting lands.

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

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SUBCHAPTER J. BOBCAT PROCLAMATION

31 TAC §65.256

The amendment is adopted under Parks and Wildlife Code, Chapter 67, which authorizes the commission to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species.

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SUBCHAPTER T. DEER BREEDER PERMITS

31 TAC §65.610, §65.612

The Texas Parks and Wildlife Commission adopts an amendment to §65.610 and §65.612, concerning Deer Breeder Permits, with changes to the proposed text as published in the February 20, 2009, issue of the *Texas Register* (34 TexReg 1221).

The changes add the phrase "issued by the department" to §65.610(b)(7) and §65.612(b)(2) and (3). The change is necessary to ensure that there is no confusion as to what is meant by the phrase "valid permit."

The amendments allow for the sale or donation of deer by a deer breeder to the holder of a valid educational display permit or zoological permit issued by the department, either by transfer or as a consequence of the termination, suspension, or revocation of a deer breeder permit. Currently, the holder of a deer breeder

permit may transfer a deer held under the permit to certain persons and for certain purposes set out §65.610. However, the current list does not include the holder of a zoological or educational display permit issued by the department. Similarly, the current rule allows the disposition of breeder deer upon the loss of a breeder permit by sale or donation to certain persons set out §65.612. Although the transfer to the holder of a zoological permit is permitted, transfer to the holder of an educational display permit is not. Allowing the transfer of a deer held under a breeder permit to the holder of an educational display or zoological permit would be beneficial to those permit holders. Therefore, the department sees no reason not to allow such a practice. The amendments also stipulate that such sales and donations are final and irreversible, which is necessary to ensure the integrity of the department's ability to maintain accurate records of deer held by deer breeders.

The department received one comment opposing adoption of the proposed rule. The commenter stated that deer breeding should not be permitted because it is privatization of wildlife and there should be no additional way for breeders to dispose of stock. The department disagrees and responds that under Parks and Wildlife Code, Chapter 43, Subchapter L, the department is required to "issue a permit to a qualified person to possess live breeder deer in captivity." This is a statutory provision and cannot be modified or eliminated by the department. The department also responds that the key element of concern as far as disposition is concerned is that the department be able to accurately track the movement of deer into and out of deer breeder facilities. Since the amendment as adopted authorizes the movement of deer between parties that have been permitted by the department and are subject to reporting and recordkeeping requirements, the department is satisfied that it will be able to monitor deer movements from deer breeder facilities. No changes were made as a result of the comment.

The department received 17 comments supporting adoption of the proposed rule.

The amendments are adopted under the authority of Parks and Wildlife Code, §43.357, which authorizes the commission to make regulations governing procedures and requirements for the purchase, transfer, sale, or shipment of breeder deer.

§65.610. Transfer of Deer.

(a) General requirement. No person may remove breeder deer from or accept breeder deer into a permitted facility unless a valid transfer permit on a form provided by the department has been activated as provided in this section.

(b) Transfer by deer breeder. The holder of a valid deer breeder's permit may transfer legally possessed breeder deer:

- (1) to or from another deer breeder as a result of sale, purchase or other arrangement;
- (2) to or from another deer breeder on a temporary basis for breeding purposes;
- (3) to or from another person on a temporary basis for nursing purposes;
- (4) to an individual who purchases or otherwise lawfully obtains the deer for purposes of release but does not possess a deer breeder's permit;
- (5) to an individual for the purpose of obtaining medical attention, provided the breeder deer do not leave this state;

(6) to a facility authorized under Subchapter D of this chapter (relating to Deer Management Permit) to receive buck deer on a temporary basis; or

(7) to the holder of a valid educational display or zoological permit issued by the department. A transfer under this paragraph is final; breeder deer donated to the holder of an educational display or zoological permit may not be returned to any breeder facility.

(c) Transfer by person other than deer breeder. An individual who does not possess a deer breeder's permit may possess deer under a transfer permit if the individual is transporting breeder deer within the state and the breeder deer were legally purchased or obtained from a deer breeder.

(d) Release.

(1) The department may authorize the release of breeder deer for stocking purposes if the department determines that the release of breeder deer will not detrimentally affect existing populations or systems.

(2) Breeder deer lawfully purchased, possessed, or obtained for stocking purposes may be held in captivity for no more than 30 days:

(A) to acclimate the breeder deer to habitat conditions at the release site;

(B) when specifically authorized by the department;

(C) if they are not hunted prior to release; and

(D) if the temporary holding facility is physically separate from any deer breeding facility and the breeder deer being temporarily held are not commingled with breeder deer being held in a deer breeding facility. Breeder deer removed from a deer breeding facility to a temporary holding facility shall not be returned to any deer breeding facility. Except as provided in Parks and Wildlife Code, §43.363, no breeder deer shall be released from a temporary holding facility during an open season or the 10-day period immediately preceding an open season.

(e) Transfer permit.

(1) A transfer permit is valid for 48 consecutive hours from the time of activation.

(2) A transfer permit authorizes the transfer of breeder deer to one and only one receiver.

(3) A transfer permit is activated only by:

(A) notifying the Law Enforcement Communications Center in Austin prior to the transport of any breeder deer; or

(B) utilizing the department's web-based activation mechanism prior to the transport of any breeder deer.

(4) No person may possess a live breeder deer at any place other than within a permitted facility unless that person also possesses on their person a department-issued transfer permit legibly indicating, at a minimum:

(A) the species, sex, and unique number of each breeder deer in possession;

(B) the source and destination facilities, or, if applicable, the specific release location for each breeder deer in possession;

(C) the date and time that the permit was activated.

(5) Not later than 48 hours following the completion of all activities under a transfer permit, the permit shall be:

(A) legibly completed and faxed to the Wildlife Division in Austin by the person designated on the permit as the party responsible for notification of the department; or

(B) completed and submitted using the department's web-based permit-completion mechanism.

(6) A deer breeder may transport breeder deer without a transfer permit from a permitted facility to a licensed veterinarian, provided:

(A) the transport occurs by the most feasible direct route;

(B) the breeder deer are not removed from the means of transportation at any point between the permitted facility and the veterinary facility; and

(C) the breeder deer do not leave this state.

(f) Marking of vehicles and trailers. No person may possess, transport, or cause the transportation of breeder deer in a trailer or vehicle under the provisions of this subchapter unless the trailer or vehicle exhibits an applicable inscription, as specified in this subsection, on the rear surface of the trailer or vehicle. The inscription shall read from left to right and shall be plainly visible at all times while possessing or transporting breeder deer upon a public roadway. The inscription shall be attached to or painted on the trailer or vehicle in block, capital letters, each of which shall be of no less than six inches in height and three inches in width, in a color that contrasts with the color of the trailer or vehicle. If the person is not a deer breeder, the inscription shall be "TXD". If the person is a deer breeder, the inscription shall be the deer breeder serial number issued to the person.

§65.612. Disposition of Deer.

(a) Upon termination, suspension, or revocation of a deer breeder's permit, the permittee shall dispose of all breeder deer covered by the permit.

(b) Breeder deer may be disposed of by:

(1) sale or donation to another deer breeder;

(2) sale or donation to a holder of a zoological permit issued by the department;

(3) sale or donation to the holder of an educational display permit issued by the department; or

(4) release to the wild as specifically authorized by the department.

(c) Breeder deer still in possession 30 days following termination, revocation, or suspension of a permit shall be disposed of at the discretion of the department.

(d) Disposition of all breeder deer shall be at the expense of the permittee.

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-200902994

Ann Bright

General Counsel

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 1. ORGANIZATION AND ADMINISTRATION

SUBCHAPTER A. OBJECTIVE, MISSION, AND PROGRAM

37 TAC §1.4

The Texas Department of Public Safety adopts amendments to Chapter 1, Subchapter A, §1.4, concerning Programs under Texas Highway Patrol Division, without changes to the proposed text as published in the May 8, 2009, issue of the *Texas Register* (34 TexReg 2748).

Adoption of amendments to §1.4 is necessary in order to update the rule so that it reflects the revised titles of the division and titles of the various services within the division that were changed during a reorganization.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Government Code, §411.006(4), which authorizes the Director to adopt rules, subject to commission approval, considered necessary for control of 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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TRD-200903073

Lamar Beckworth
Director

Texas Department of Public Safety

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For further information, please call: (512) 424-2135

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SUBCHAPTER D. PUBLIC INFORMATION POLICIES

37 TAC §1.58

The Texas Department of Public Safety adopts amendments to Chapter 1, Subchapter D, §1.58, concerning Release of Information on Crash Victims, without changes to the proposed text as published in the May 8, 2009, issue of the *Texas Register* (34 TexReg 2750).

Adoption of the amendments to §1.58 is necessary in order to update the rule so that it reflects the revised wording of "crash" as it relates to motor vehicle collisions which replaced the terminology "accident" previously used.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Government Code, §411.006(4), which authorizes the Director to adopt rules, subject to commission approval, considered necessary for control of 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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Lamar Beckworth

Director

Texas Department of Public Safety

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For further information, please call: (512) 424-2135

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SUBCHAPTER I. FEES FOR COPIES OF RECORDS

37 TAC §1.129

The Texas Department of Public Safety adopts amendments to Chapter 1, Subchapter I, §1.129, concerning Fees for Sale of Motor Vehicle Crash Reports in Highway Patrol Field Offices, without changes to the proposed text as published in the May 8, 2009, issue of the *Texas Register* (34 TexReg 2750).

Adoption of amendments to §1.129 is necessary in order to update the rule so that it reflects the revised wording of "crash" as it relates to motor vehicle collisions which replaced the terminology "accident" previously used.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Government Code, §411.006(4), which authorizes the Director to adopt rules, subject to commission approval, considered necessary for control of 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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Lamar Beckworth
Director
Texas Department of Public Safety
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For further information, please call: (512) 424-2135



SUBCHAPTER W. SENATE BILL 1074 VIDEO UNITS

37 TAC §§1.281 - 1.285

The Texas Department of Public Safety adopts the repeal of Chapter 1, Subchapter W, §§1.281 - 1.285, concerning Senate Bill 1074 Video Units, without changes to the proposal as published in the May 8, 2009, issue of the *Texas Register* (34 TexReg 2751).

Adoption of repeal of the sections is necessary due to the sections no longer being necessary. This subchapter pertains to the regulation of a contract for video units in 2002 that no longer exists.

No comments were received regarding adoption of the repeals.

The repeals are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Government Code, §411.006(4), which authorizes the Director to adopt rules, subject to commission approval, considered necessary for control of 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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Lamar Beckworth
Director
Texas Department of Public Safety
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For further information, please call: (512) 424-2135



CHAPTER 14. SCHOOL BUS SAFETY STANDARDS

SUBCHAPTER D. SCHOOL BUS SAFETY STANDARDS

37 TAC §14.52

(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 37 TAC §14.52 is not included in the print version of the Texas Register. The figure is available in the on-line version of the August 7, 2009, issue of the Texas Register.)

The Texas Department of Public Safety adopts amendments to Chapter 14, Subchapter D, §14.52, concerning Texas School Bus Specifications, with changes to the proposed text as pub-

lished in the May 8, 2009, issue of the *Texas Register* (34 TexReg 2752) and will be republished.

Adoption of amendments to §14.52 is necessary in order to update the rule so that it reflects the 2009 Texas School Bus Specifications as the current publication.

The department accepted comments on the proposed rule through June 8, 2009. One written comment was submitted by Lee Banks representing Rush Bus Centers.

The comment, as well as the department's response thereto, is summarized below:

COMMENT: Regarding §14.52. Language in the 2009 School Bus Specifications document states they will be applicable for 2009 Model School Buses. This statement would make the 2009 Specifications retroactive to buses that have already been sold thus far in 2009 and put into service. My understanding is these specifications are to be effective on buses ordered and/or quoted during the period of time they are in effect regardless of year model.

RESPONSE: The department agrees with the comment and clarifies there is no intent to retroactively apply these specifications for 2009 model school buses purchased before formal adoption of the 2009 Texas School Bus Specifications. The specifications have been changed from "The 2009 Texas School Bus Specifications are effective January 1, 2009 and supersede the 2008 Texas School Bus Specifications" to the new language of "The 2009 Texas School Bus Specifications are effective upon final adoption of the Public Safety Commission." This change is made to the first paragraph of page A-3 of the 2009 Texas School Bus Specifications document.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Education Code, §34.002, which authorizes the department to adopt safety standards for school buses; and Texas Transportation Code, §547.102, which authorizes the department to adopt standards and specifications for school bus equipment; and §547.7015, which authorizes the department to adopt rules governing the design, color, lighting, and other equipment, construction, and operation of a school bus for the transportation of schoolchildren.

§14.52. *Texas School Bus Specifications.*

(a) All school bus chassis and body manufacturers shall certify to the department, in the form of a letter, that all school buses offered for sale to or use by the public school systems in Texas meet or exceed all standards, specifications, and requirements as specified in the department's publication Texas School Bus Specifications. The department hereby adopts the Texas School Bus Specifications for 2009 Model School Buses. Previously published Texas School Bus Specifications remain in effect for earlier model year school buses until the department repeals these publications.

Figure: 37 TAC §14.52(a)

(b) All school bus chassis and body manufacturers shall certify to the department, in the form of a letter, that all multifunction school activity buses offered for sale to or use by the public school systems in Texas meet or exceed all federal standards, specifications, and requirements of a multifunction school activity bus as specified in the Title 49, Code of Federal Regulations, Part 571.

(1) A multifunction school activity bus may be painted any color except National School Bus Glossy Yellow.

(2) A multifunction school activity bus cannot be used for home to school or school to home transportation. Before delivery of a multifunction school activity bus, the manufacturer must place a label in the direct line of site of the driver while seated in the driver's seat stating: "This vehicle is not to be used for home to school or school to home transportation."

(c) Any new school bus found out of compliance with the specifications that were in effect in Texas on the date the vehicle was manufactured will be placed out of service by the vehicle's owner until it is brought into compliance with the applicable specifications.

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-200903077

Lamar Beckworth
Director

Texas Department of Public Safety

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For further information, please call: (512) 424-2135



PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 421. STANDARDS FOR CERTIFICATION

37 TAC §421.5, §421.17

The Texas Commission on Fire Protection (Commission) adopts the amendments to Chapter 421, Standards for Certification concerning §421.5, Definitions, and §421.17, Requirement to Maintain Certification. These amendments are adopted without changes to the proposed text published in the May 29, 2009, issue of the *Texas Register* (34 TexReg 3345) and will not be republished.

These amendments are to acknowledge and accept the State Firemen and Fire Marshals' Association Level II Instructor certification by individuals received on or after June 1, 2008, or Instructor I certification received on or after June 1, 2008. The Commission will credit the time the individual has held the new certification if issued after the effective date, and any individual whose certificate has been expired for one year or longer may not renew the certificate that was previously held. To obtain a new certification, an individual must meet the requirements in §439.1 of this title (relating to Requirements--General).

No comments were received from the public regarding these proposed amendments.

These amendments are adopted under Texas Government Code, Chapter 419, Subchapter B, Regulating and Assisting Fire Fighters and Fire Departments; §419.021 and §419.035.

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-200902997

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

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



CHAPTER 427. TRAINING FACILITY CERTIFICATION

SUBCHAPTER B. DISTANCE TRAINING PROVIDER

37 TAC §427.201

The Texas Commission on Fire Protection (Commission) adopts an amendment to Chapter 427, Training Facility Certification, Subchapter B, Distance Training Provider; §427.201, Minimum Standards for Distance Training Provider. This amendment is adopted with changes to the proposed text published in the May 29, 2009, issue of the *Texas Register* (34 TexReg 3346) and will be republished.

This amendment is to acknowledge and accept the State Firemen and Fire Marshals' Association Level II Instructor certification by individuals received on or after June 1, 2008, or Instructor I certification received on or after June 1, 2008. The Commission will credit the time the individual has held the new certification if issued after the effective date.

No comments were received from the public regarding the proposed amendment.

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

§427.201. *Minimum Standards for Distance Training Provider.*

(a) The following definition is applicable to this subchapter only. Approved distance training is defined as fire training where instructors and students are primarily in different locations and content is instructed primarily using the internet or an intranet and courses must contain some level of interactivity. Distance training that serves as nothing more than electronic text is not acceptable. Online courses must provide the opportunity for the student to interact or ask questions via e-mail, chat rooms or some other method of communication. Other computer-mediated methods of instruction may be used to enhance instruction; however, the primary delivery method must be through the internet or an intranet.

(b) A distance training provider must seek certification as a training facility in each discipline it intends to instruct.

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

(d) A distance training provider that applies for certification as a training facility in a discipline that includes skills training shall com-

ply with Subchapter A of this chapter concerning minimum standards, facilities, apparatus, protective clothing, equipment, and live fire training utilized to teach and test the required skills.

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

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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Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

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

37 TAC §427.303, §427.305

The Texas Commission on Fire Protection (Commission) adopts amendments to Chapter 427, Training Facility Certification; Subchapter C, Training Programs for On-Site and Distance Training Providers; §427.303, Training Approval Process for On-Site and Distance Training Providers; and §427.305, Procedures for Testing Conducted by On-Site and Distance Training Providers. These amendments are adopted without changes to the proposed text published in the May 29, 2009, issue of the *Texas Register* (34 TexReg 3347) and will not be republished.

These amendments are to specify deviations from the original course approval submitted to the Commission. Some language changes were made for better clarification and to establish performance skills testing which will not be conducted until after all required training is complete, and that will facilitate the Commission's ability to audit the skills testing portion of the test.

No comments were received from the public regarding the proposed amendments.

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

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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Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

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



CHAPTER 433. MINIMUM STANDARDS FOR DRIVER/OPERATOR-PUMPER

37 TAC §433.5

The Texas Commission on Fire Protection (Commission) adopts an amendment to Chapter 433, Minimum Standards for Driver/Operator-Pumper; §433.5, Examination Requirements. This amendment is adopted without changes to the proposed text as published in the May 29, 2009, issue of the *Texas Register* (34 TexReg 3348) and will not be republished.

This amendment is adopted in order to remove restrictions requiring individuals to take a written test. This change will allow the Commission the latitude to administer a computer-based test. This change also restructures the last section to define the requirements that an individual must meet before taking the test.

No comments were received from the public regarding the proposed amendment.

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

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-200903000

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

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CHAPTER 437. FEES

37 TAC §§437.3, 437.5, 437.13

The Texas Commission on Fire Protection (Commission) adopts amendments to Chapter 437, Fees; §437.3, Certification Fees; §437.5, Renewal Fees; and §437.13, Basic Certification Examination Fees. The amendments are adopted without changes to the proposed text as published in the May 29, 2009, issue of the *Texas Register* (34 TexReg 3348) and will not be republished.

The amendments are adopted in order to raise fees charged by the Commission to process applications for testing, certification and renewal of certifications, and associated late fees. The fee increase was a condition agreed upon by the legislature to supplement the cost associated with adding seven additional employees to the Commission staff in order to meet the demands placed upon it by the fire service.

No comments were received from the public regarding the proposed amendments.

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

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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Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

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CHAPTER 439. EXAMINATIONS FOR CERTIFICATION

SUBCHAPTER A. EXAMINATIONS FOR ON-SITE DELIVERY TRAINING

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

The Texas Commission on Fire Protection (Commission) adopts amendments to Chapter 439, Examinations for Certification; Subchapter A, Examinations for On-Site Delivery Training; §439.1, Requirements--General; §439.3, Definitions; §439.5, Procedures; §439.7, Eligibility; §439.9, Grading; §439.11, Academy Administered Performance Skill Evaluations; and §439.19, Number of Test Questions. The amendments are adopted without changes to the proposed text as published in the May 29, 2009, issue of the *Texas Register* (34 TexReg 3350) and will not be republished.

The amendment to §439.1 removes redundant language and language that is not a requirement to test. Language from another section was incorporated in order to address the requirements to retest for expired certifications. The amendment to §439.3 cleans up the language to clarify intent and meaning. Section 439.5 procedures for test administration were restructured to facilitate the ability to administer computer-based tests and not limit the Commission to administering written examinations. The amendment to §439.7 clarifies the necessary steps to determine eligibility. The amendment to §439.9 removes language that limited the Commission to written examinations. The amendment to §439.11 identifies the procedures and time to complete the performance skills relating to the certification examination process. In §439.19 the word "written" is removed from the section so as not to limit the Commission in administering only written tests, but to also enable the Commission to administer computer-based questions. It also identifies the total number of skills evaluated for each certification and the minimum number required for a final evaluation.

No comments were received from the public regarding the proposed amendments.

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

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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Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

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37 TAC §§439.13, 439.15, 439.17

The Texas Commission on Fire Protection (Commission) adopts the repeal of Chapter 439, Examinations for Certification, Subchapter A, Examinations for On-Site Delivery Training; §439.13, State Administered Performance Skill Evaluation, §439.15, Proof of Proficiency, and §439.17, Testing for Certification Status. These sections are adopted without changes as proposed in the May 29, 2009, issue of the *Texas Register* (34 TexReg 3353).

The Commission adopts this repeal in order to remove the existing three sections as some of the information was redundant and the required proof of proficiency and certification status was incorporated into §439.1 as part of the general requirements.

No comments were received from the public regarding this repeal.

This repeal is adopted under Texas Government Code, Chapter 419, Subchapter B, §419.008, Regulating and Assisting Fire Fighters and Fire Departments, §419.032, Appointment of Fire Protection Personnel and §419.035, Certification Examinations.

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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Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

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



SUBCHAPTER B. EXAMINATIONS FOR DISTANCE TRAINING

37 TAC §439.203, §439.205

The Texas Commission on Fire Protection (Commission) adopts amendments to Chapter 439, Examinations for Certification, Subchapter B, Examinations for Distance Training; §439.203, Procedures; and §439.205, Performance Skill Evaluation. The amendment to §439.203 is adopted without changes to the proposed text as published in the May 29, 2009, issue of the *Texas Register* (34 TexReg 3353) and will not be republished.

The amendment to §439.205 is adopted with changes to the proposed text and will be republished.

The amendments are adopted for the purpose of removing redundant language as procedures and skill evaluation requirements are addressed in Subchapter A, and as they are applicable to all types of training facilities.

No comments were received from the public regarding the proposed amendments.

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

§439.205. Performance Skill Evaluation.

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

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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Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

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



CHAPTER 449. HEAD OF A FIRE DEPARTMENT

37 TAC §449.3, §449.5

The Texas Commission on Fire Protection (Commission) adopts amendments to Chapter 449, Head of a Department; §449.3, Minimum Standards for Certification as Head of a Suppression Fire Department; and §449.5 Minimum Standards for Certification as Head of a Prevention Only Department. These amendments are adopted with changes to the proposed text published in the May 29, 2009, issue of the *Texas Register* (34 TexReg 3354) and will be republished.

These amendments remove the word "written" throughout this chapter which enables the Commission to administer computer-based examinations.

No comments were received from the public regarding the proposed amendment.

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

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

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

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

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

(3) provide documentation in the form of a nonself serving sworn affidavit of ten years experience as an employee of a local governmental entity in a full-time structural fire protection personnel position in a jurisdiction other than Texas; and successfully pass a Commission, Head of Department examination as specified in Chapter 439 of this title; or

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

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

(b) The ten years of volunteer service must include documentation of attendance at 40% of the drills for each year and attendance of at least 25% of a department's emergencies in a calendar year while a member of a volunteer fire department or departments with 10 or more active members that conducts a minimum of 48 hours of drills in a calendar year.

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

(d) An individual certified as head of a fire department under this section may engage in fire fighting activities only as the head of a fire department. These activities include incident command, direction of fire fighting activities or other emergency activities typically associated with fire fighting duties, i.e. rescue, confined space and hazardous materials response.

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

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

(1) hold a certification as a fire inspector, fire investigator, or arson investigator and have five years of full-time experience in fire prevention activities; or

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

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

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

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

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

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 July 21, 2009.

TRD-200903004

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

Effective date: August 10, 2009

Proposal publication date: May 29, 2009

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



CHAPTER 451. FIRE OFFICER

SUBCHAPTER A. MINIMUM STANDARDS FOR FIRE OFFICER I

37 TAC §451.5

The Texas Commission on Fire Protection (Commission) adopts amendments to Chapter 451, Fire Officer; Subchapter A, Minimum Standards for Fire Officer I; §451.5, Examination Requirements. The amendment is adopted with changes to the proposed text as published in the May 29, 2009, issue of the *Texas Register* (34 TexReg 3355) and will be republished.

The amendment is adopted to allow the Commission the latitude to administer a computer-based test, and also restructures the last section to define the requirements an individual must meet before they take a test.

No comments were received from the public regarding the proposed amendment.

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

§451.5. Examination Requirements.

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

(b) Individuals will be permitted to take the Commission examination for Fire Officer I certification by documenting the following: Structure Fire Protection Personnel certification and Fire Service Instructor certification through the Commission or the equivalent IFSAC seals, and completing a Commission-approved Fire Officer I curriculum.

(c) No individual will be permitted to take the Commission examination for Fire Officer I certification unless the individual documents completion of the Fire Fighter I and Fire Fighter II level training as required by Chapter 1, Basic Fire Suppression, of the Commission's Certification Curriculum Manual and holds, as a minimum, Fire Service Instructor I certification through the Commission, or documents accreditation from International Fire Service Accreditation Congress as an Instructor I.

This agency hereby certifies that the 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 July 21, 2009.

TRD-200903005

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

Effective date: August 10, 2009

Proposal publication date: May 29, 2009

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



SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE OFFICER II

37 TAC §451.205

The Texas Commission on Fire Protection (Commission) adopts amendments to Chapter 451, Fire Officer; Subchapter B, Minimum Standards for Fire Officer II; §451.205, Examination Requirements. The amendment is adopted with changes to the proposed text as published in the May 29, 2009, issue of the *Texas Register* (34 TexReg 3356) and will be republished.

The amendment is adopted to remove restrictions requiring individuals to take a written test. This amendment will allow the Commission the latitude to administer a computer-based test and also restructures the last section to define the requirements an individual must meet before they can take a test.

No comments were received from the public regarding the proposed amendment.

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

§451.205. Examination Requirements.

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

(b) Individuals will be permitted to take the Commission examination for Fire Officer II certification by documenting the following: Structure Fire Protection Personnel certification, Fire Service Instructor certification and Fire Officer I certification through the Commission or the equivalent IFSAC seals, and completing a Commission-approved Fire Officer II curriculum.

(c) No individual will be permitted to take the Commission examination for Fire Officer II certification unless the individual documents completion of the Fire Fighter I and Fire Fighter II level training as required by Chapter 1, Basic Fire Suppression, of the Commission's Certification Curriculum Manual and holds, as a minimum, Fire Service Instructor I certification through the Commission, or documents accreditation from the International Fire Service Accreditation Congress as an Instructor I.

This agency hereby certifies that the 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 July 21, 2009.

TRD-200903006

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

Effective date: August 10, 2009

Proposal publication date: May 29, 2009

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



CHAPTER 453. MINIMUM STANDARDS FOR HAZARDOUS MATERIALS TECHNICIAN

37 TAC §453.5

The Texas Commission on Fire Protection (Commission) adopts an amendment to Chapter 453, Minimum Standards

for Hazardous Materials Technician; §453.5, Examination Requirements. The amendment is adopted without changes to the proposed text as published in the May 29, 2009, issue of the *Texas Register* (34 TexReg 3356) and will not be republished.

The amendment is adopted to remove the restriction requiring individuals to take a written test. This change would allow the Commission to administer a computer-based test and also restructures the last section to define the requirements that an individual must meet before they can take a test.

There were no comments from the public regarding this proposed amendment.

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

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 July 21, 2009.

TRD-200903007

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

Effective date: August 10, 2009

Proposal publication date: May 29, 2009

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



REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Board of Nursing

Title 22, Part 11

In accordance with the Government Code, §2001.039, the Texas Board of Nursing (Board) files this notice of intention to review and consider for re-adoption, re-adoption with amendments, or repeal, the following chapter contained in Title 22, Part 11 of the Texas Administrative Code:

Chapter 227, Pilot Programs for Innovative Applications to Professional Nursing Education, §§227.1 - 227.6.

These rules are continuously assessed to determine whether the reason(s) for originally adopting this chapter continue(s) to exist. Each section of this chapter is continually re-evaluated to determine whether it is obsolete, reflects current legal and policy considerations, reflects current procedures and practices of the Board, and/or whether it is in compliance with the Government Code Chapter 2001 (the Administrative Procedure Act).

The public has thirty (30) days to comment on the rule review and to submit any response or suggestions. No action is required by the Board. Written comments may be submitted to Dusty Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.state.tx.us, or by fax to Dusty Johnston at (512) 305-8101. This rule review completes the implementation of the Board's rule review plan for 2007 - 2011 that is available on the Secretary of State's web site.

TRD-200903035

James W. Johnston

General Counsel

Texas Board of Nursing

Filed: July 22, 2009



IN

ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Department of Agriculture

Request for Proposals: Parallel Pathways to Success Grant Program

Statement of Purpose. The Texas Department of Agriculture (TDA) is requesting proposals for projects for the Parallel Pathways to Success Pilot Grant Program. The pilot program is administered by the Rural Economic Development Division (RED) of TDA and requires grant recipients to provide matching funds not less than 10% of the overall grant award. The purpose of this grant is to align educational resources with workforce needs by supporting the development of programs that offer rural high school students a more flexible education system such that students will have the opportunity to concurrently earn both a high school diploma and two years of college credit toward an Associate's or Bachelor's degree. Funded projects are expected to result in a functioning program within 1 - 2 years.

Submission Dates/Locations. Forms required for submitting a proposal are available by accessing TDA's website at: www.texasagriculture.gov, or by e-mailing RED at: finance@texasagriculture.gov. One hard copy and one electronic copy of the proposal in Microsoft Word format must arrive no later than 5:00 p.m. on **August 17, 2009**, to one of the following:

Physical Address: Texas Department of Agriculture, Rural Economic Development, 1700 N. Congress Avenue, 11th Floor, Austin, Texas 78701, Attention: Rick Rhodes.

Mailing Address: Texas Department of Agriculture, Rural Economic Development, P.O. Box 12847, Austin, Texas 78711, Attention: Rick Rhodes

The electronic copy should be e-mailed to: rick.rhodes@texasagriculture.gov

Eligibility. Grant proposals will be accepted from any accredited high school, institution of higher learning, chambers of commerce, economic development commissions or similar organizations located in the State of Texas.

Proposal Requirements.

Funding Parameters:

It is anticipated that selected projects will be funded in a range of \$50,000 - \$125,000 per year. Projects may be awarded in excess of this range if the project proposal includes a strong justification for the funding and a potential for providing an operating program by fall 2009. Projects will be awarded for **two years (August 31, 2009 - August 31, 2011)**. All awards require matching funding at not less than 10% of the overall grant award.

TDA reserves the right to fund proposals partially or fully. Where more than one proposal for a geographical region is found acceptable for funding, TDA may request cooperation between grantees or revision/adjustment to a proposal in order to avoid duplication and to realize the maximum benefit to the state.

Form Requirements:

Proposals must be submitted on form RED-200 for consideration. RED-200 shall not exceed 6 pages. (2 pages for Personnel/contact information, 3 pages for proposal, and 1 page for budget information.)

The required forms are available by accessing TDA's website at: www.texasagriculture.gov or by e-mailing the RED at: finance@texasagriculture.gov.

Technical Requirements:

Include the following items:

1. **Project Director Information - Do Not Exceed Two Pages.** Include title, performing institutions, lead contact information and experience, responsible contracts officer information.

2. **Project Summary - Do Not Exceed 200 Words.** Briefly summarize the program for which you are requesting funding.

3. **Project Proposal - Do Not Exceed Three Pages.** Include the following:

A. Background - Statement of program including the institutions that the program will be offered through; any history regarding this particular program; and how the program will serve the needs of the students in its community.

B. Objectives - Concise outline of what the program will offer students including curriculum, any degrees or certificates offered, criteria for acceptance into program; specific goals and performance measures and how those will be measured.

C. Benefits - Description of the expected results and their anticipated contributions to students and meeting the needs of the workforce in rural Texas.

4. **Performance and Budget Information.** Include the following:

A. Project Budget - Include categories of Salary, Travel, Materials and Operating Expenses, Equipment, Other, Contracts, and Indirect (not to exceed 10%) and matching funds. Round budget items to the nearest \$100;

B. Matching Funds Table - This grant requires matching funds of not less than 10% of the grant award. The ability of a project to claim supporting or leveraged funds in excess of the minimum percentage will be a positive factor in the review process. Matching funds must be documented on the budget submission form and reported on a quarterly basis; and

C. Indirect Costs - Under this grant 10% of the grant award amount will be allowed to be used for the reimbursement of indirect costs.

Budget Information: This grant will be paid on a cost reimbursement basis after matching funds have been documented.

1. **Eligible Expenses.** Generally, expenses that are necessary and reasonable for proper and efficient performance and administration of a project are eligible. Expenses must be properly documented with sufficient backup detail, including copies of invoices. Examples of eligible expenditures are:

Personnel costs - both salary and benefits;

Travel - domestic (Reimbursement for foreign travel is discouraged);
Equipment, Materials and direct operating expenses - items that costs less than \$5,000 per unit with a useful life of less than one year, office supplies, postage, telecommunications, printing, etc.;

Other expenses - any expenses that do not fall into the above categories;

Contracts - agreements made with other universities or private parties to perform a portion of the award; and

Indirect expenses - limited to 10% of the grant award.

2. Ineligible Expenses. Expenses that are prohibited by state or federal law are ineligible. Examples of these expenditures are:

Alcoholic beverages;

Entertainment;

Contributions, charitable or political;

Expenses falling outside of the contract period;

Expenses for expenditures not listed in the project budget;

Tangible personal property costing over \$5000 per unit and having a useful life over one year; and

Expenses that are not adequately documented.

3. Description of the Budget. Present an overall project budget and include the following items in the budget description:

A. Personnel services: Grant funds may be used for directly supporting salaries and wages of teachers, administrative assistants and other support personnel.

B. Travel: Grant funds used for travel expenses, domestic or foreign, must be limited to the State of Texas established mileage, per diem, and lodging policies. Reimbursement for foreign travel is discouraged, but may be paid on a case-by-case basis. To be eligible for reimbursement, foreign travel shall be approved in advance by the Commissioner or his designee.

C. Materials and Direct Operating Expenses: Expenses that are directly related to the grantee's day-to-day operation of the grant project that are not included in any of the Grantee's other standard budget categories and has an acquisition cost of less than \$5,000 per unit. Grantees must allocate costs on a prorated basis for shared usage, including office supplies, postage, telecommunications, and printing.

D. Professional/Contractual: Any contract or agreement entered into by a grantee and a third party that obligates grant funds must be in writing and consistent with Texas law. Grantees must maintain adequate documentation supporting budget items for a contractor's time, services, and rates of compensation.

E. Indirect Expenses: Grant funds may be used for indirect costs up to 10% of the grant award amount.

F. Matching Funds: Please identify all funding, including amount and payor, received for this project or funding anticipated to be received during the two-year grant term.

G. Additional Budget Information: Provide any additional information you think would be helpful to the review committee including equipment justification, subcontract recipients and amounts, list of key personnel to be paid, or description of other large item expenditures.

Evaluation of Proposals.

The proposals will be evaluated on the following elements:

1. The merits of the plan in regard to bridging the gap to higher education and workforce readiness for rural high school students;

2. The potential for having a program in place in 1 - 2 years;

3. Rigorousness and relevancy of curriculum;

4. The feasibility of the objectives;

5. The anticipated benefits to the workforce in rural Texas;

6. How the programs academic excellence is monitored and evaluated to ensure the students are performing at a higher level;

7. The requested budget in relation to expected benefits; and

8. The ability to provide 10% matching funds.

Award Information and Notification.

TDA will approve projects for funding. TDA reserves the right to accept or reject any or all proposals submitted. TDA is under no legal or other obligation to award a grant on the basis of a proposal submitted in response to this Request for Proposals. TDA shall not pay for any costs incurred by any entity in responding to this Request for Proposals.

The public announcements and written notifications will be made to all applicants. Favorable decisions will indicate the amount of award, duration of the grant, and any special conditions associated with the project. All grant recipients will have to execute a grant agreement with TDA no later than August 31, 2009.

General Compliance Information.

1. Prior to accepting the grant and signing the grant agreement, applicants will be provided a copy of the TDA reporting requirements for their review. This document will explain billing procedures, quarterly and annual reporting requirements, procedures for requesting a change in the project scope or budget, and other miscellaneous items.

2. Any delegation by the Grantee to a subcontractor regarding any duties and responsibilities imposed by the grant award shall be approved in advance by TDA and shall not relieve the Grantee of its responsibilities to TDA for their performance.

3. All grant awards are subject to the availability of appropriations and authorizations by the Texas Legislature and TDA.

4. Any information or documentation submitted to TDA as part of the project grant proposal is subject to disclosure under the Texas Public Information Act.

5. While TDA attempts to observe the strictest confidence in handling the proposals, it cannot guarantee complete confidentiality on any matters that lie beyond its control. The confidentiality of recipient's "proprietary data" so designated shall be strictly observed to the extent permitted by appropriate Texas laws, including the Texas Public Information Act.

6. Control of the ownership and disposition of all patentable products and inventories shall be agreed to by Grantee and TDA.

7. Awarded grant projects must remain in full compliance with state and federal laws and regulations. Noncompliance with such law may result in termination by TDA.

8. Grant recipients must keep a separate bookkeeping account with a complete record of all expenditures relating to the project. Records shall be maintained for three years after the completion of the 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 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 com-

pletion 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 project location(s) and to obtain full information regarding all project activities.

9. If the Grantee has a financial audit performed in any year during which Grantee receives funds from Grantor, and if the Grantor requests information about the audit, the Grantee shall provide such information to TDA or provide information as to where the audit report can be publicly viewed, including the audit transmittal letter, management letter, and any schedules in which the Grantee's funds are included.

10. Grant awards to Texas institutions shall comply in all respects with the Uniform Grant Management Standards (UGMS). A copy may be downloaded from the following website: www.governor.state.tx.us/divisions/stategrants/guidelines/files/UGMS012001.doc

11. Grant management guidelines will be provided to grantees once an award is made.

For any questions:

Please contact Rick Rhodes, Assistant Commissioner for Rural Economic Development, at (512) 463-7577 or by e-mail at: rick.rhodes@texasagriculture.gov.

TRD-200903207
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: July 29, 2009

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Comptroller of Public Accounts

Notice of Intent to Amend Consulting Contract

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces this notice of intent to amend and renew the statistician consulting services contract with Analytical Systems, Inc. Consultant will advise the Comptroller on statistical issues and provide other related services in connection with the Comptroller's Annual Property Value Study (Study). The successful respondent will be expected to begin the performance of the Contract on or about September 1, 2009, or as soon thereafter as practical.

Background: The Comptroller requires highly specialized statistical consulting expertise and experience for the services to be provided under the Contract. The Consultant will advise the Comptroller periodically during the year regarding complex statistical and other issues relating to the Study and provide all other reasonably-related services. The amended contract amount is not to exceed \$45,000.00. The term of the amended contract will be September 1, 2009, through August 31, 2010. The report will be due on or about August 31, 2010.

Current Contract: The current consultant is Analytical Systems, Inc., located at: P.O. Box 656, Castroville, Texas 78009. The total amount of this contract is not to exceed \$45,000.00. The term of the contract is October 15, 2008 through August 31, 2009. The reports submitted under this contract were due on or before August 31, 2009.

Award Procedure: The notice of request for proposals (RFP #189a) was published in the August 1, 2008, issue of the *Texas Register* (33 TexReg 6185).

TRD-200903216

William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: July 29, 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, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/03/09 - 08/09/09 is 18% for Consumer¹/Agricultural/Commercial²/credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/03/09 - 08/09/09 is 18% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

TRD-200903175
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: July 27, 2009

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Court Reporters Certification Board

Certification of Court Reporters

Following the examination of applicants on June 24, 2009, the Texas Court Reporters Certification Board certified to the Supreme Court of Texas the following individuals who are qualified in the method indicated to practice shorthand reporting pursuant to Chapter 52 of the Texas Government Code, V.T.C.A.:

MACHINE SHORTHAND: JESSICA RAMIREZ - ROBSTOWN, TX; REBEKHA BENCHIMOL - RICHARDSON, TX; KATHLEEN MCCURRY - CARROLLTON, TX; BRENNA HOMFELD - HOUSTON, TX; JENNIFER BROADHEAD - CLUTE, TX; BRENDA BARRIENTOS - GRAND PRAIRIE, TX; MELISSA RAY - THE COLONY, TX; TAVIS JACKS - SPRING, TX; CAROLINE CASTRO - ORLANDO, FL; LOREN GONZALES - HOUSTON, TX; LAUREN STRAIN - LONGVIEW, TX; CYNTHIA HINDS - KEMP, TX; REBECCA CALLOW - AUSTIN, TX; and DEBRA RIVERA - LEHI, UT.

TRD-200903037
Sheryl Jones
Administrator of Licensing
Court Reporters Certification Board
Filed: July 23, 2009

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State Board for Educator Certification

Notice of State Board for Educator Certification Disciplinary Policy Guidelines

The State Board for Educator Certification (SBEC) took action at its June 18, 2009, meeting to adopt the following Disciplinary Policy Guidelines in order to articulate and provide notice of its guiding policy considerations in educator discipline matters.

State Board for Educator Certification Disciplinary Policy Guidelines

As provided in 19 TAC §249.5, the primary purposes the SBEC seeks to achieve in educator disciplinary matters are to: (1) protect the safety and welfare of Texas schoolchildren and school personnel; (2) ensure educators and applicants are morally fit and worthy to instruct or to supervise the youth of the state; and (3) fairly and efficiently resolve educator disciplinary proceedings.

The SBEC's focus on the safety and welfare of students is also reflected in the SBEC Mission Statement, Core Principles, and Goals that were adopted on February 6, 2009 (text included in this notice).

Without diminishing in any way the SBEC 19 TAC Chapter 249 procedural and substantive rights of educators to contest allegations of educator misconduct, it is the policy of the SBEC to fully investigate such allegations and, if those allegations are found to have merit, to ensure that any sanction that is imposed furthers these purposes.

A certified educator holds a unique position of public trust with almost unparalleled access to the hearts and minds of impressionable students. Therefore, the conduct of an educator must be held to the highest standard. Because SBEC sanctions are imposed for reasons of public policy, and are not penal in nature, criminal procedural and punishment standards are not appropriate to educator discipline proceedings.

General Principles:

1. Because the SBEC's primary duty is to safeguard the interests of Texas students, educator certification must be considered a privilege and not a right.
2. SBEC disciplinary sanctions are based on educator conduct that is proved by a preponderance of the evidence, without regard to whether there has been a criminal conviction, deferred adjudication or other type of community supervision, an indictment, or even an arrest. Under the Educators' Code of Ethics, an educator may be sanctioned for conduct underlying a criminal conviction even if the crime is not subject to sanction under the Texas Occupations Code, Chapter 53. An educator may also be sanctioned for conduct underlying a criminal conviction even if the conduct is not specifically listed in 19 TAC §249.16, as long as the conduct renders the educator unworthy to instruct.
3. Because the SBEC recognizes that an educator's good moral character, as defined in 19 TAC §249.3, constitutes the essence of the role model that the educator represents to students both inside and outside the classroom, criminal law, 19 TAC Chapter 247, the Educators' Code of Ethics, and 19 TAC Chapter 249, providing for educator disciplinary proceedings, are merely a minimum base line standard for educator conduct. Active community supervision, as well as conduct that indicates dishonesty, untruthfulness, habitual impairment through drugs or alcohol, abuse or neglect of students and minors, including the educator's own children, or reckless endangerment of the safety of others, may demonstrate that the person lacks good moral character, is a negative role model to students, and does not possess the moral fitness necessary to be a certified educator.
4. "Unworthy to instruct or to supervise the youth of this state," which serves as a basis for sanctions under 19 TAC §249.15(b)(2), is a broad concept that is not limited to the specific criminal convictions that are described in Texas Education Code (TEC), §21.058 and §21.060. The SBEC 19 TAC §249.3(45) definition of "the determination that a person is unfit to hold a certificate under the TEC, Chapter 21, Subchapter B, or to be allowed on a school campus under the auspices of an educator preparation program" predates the adoption of TEC, §21.058 and §21.060, and is based upon the TEC, Chapter 21, Subchapter B, grant of authority to the SBEC to "regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators." As a Texas Court of Civil Appeals ruled in the

seminal case of *Marrs v. Matthews*, 270 S.W. 586 (1925), "unworthy to instruct" "means the lack of 'worth'; the absence of those moral and mental qualities which are required to enable one to render the service essential to the accomplishment of the object which the law has in view." Therefore, the moral fitness of a person to instruct the youth of this state must be determined from an examination of all relevant conduct, is not limited to conduct that occurs while performing the duties of a professional educator, and is not limited to conduct that constitutes a criminal violation or results in a criminal conviction.

5. Educators have positions of authority, have extensive access to students when no other adults (or even other students, in some cases) are present, and have access to confidential information that could provide a unique opportunity to exploit student vulnerabilities. Therefore, educators must clearly understand the boundaries of the educator-student relationship that they are trusted not to cross. The SBEC considers any violation of that trust, such as soliciting or engaging in a romantic or sexual relationship with any student or minor, to be conduct that may result in permanent revocation of an educator's certificate.

6. The SBEC recognizes and considers evidence of rehabilitation with regard to educator conduct that could result in sanction, denial of a certification application, or denial of an application for reinstatement of a certificate, but must also consider the nature and seriousness of prior conduct, the potential danger the conduct poses to the health and welfare of students, the effect of the prior conduct upon any victims of the conduct, whether sufficient time has passed and sufficient evidence is presented to demonstrate that the educator or applicant has been rehabilitated from the prior conduct, and the effect of the conduct upon the educator's good moral character and ability to be a proper role model for students.

State Board for Educator Certification Mission Statement, Core Principles, and Goals

Mission Statement (adopted February 6, 2009)

Ensure the highest level of educator preparation to promote student achievement and to ensure the safety and welfare of Texas school children.

Core Principles (adopted February 6, 2009)

We believe well-prepared educators are essential. We believe high certification standards measured by rigorous and reliable assessments are essential. We believe student success is primary and we must ensure the safety and welfare of Texas school children. We believe flexible and accessible certification programs, held to the same standards of accountability, are essential. We believe stakeholder input is essential and we are accountable to all Texas stakeholders. We believe educators must be held to high standards of ethical conduct. We believe we must continually improve our policies and processes in response to changing needs. We believe we must ensure consistency and effectiveness among educator preparation programs.

Goals (adopted February 6, 2009)

1. The Board will seek the tools and resources to ensure the education, safety and welfare of Texas school children.
2. Monitor and improve the quality and effectiveness of educator preparation programs.
3. Improve the effectiveness and the efficiency of business operations by expanding the use of technology.

Further Information. For more information, contact the SBEC c/o TEA Division of Educator Quality and Standards by mail at 1701 North Congress Avenue, Room 5-100, Austin, Texas 78701; by telephone at

(512) 936-8213; by fax at (512) 463-8762; or by email at maggie.heermans@tea.state.tx.us.

TRD-200903204

Cristina De La Fuente-Valadez

Director, Policy Coordination, Texas Education Agency

State Board for Educator Certification

Filed: July 29, 2009



City of El Paso

Notice of Deposit to Firemen and Policemen Pension Fund

The City of El Paso's City Manager, Joyce Wilson, certifies that, on July 30, 2009, the City of El Paso deposited \$110,000,000 (one hundred ten million dollars) as the second and final installment, to the El Paso Firemen and Policemen Pension Fund in accordance with an agreement between the City and the Fund, pursuant to Article 6243b of Vernon's Civil Statutes as modified by §2.07, Ch 1420, Acts 80th Leg., R.S.

TRD-200903038

Joyce Wilson

City Manager

City of El Paso

Filed: July 23, 2009



Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 7, 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 September 7, 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: 850 Pine Street, Inc.; DOCKET NUMBER: 2009-0374-AIR-E; IDENTIFIER: RN100225671; LOCATION:

Beaumont, Jefferson County; TYPE OF FACILITY: metal fabrication; RULE VIOLATED: 30 Texas Administrative Code (TAC) §115.247(2) and §122.143(4), Federal Operating Permit (FOP) Number O-01657, General Terms and Conditions (GTC) and Special Condition (SC) Number 5A, and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit the monthly gasoline throughput on an annual basis; 30 TAC §116.115(c) and §122.143(4), FOP Number O-01657, GTC and SC Number 6A, Air Permit Number 56685, SC Number 3, and THSC, §382.085(b), by failing to properly label all permitted sources; 30 TAC §122.143(4) and §122.145(2)(A) - (C), FOP Number O-01657, GTC, and THSC, §382.085(b), by failing to report deviations; and 30 TAC §§122.143(4), 122.145(2)(A) - (C), and 122.146(1), (2), (5)(C)(i) - (v), FOP Number O-01657, GTC and SC Number 8, and THSC, §382.085(b), by failing to timely submit annual compliance certification and deviation reports and include all deviations; PENALTY: \$9,575; Supplemental Environmental Project (SEP) offset amount of \$3,830 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Clean School Buses; ENFORCEMENT COORDINATOR: Audra Benoit, (409) 899-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: Taisseer Al-Aqqad dba Best Food Store; DOCKET NUMBER: 2009-0328-PST-E; IDENTIFIER: RN101543593; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; PENALTY: \$3,021; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: City of Brady; DOCKET NUMBER: 2009-0546-MLM-E; IDENTIFIER: RN101387231, RN104191200; LOCATION: McCulloch County; TYPE OF FACILITY: public water supply (PWS); RULE VIOLATED: 30 TAC §305.125(4) and (5), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0004712000, Permit Conditions Number 2.g. and Operational Requirements Number 1, and the Code, §26.121(a), by failing to prevent an unauthorized discharge of water treatment wastewater; 30 TAC §319.302(b)(3) and (c), by failing to notify appropriate local government officials and the local media as quickly as possible, but not later than 24 hours after becoming aware of an unauthorized discharge of 100,000 gallons or more from the facility; and 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) for total trihalomethanes (TTHM); PENALTY: \$3,775; SEP offset amount of \$3,775 applied to RC&D - Abandoned Tire Clean-Up; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(4) COMPANY: Chemical Lime, Limited; DOCKET NUMBER: 2009-0223-AIR-E; IDENTIFIER: RN100219856; LOCATION: Clifton, Bosque County; TYPE OF FACILITY: regenerative lime kiln; RULE VIOLATED: 30 TAC §101.20(3) and §116.115(b)(2)(F) and (c), New Source Review (NSR) Permit Number 8434/PSD-TX-441, SC Number 1, and THSC, §382.085(b), by failing to comply with permitted emissions limits; PENALTY: \$6,000; ENFORCEMENT COORDINATOR: Kirk Schoppe, (512) 239-0489; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: CHITTAGONG CORPORATION dba ANB Food Mart; DOCKET NUMBER: 2009-0437-PST-E; IDENTIFIER: RN101675759; LOCATION: Navasota, Grimes County; TYPE OF

FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.10(b)(1)(B), by failing to maintain underground storage tank (UST) records and make them immediately available for inspection; 30 TAC §334.49(c)(2)(C) and the Code, §26.3475(d), by failing to inspect the impressed current cathodic protection system; 30 TAC §334.49(c)(4)(C) and the Code, §26.3475(d), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection; 30 TAC §334.50(b)(2)(A) and the Code, §26.3475(a), by failing to provide proper release detection for the pressurized piping associated with the USTs; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to test the line leak detectors at least once per year for performance and operational reliability; 30 TAC §334.42(i), by failing to inspect all sumps, manways, overflow containers, or catchment basins associated with a UST system; and 30 TAC §334.54(b)(2), by failing to maintain all piping, pump, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; PENALTY: \$9,532; ENFORCEMENT COORDINATOR: Brianna Carlson, (956) 425-6010; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(6) COMPANY: Michael W. Cruce; DOCKET NUMBER: 2009-1035-WOC-E; IDENTIFIER: RN104669486; LOCATION: Gilmer, Upshur County; TYPE OF FACILITY: wastewater operator; 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: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(7) COMPANY: City of Edgewood; DOCKET NUMBER: 2009-0589-PWS-E; IDENTIFIER: RN101404887; LOCATION: Van Zandt County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.113(f)(4) and (5), TCEQ Agreed Order Docket Number 2005-0843-MLM-E, Ordering Provision Number 4.a., and THSC, §341.0315(c), by failing to comply with the MCL for TTHM and haloacetic acids (HAA5); PENALTY: \$2,160; SEP offset amount of \$2,160 applied to RC&D - Unauthorized Trash Dump Clean-Up; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 490-3096; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(8) COMPANY: City of Emory; DOCKET NUMBER: 2009-0485-PWS-E; IDENTIFIER: RN101221406; LOCATION: Emory, Rains County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.43(c)(8), by failing to maintain the facility's storage tanks in strict accordance with current American Water Works Association standards; 30 TAC §290.43(c)(6), by failing to maintain all treatment units, storage and pressure maintenance facilities, and distribution lines and related appurtenances in a watertight condition; 30 TAC §290.46(s)(2), (B)(i), and (C)(i)(ii) and (iii), by failing to use required standards for performing lab equipment calibrations, by failing to calibrate the benchtop turbidimeters with primary standards; by failing to verify the accuracy of manual disinfectant residual analyzers; by failing to calibrate the continuous disinfectant residual analyzers once every 90 days using chlorine solutions of known concentrations, and by failing to check the calibration of the continuous disinfectant residual analyzers; 30 TAC §290.42(f)(1)(C), by failing to provide all chemical bulk storage facilities and day tanks with a device that indicates the amount of chemical remaining in the facility or tank; 30 TAC §290.46(j), by failing to complete a customer service inspection certificate prior to providing continuous water service to new construction; 30 TAC §290.42(f)(1)(E)(ii), by failing to provide adequate containment facilities for all liquid chemical storage tanks; 30 TAC §290.111(e)(3)(B), by failing to continuously monitor and record the turbidity level of the combined filter effluent; 30 TAC §290.42(e)(4)(C), by failing to

provide forced air ventilation for enclosures containing more than one operating 150-pound chlorine cylinder; 30 TAC §290.44(h)(1)(A), by failing to install a backflow prevention assembly or an air gap at all residences and establishments where an actual or potential contamination hazard exists; 30 TAC §290.42(d)(11)(F)(iii), by failing to provide a rate of flow of backwash water that is at least 20 inches vertical rise per minute (12.5 gallons per minute (gpm) per square foot) and not more than 35 inches of vertical rise per minute (21.8 gpm per square foot); 30 TAC §290.42(d)(15)(E), by failing to provide facilities to monitor the depth of the sludge blanket; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.46(m)(1)(A), by failing to conduct annual inspections of the five storage tanks; and 30 TAC §290.42(d)(13), by failing to identify the influent, effluent, waste backwash, and chemical feed lines every five feet either by the use of a label or by various colors of paint; PENALTY: \$19,430; SEP offset amount of \$19,430 applied to RC&D - Water or Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(9) COMPANY: Grand Ranch Treatment Company; DOCKET NUMBER: 2009-0660-MWD-E; IDENTIFIER: RN102344157; LOCATION: Johnson County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0013846001, Interim Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for total suspended solids (TSS); PENALTY: \$1,310; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: City of Granite Shoals; DOCKET NUMBER: 2009-0547-PWS-E; IDENTIFIER: RN101214815; LOCATION: Granite Shoals, Burnet County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by exceeding the MCL for TTHM; PENALTY: \$1,330; SEP offset amount of \$1,330 applied to Lower Colorado River Authority's Household Hazardous Waste and Reusable Materials Collection; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(11) COMPANY: Danny J. Dolen dba Green Lake Estates Water Supply; DOCKET NUMBER: 2009-0516-PWS-E; IDENTIFIER: RN104443734; LOCATION: Limestone County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.46(f)(2) and (3)(D)(ii), by failing to compile and maintain records of water works operation and maintenance activities; 30 TAC §290.42(1), by failing to provide a thorough plant operations manual that is kept up-to-date for operator review and reference; 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement; 30 TAC §290.46(t), by failing to post a legible sign at each production, treatment, and storage facility that contains the name of the water supply and emergency telephone numbers; 30 TAC §290.43(e), by failing to enclose all water storage tanks and pressure maintenance facilities with an intruder-resistant fence with lockable gates; 30 TAC §290.41(c)(3)(N), by failing to provide the well with a flow measuring device to measure production yields and provide for the accumulation of water production data; and 30 TAC §290.46(v), by failing to ensure that all water system electrical wiring is securely installed in compliance with a local or national electrical code; PENALTY: \$1,586; ENFORCEMENT COORDINATOR: Amanda Henry, (713) 767-3500; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(12) COMPANY: Hudspeth County Water Control and Improvement District Number 1; DOCKET NUMBER: 2009-0537-MWD-E; IDENTIFIER: RN102181849; LOCATION: Hudspeth County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0013858001, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, and the Code, §26.121(a), by failing to comply with permitted effluent limits for dissolved oxygen, biochemical oxygen demand, TSS, and flow; PENALTY: \$8,400; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(13) COMPANY: JELD-WEN, Inc.; DOCKET NUMBER: 2009-0357-AIR-E; IDENTIFIER: RN102549706; LOCATION: Sulphur Springs, Hopkins County; TYPE OF FACILITY: door manufacturing plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c), Air Permit Number 21189, SC Number 10(c), and THSC, §382.085(b), by failing to maintain emissions at or below the rates listed in the maximum allowable emission rate table for the expanded polystyrene block molder facilities and the glue roll spreaders 1, 2, and 3; and 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to obtain authorization to continue operations; PENALTY: \$5,500; SEP offset amount of \$2,200 applied to RC&D - Clean School Buses; ENFORCEMENT COORDINATOR: Raymond Marlow, (409) 898-3838; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(14) COMPANY: Richard C. King; DOCKET NUMBER: 2009-1036-WR-E; IDENTIFIER: RN105695639; LOCATION: Van Zandt County; TYPE OF FACILITY: well and pump; RULE VIOLATED: the Code, §11.081 and §11.121, by impounding, diverting, or using state water without a required permit; PENALTY: \$350; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(15) COMPANY: Lake Lavon Baptist Encampment; DOCKET NUMBER: 2009-0576-MWD-E; IDENTIFIER: RN101512424; LOCATION: Collin County; TYPE OF FACILITY: church camp with domestic wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and TPDES Permit Number WQ0014192001, Effluent Limitations and Monitoring Requirements B, by failing to measure flow as required by the permit due to weir inadequacies; 30 TAC §319.5(a) and TPDES Permit Number WQ0014192001, Effluent Limitations and Monitoring Requirements B, by failing to collect samples at the location specified by the permit; 30 TAC §319.7(c) and TPDES Permit Number WQ0014192001, Monitoring Requirements 3.c, by failing to maintain adequate pH records; 30 TAC §305.125(5) and TPDES Permit Number WQ0014192001, Special Provisions 4 and 9, by failing to properly maintain the evaporation pond and to obtain certification of the pond liner by a Texas licensed professional engineer; and 30 TAC §319.4 and TPDES Permit Number WQ0014192001, Effluent Limitations and Monitoring Requirements A and B, by failing to conduct sampling and analyses on the parameters specified in the permit; PENALTY: \$4,950; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Milwhite, Inc.; DOCKET NUMBER: 2009-0722-AIR-E; IDENTIFIER: RN102540960; LOCATION: Brownsville, Cameron County; TYPE OF FACILITY: raw mineral handling plant; RULE VIOLATED: 30 TAC §116.115(c), NSR Permit Number 7537, SC Number 1, and THSC, §382.085(b), by failing to comply with permitted limits; 30 TAC §116.115(c), NSR Permit Number 7537, SC Number 11, and THSC, §382.085(b), by failing to keep the north door of the grinding building closed; 30 TAC §101.4 and §116.115(c),

NSR Permit Number 7537, SC Number 12, and THSC, §382.085(a) and (b), by failing to prevent nuisance dust emissions from impacting off property receptors; and 30 TAC §116.115(b)(2)(E)(i) and (c), NSR Permit Number 7537, SC Number 14, and THSC, §382.085(b), by failing to maintain records for a rolling two-year period; PENALTY: \$6,000; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5447, (956) 425-6010.

(17) COMPANY: Monarch Utilities I L.P.; DOCKET NUMBER: 2008-0112-MWD-E; IDENTIFIER: RN102287125; LOCATION: Henderson County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0011506001, Effluent Limitations and Monitoring Requirements Numbers 1, 2, and 3, and the Code, §26.121(a)(1), by failing to comply with permit effluent limits for pH, ammonia nitrogen, chlorine, and five-day carbonaceous biochemical oxygen demand; PENALTY: \$10,110; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(18) COMPANY: Possum Kingdom Water Supply Corporation; DOCKET NUMBER: 2009-0719-PWS-E; IDENTIFIER: RN103129076; LOCATION: Palo Pinto County; TYPE OF FACILITY: water treatment plant; RULE VIOLATED: 30 TAC §290.45(b)(2)(B) and (g) and THSC, §341.0315(c), by failing to provide a treatment plant capacity of 0.6 gpm under normal rated design flow, or an established alternative capacity requirement; PENALTY: \$275; ENFORCEMENT COORDINATOR: Amanda Henry, (713) 767-3500; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: Sealy Oil Mill & Feed Company; DOCKET NUMBER: 2009-0573-AIR-E; IDENTIFIER: RN105605117; LOCATION: Sealy, Austin County; TYPE OF FACILITY: feed store; RULE VIOLATED: 30 TAC §116.110(a)(1) and THSC, §382.0518(a) and §382.085(b), by failing to obtain permit authorization to load and unload grain from two silos; PENALTY: \$1,050; ENFORCEMENT COORDINATOR: Juliet Morgan, (512) 239-0735; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(20) COMPANY: Springfield Custom Homes, Inc.; DOCKET NUMBER: 2009-1037-WQ-E; IDENTIFIER: RN105749147; LOCATION: Dallas County; TYPE OF FACILITY: home developer; 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: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: Springfield Custom Homes, Inc.; DOCKET NUMBER: 2009-1038-WQ-E; IDENTIFIER: RN105749337; LOCATION: Dallas County; TYPE OF FACILITY: home developer; 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: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: Springfield Custom Homes, Inc.; DOCKET NUMBER: 2009-1039-WQ-E; IDENTIFIER: RN105748206; LOCATION: Denton County; TYPE OF FACILITY: home developer; 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: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: ST. FRANCIS VILLAGE, INC.; DOCKET NUMBER: 2009-0279-MWD-E; IDENTIFIER: RN102362589;

LOCATION: Tarrant County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010612001, Interim Effluent Limitations and Monitoring Requirements Numbers 1 and 2, and the Code, §26.121(a), by failing to comply with permit effluent limits for flow and residual chlorine; PENALTY: \$6,680; SEP offset amount of \$5,344 applied to holding a minimum of two one-day waterway cleanup events surrounding Lake Benbrook for the collection, recycling, and proper disposal of improperly disposed debris and wastes; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(24) COMPANY: WTG Gas Processing, L.P.; DOCKET NUMBER: 2009-0210-AIR-E; IDENTIFIER: RN100211473; LOCATION: Howard County; TYPE OF FACILITY: natural gas plant; RULE VIOLATED: 30 TAC §116.115(c), Permit Number 20137, SC Number 5, and THSC, §382.085(b), by failing to maintain a minimum sulfur reduction efficiency of 94.0%; PENALTY: \$5,850; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 3300 North A Street, Building 4-107, Midland, Texas 79705-5406, (432) 570-1359.

TRD-200903179

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: July 28, 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 **September 7, 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 September 7, 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: Creek Park Corporation; DOCKET NUMBER: 2007-0410-MWD-E; TCEQ ID NUMBER: RN102915691; LOCATION: approximately one mile east of County Road (CR) 600 and approximately 1.5 miles south of the intersection of CR 600 and Farm-to-Market Road 917, Johnson County; TYPE OF FACILITY: wastewater treatment plant and wastewater collection system; RULES VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013868001, Effluent Limitations and Monitoring Requirements Numbers 1, 2, and 6; and TWC, §26.121(a), by failing to comply with permit effluent limits; 30 TAC §305.125(1) and (11)(A) and TPDES Permit Number WQ001386001, Monitoring and Reporting Requirements Number 3.b., by failing to measure flow in a manner that was representative of actual flow; 30 TAC §319.7(d) and TPDES Permit Number WQ0013868001, Monitoring and Reporting Requirements Number 1, by failing to timely submit the Discharge Monitoring Report for the monitoring period ending January 31, 2005; 30 TAC §317.7(e), by failing to provide a lock for the gate at the entry point to the facility; 30 TAC §305.125(17) and TPDES Permit Number WQ0013868001, Sludge Provisions, by failing to timely submit annual sludge reports for the monitoring periods ending July 31, 2004, July 31, 2005, and July 31, 2006; 30 TAC §305.125(5) and TPDES Permit Number WQ0013868001, Operational Requirements Number 1, by failing to ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §317.4(a)(5), by failing to provide auxiliary power facilities for the wastewater treatment facility; and 30 TAC §305.125(9) and TPDES Permit Number WQ0013868001, Monitoring and Reporting Requirements Number 7.a., by failing to report any noncompliance which may endanger human health or safety of the environment orally within 24 hours and in writing within five working days of becoming aware of the noncompliance; PENALTY: \$16,380; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Kobo, Inc. dba Kobo Homes, Inc.; DOCKET NUMBER: 2008-1209-WQ-E; TCEQ ID NUMBER: RN105060834; LOCATION: Lampasas CR 4026, 1/4 of a mile south of the intersection of United States Highway 183 on Lampasas CR 4026, Lampasas, Lampasas County; TYPE OF FACILITY: subdivision site called Kobo Circle O Subdivision; RULES VIOLATED: 30 TAC §305.125(1) and TPDES Construction General Permit (CGP) Number TXR15DM40, Part III, Section D(1), by failing to make readily available a storm water pollution prevention plan at the time of the on-site inspection; and 30 TAC §305.125(1) and TPDES CGP Number TXR15DM40, Part III, Section F(7)(a), by failing to conduct inspections of controls in accordance to the provisions of the CGP for storm water; PENALTY: \$2,372; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: RSE, Inc. dba Handy Stop; DOCKET NUMBER: 2009-0053-PST-E; TCEQ ID NUMBER: RN102859600; LOCATION: 701 MacArthur Boulevard, Grand Prairie, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum; PENALTY: \$2,945; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Sammy El-Hamed, aka Sammy K. Elhamed, aka Sammy Elhammed, aka Saeb El-Hamed dba Saveway FS; DOCKET NUMBER: 2008-0544-PST-E; TCEQ ID NUMBER: RN102355690; LOCATION: 1802 South East 14th Street, Grand Prairie, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.78, by failing to submit a site assessment report to the agency within 45 days of confirmation of a release; 30 TAC §334.49(c)(4) and TWC, §26.3475(d), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; 30 TAC §334.50(b)(1)(A), (2), and (A)(i)(III), and TWC, §26.3475(a) and (c)(1), by failing to ensure that all underground storage tanks (UST) are monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to conduct proper release detection for the product piping associated with the UST system; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel each operating day; 30 TAC §334.45(c)(3)(A), by failing to install an emergency shutoff valve (also known as shear impact valve) on each pressurized delivery or product line and ensure that it is securely anchored at the base of the dispenser; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first; 30 TAC §115.242(1)(C) and THSC, §382.085(b), by failing to upgrade the Stage II equipment to onboard refueling vapor recovery compatible systems; 30 TAC §334.10(b), by failing to maintain the required UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$18,188; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Weir Bros., Inc.; DOCKET NUMBER: 2008-1369-MSW-E; TCEQ ID NUMBER: RN100755727; LOCATION: 4523 Farm-To-Market Road 2931, Aubrey, Denton County; TYPE OF FACILITY: sand pit and mulching facility; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the disposal of municipal solid waste at an unauthorized disposal site; PENALTY: \$39,400; STAFF ATTORNEY: Barham Richard, Litigation Division, MC 175, (512) 239-0107; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200903191

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: July 28, 2009



Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the

procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the 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 **September 7, 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 September 7, 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: Afzal Shekhani dba Adams Plaza; DOCKET NUMBER: 2009-0692-PST-E; TCEQ ID NUMBER: RN101283448; LOCATION: 1135 Aldine Bender Road, Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b), by failing to maintain underground storage tanks (USTs) records and make them immediately available for inspection upon request by agency personnel; 30 TAC §334.8(c)(5)(B)(ii), by failing to timely renew a previously issued TCEQ delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; Texas Health and Safety Code (THSC), §382.085(b) and 30 TAC §115.244(1) and (3), by failing to conduct daily and monthly inspections of the Stage II vapor recovery system; THSC, §382.085(b) and 30 TAC §115.242(9), by failing to post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with Stage II equipment; THSC, §382.085(b) and 30 TAC §115.248(1), by failing to ensure that at least one station representative received training in the operation and maintenance of the Stage II vapor recovery system, and each current employee receives in-house Stage II vapor recovery training regarding the purpose and correct operation of the Stage II equipment; PENALTY: \$3,596; STAFF ATTORNEY: Barham Richard, Litigation Division, MC 175, (512) 239-0107; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(2) COMPANY: Almeda, Inc. dba Downtown Tiger Mart; DOCKET NUMBER: 2008-1875-PST-E; TCEQ ID NUMBER: RN102532801; LOCATION: 2111 Fannin Street, Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifolding and dynamic back-pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first; PENALTY:

\$6,296; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(3) COMPANY: Cain Addition Home Owners Association CAHA; DOCKET NUMBER: 2009-0320-PWS-E; TCEQ ID NUMBER: RN105504567; LOCATION: 1160 East County Road 2327, Riviera, Kleberg County; TYPE OF FACILITY: public water supply system; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(ii) and §290.122(c)(2)(A) and THSC, §341.033(d), by failing to collect routine distribution water samples for coliform analysis for the months of May 2008 - January 2009, and by failing to provide public notification of the failure to sample for the months of May 2008 - January 2009; and 30 TAC §290.51(a)(3) and TWC, §5.702, by failing to pay all annual and late Public Health Services fees for TCEQ Financial Administration Account Number 91370036 for Fiscal Year 2009; PENALTY: \$3,300; STAFF ATTORNEY: Becky Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(4) COMPANY: Coastal Industrial Coatings; DOCKET NUMBER: 2008-1883-AIR-E; TCEQ ID NUMBER: RN104924543; LOCATION: 8089 Highway 69 South, Kountze, Hardin County; TYPE OF FACILITY: industrial coating plant; RULES VIOLATED: 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to obtain a permit or meet the conditions of a permit by rule; PENALTY: \$5,200; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(5) COMPANY: Four D. Construction, Inc.; DOCKET NUMBER: 2008-1851-WQ-E; TCEQ ID NUMBER: RN105372312; LOCATION: Pleasant Valley Road and Wells Road, Wylie, Dallas County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities to water in the state; PENALTY: \$3,120; STAFF ATTORNEY: Becky Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Houston Harrisburg Convenience Store, Inc. dba Harrisburg Citgo; DOCKET NUMBER: 2009-0392-PST-E; TCEQ ID NUMBER: RN101727113; LOCATION: 6503 Harrisburg Boulevard, Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months, i.e., the Stage II annual compliance testing had not been conducted; PENALTY: \$3,596; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(7) COMPANY: Jesus Guzman, Jr.; DOCKET NUMBER: 2008-1739-PST-E; TCEQ ID NUMBER: RN101680981; LOCATION: southwest corner of Las Palmas Street and Farm-to-Market 2360, Grulla, Starr County; TYPE OF FACILITY: two inactive USTs; RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to update the self-certification registration to reflect changes to the system; and 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 upgraded requirements;

PENALTY: \$3,500; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(8) COMPANY: Larry O'Neill dba Lazy Acres Trailer Park; DOCKET NUMBER: 2008-1829-PWS-E; TCEQ ID NUMBER: RN101653723; LOCATION: 8611 New Laredo Highway, San Antonio, Bexar County; TYPE OF FACILITY: mobile home park with a public water supply; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(ii) and §290.122(c)(2)(A) and THSC, §341.033(d), by failing to collect routine distribution water samples for coliform analysis for the months of May 2006, September 2006, July 2007, October - December 2007, and February and March 2008 and by failing to provide public notification of the failure to collect routine distribution water samples for coliform analysis for the months of May 2006, July 2007, October - December 2007, and February and March 2008; 30 TAC §290.109(c)(3)(A)(ii) and §290.122(c)(2)(A), by failing to collect and submit a minimum of four repeat distribution coliform samples within 24 hours after being notified of a total coliform-positive result on a routine sample found during the months of October 2006 and March 2007, and by failing to provide public notice of the failure to collect all required repeat samples during the month of March 2007; and 30 TAC §290.109(c)(2)(F) and §290.122(c)(2)(A), by failing to collect a minimum of five routine distribution coliform samples during the month (November 2006 and March 2007) following a total coliform-positive result and by failing to provide public notice of the failure to conduct proper distribution coliform sampling during the month of March 2007; PENALTY: \$6,286; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(9) COMPANY: Ocean2Ocean, LLC; DOCKET NUMBER: 2008-1496-EAQ-E; TCEQ ID NUMBER: RN105354211; LOCATION: 2280 Bulverde Road, Bulverde, Comal County; TYPE OF FACILITY: multi-use development site; RULES VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of a Water Pollution Abatement Plan prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: \$48,450; STAFF ATTORNEY: Becky Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(10) COMPANY: Phyllis Moore; DOCKET NUMBER: 2009-0106-MLM-E; TCEQ ID NUMBER: RN105490171; LOCATION: 700 Oak Grove Loop, China Spring, McLennan County; TYPE OF FACILITY: land development and construction; RULES VIOLATED: TWC, §26.121(a), by failing to prevent the unauthorized discharge of sediment into or adjacent to water in the state; 30 TAC §281.25(a)(4) and 40 CFR §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activity; 30 TAC §111.201 and §330.15(c), THSC, §382.085(b), by failing to comply with the general prohibition on outdoor burning and to prevent the unauthorized disposal of municipal solid waste; PENALTY: \$4,792; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(11) COMPANY: Thomas Jones and Mary Jones; DOCKET NUMBER: 2008-0281-PST-E; TCEQ ID NUMBER: RN102219763; LOCATION: 28042 United States Highway 377, Gordonville, Grayson County; TYPE OF FACILITY: gasoline service 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, 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: \$8,925; STAFF ATTORNEY: Gary Shiu, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200903190

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: July 28, 2009



Notice of Request for Nominations to Fill Positions on the Pollution Prevention Advisory Committee

The Texas Commission on Environmental Quality (commission) is soliciting nominations to fill several positions on the Pollution Prevention Advisory Committee (PPAC). The legislatively created advisory committee, established under Texas Health and Safety Code, §361.0215, advises the commission on the state's policy and goals for pollution prevention and waste minimization.

The PPAC is composed of nine voting members who offer a balanced representation of environmental and public interest groups and the regulated community.

Individuals interested in being considered by the commission should submit a one-page letter of interest and brief resume or biography. All materials must be received by the commission no later than 5:00 p.m. September 7, 2009.

The PPAC advises the commission on: the appropriate organization of state agencies and the financial and technical resources required to aid the state in its efforts to promote waste reduction and minimization; the development of public awareness programs to educate citizens about hazardous waste and the appropriate disposal of hazardous waste and hazardous materials that are used and collected by households; the provision of technical assistance to local governments for the development of waste management strategies designed to assist small quantity generators of hazardous waste; other possible programs to more effectively implement the state's hierarchy of preferred waste management technologies as set forth in Texas Health and Safety Code, §361.023(a); and the development of state purchasing guidelines for environmentally preferable products, under the authority provided in Texas Health and Safety Code, §361.423.

The PPAC operates under the requirements of 30 TAC Chapter 5, Advisory Committees and Groups. The 79th Legislature, 2005, authorized reimbursement for committee members' travel expenses.

The commissioners invite nominations for the following positions. Nominations may be made for oneself. Each nomination should include a brief cover letter and biographical summary that includes the individual's experience and qualifications, and an agreement to serve on the committee if appointed. Please submit nomination(s) for consideration by the commission for the following terms: two full member representatives from the regulated community (to fill four-year terms that expire on August 31, 2013); three full member representatives from an environmental or public interest group (to fill four-year terms that expire on August 31, 2013).

Written nominations must be received in the Small Business and Environmental Assistance Division Office by 5:00 p.m. on September 7, 2009, via mail, hand delivery, email, or fax. Nominations should be

directed to: Mary Kelley, Small Business and Environmental Assistance Division (MC 113), Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087. They can also be sent via e-mail to recycle@tceq.state.tx.us, or they can be faxed to (512) 239-1065. Documents can be submitted via hand delivery to the Small Business and Environmental Assistance Division, 12100 Park 35 Circle, Building F, Suite 1301, Austin, Texas 78753.

Questions regarding the PPAC and the current nominations process can be directed to Mary Kelley at (512) 239-6324.

TRD-200903192

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: July 28, 2009



Notice of Water Quality Applications

The following notices were issued on June 29, 2009 through July 17, 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

HANSON AGGREGATES INC which operates Chico Quarry, has applied for a renewal of TPDES Permit No. WQ0000679000, which authorizes The discharge of treated processed wastewater and stormwater on an intermittent and flow variable basis via Outfall 001. The facility is located at 6097 Farm-to-Market Road 1810, approximately one-mile east of the intersection of State Highway 101 and Farm-to-Market Road 1810 in the City of Chico, Wise County, Texas 75063.

SYNAGRO OF TEXAS CDR INC has applied for a renewal of Texas Pollution Discharge Elimination System (TPDES) Sludge Permit No. WQ0003893000 (EPA I.D. No. TXL005010) to authorize the storage and treatment of liquid municipal wastewater treatment plant sludge from multiple sources. The sewage sludge processing facility consists of above ground steel storage tanks with a total capacity of 233,000 gallons. The facility will store and treat liquid sewage sludge with lime. Lime stabilized sewage sludge will be sent to Texas Commission on Environmental Quality (TCEQ) permitted or registered beneficial use land application sites or hauled by trucks to a TCEQ permitted landfill. This permit will not authorize a discharge of pollutants into waters in the State. The sludge processing facility is located approximately 0.9 mile southwest of the intersection of Farm-to-Market Road 362 and Farm-to-Market Road 529, approximately 8 miles north of the City of Brookshire, in Waller County, Texas 77243.

CITY OF CROSBYTON has applied for a renewal of TCEQ Permit No. WQ0010097001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 264,000 gallons per day via surface irrigation of 518.3 acres of non-public access farmland. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately 3.0 miles southeast of the intersection of U.S. Highway 82 and Farm-to-Market Road 651 in Crosby County, Texas 79322.

CITY OF CORPUS CHRISTI has applied for a renewal of TPDES Permit No. WQ0010401009 which authorizes the discharge of treated

domestic wastewater at an annual average flow not to exceed 2,500,000 gallons per day. The facility is located at 13409 Whitecap Boulevard at the west end of Whitecap Boulevard on Padre Island in the City of Corpus Christi in Nueces County, Texas.

LDH ENERGY MONT BELVIEU LP which proposes to operate a Pipeline Transportation Terminal for Refined Petroleum Products, has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004876000, to authorize a discharge of storm water associated with industrial activity on an intermittent and flow variable basis via Outfall 001. The facility is located at 4201 Farm-to-Market Road 1942, west of the City of Mont Belvieu and north of the City of Baytown, on the north side of the Coastal Water Authority canal road on the levee, 0.6 miles from where the canal road on the levee intersects Crosby-Babers Hill Road (FM 1942), near the intersection of Babers Hill Road and Crosby-Babers Hill Road (FM 1942), in Harris County, Texas, 77521.

CITY OF MARLIN has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0010110002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The facility is located at 241 County Road 302, on the west side of County Road 302 approximately 2.5 miles southwest of the intersection of State Highway 6 and State Highway 712 in Falls County, Texas.

CITY OF NACOGDOCHES has applied for a renewal of TPDES Permit No. WQ0010342004, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 12,880,000 gallons per day. The facility is located on the east side of Bayou La Nana between Farm-to-Market Road 1275 and Farm-to-Market Road 2863 in Nacogdoches County, Texas.

CITY OF LINDEN has applied for a renewal of TPDES Permit No. WQ0010429003, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 450,000 gallons per day. The facility is located approximately 7,000 feet southeast of the intersection of Farm-to-Market Road 125 and U.S. Highway 59 (Jefferson Highway) in Cass County, Texas 75563.

CITY OF BOLING has applied for a renewal of TPDES Permit No. WQ0010843001 which authorizes the discharge of treated domestic wastewater at a daily flow not to exceed 133,000 gallons per day. The facility is located adjacent to Caney Creek, west of and adjacent to Rycade Avenue in the City of Boling in Wharton County, Texas.

GUADALUPE BLANCO RIVER AUTHORITY has applied for a renewal of TPDES Permit No. WQ0011427001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility is located at 135 Pecan Orchard Road, 1,700 feet east-northeast of the intersection of Seguin-Sutherland Springs Road and State Highway 123 in the City of Seguin in Guadalupe County, Texas 78155.

GUADALUPE BLANCO RIVER AUTHORITY has applied for a renewal of TPDES Permit No. WQ0013954001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The facility is located at 635 Bayou Drive, approximately 7,000 feet northwest of the intersection of Farm-to-Market Road 2433 and State Route 35 and approximately 7,000 feet southeast of the intersection of Farm-to-Market Road 1679 and U.S. Route 87 in Calhoun County, Texas 78155.

AQUA DEVELOPMENT INC has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0014061001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 490,000 gallons per

day. The facility is located approximately 2.0 miles east of the intersection of Farm-to-Market Road 973 and Blake Manor Road in Travis County, Texas 78653.

LOWER COLORADO RIVER AUTHORITY has applied for a renewal of TPDES Permit No. WQ0014303001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located approximately 1,000 feet east of Pope Bend Road and approximately 3 miles north-east of the intersection of State Highway 71 and Pope Bend Road in Bastrop County, Texas 78767.

FAYETTE WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. WQ0014537001, which authorizes the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 20,000 gallons per day. The facility is located 0.4 mile west on Knape Road from U.S. Highway 77 South in Fayette County, Texas 78945.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200903208

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 29, 2009



Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on July 24, 2009, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Alan and Yolanda Black dba Black's Construction and Caliche Pit; SOAH Docket No. 582-09-1615; TCEQ Docket No. 2008-1234-MSW-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Alan and Yolanda Black dba Black's Construction and Caliche Pit on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-200903209

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 29, 2009



Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5780 or (800) 325-8506.

Deadline: Semiannual Report due July 15, 2008 for Political Action Committees

Marcus Mpwo, African Coalition Political Action Committee, 12401 S. Post Oak Rd., Ste. D, Houston, Texas 77045-2021

Deadline: Personal Financial Statement due April 30, 2009

Jose E. de Santiago, Jr., 15927 Jove St., Houston, Texas 77060

Edward Johnson, 1711 San Jacinto Blvd., Rm. 400, Austin, Texas 78701

Joaquinn L. Rodriguez, 1570 Hillcrest Blvd., Eagle Pass, Texas 78852

Robin D. Sage, P.O. Box 3815, Longview, Texas 75606

William H. Watson, 5310 77th St., Lubbock, Texas 40631

Deadline: Monthly Report due June 5, 2009

Carlos Cardenas, M.D., Border Health PAC, 1210 W. Expressway 83, Ste. 10, Pharr, Texas 78577

TRD-200903049

David A. Reisman

Executive Director

Texas Ethics Commission

Filed: July 23, 2009



Texas Facilities Commission

Request for Proposals #303-9-12223

The Texas Facilities Commission (TFC), on behalf of the Department of Public Safety (DPS), announces the issuance of Request for Proposals (RFP) #303-9-12223. TFC seeks a 5 year or 10 year lease of approximately 3,546 square feet of office space in the city or immediate vicinity of Katy, Texas.

The deadline for questions is August 21, 2009, and the deadline for proposals is September 4, 2009, at 3:00 p.m. The award date is September 18, 2009. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Sandy Williams at (512) 475-0453. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=84079.

TRD-200903213

Kay Molina

General Counsel

Texas Facilities Commission

Filed: July 29, 2009



Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on August 27, 2009, at 1:00 p.m. to receive public comment on the proposed interim per diem Medicaid reimbursement rates for small and large, state-operated Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR) operated by the Texas Department of Aging and Disability Services (DADS).

The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.105(g), which require public notice and hearings on proposed Medicaid reimbursements before such rates are approved by HHSC. 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 Disability Act (ADA) accommodation or auxiliary aids or services should contact Esther Brown by calling (512) 491-1445, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. As the single state agency for the state Medicaid program, HHSC proposes the following interim reimbursement rates for small and large state-operated ICF/MR facilities operated by DADS:

Small State-Operated ICF/MR Facilities - Proposed interim daily rate: \$452.40

Large State-Operated ICF/MR Facilities-Medicaid Only clients - Proposed interim daily rate: \$469.88

Large State-Operated ICF/MR Facilities-Dual-eligible Medicaid/Medicare clients - Proposed interim daily rate: \$450.30

HHSC is proposing these interim rates so that adequate funds will be available to serve clients in these facilities. The proposed interim rates account for actual and projected increases in costs to operate these facilities. The proposed interim rates will be effective September 1, 2009, if approved.

Methodology and Justification. The proposed rates were determined in accordance with the rate setting methodologies codified at Texas Administrative Code (TAC) Title 1 Chapter 355, Subchapter D, §355.456(e), relating to Reimbursement Methodology.

Briefing Package. A briefing package describing the proposed payment rates will be available on August 13, 2009. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Esther Brown by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at Esther.Brown@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 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Esther Brown, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Esther Brown at (512) 491-1998; or by e-mail to Esther.Brown@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Esther Brown, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-200903168

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: July 27, 2009



Notification of Consulting Procurement

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Texas Health and Human Services Commission (HHSC) announces the release of its Intention to Hire Consultant for Information Technology Negotiation Support Services HHSC Procurement #529-10-0021.

The purpose of this procurement is to secure the services of a single, qualified vendor to provide information, advice, and assistance concerning various proposals in Information Technology (IT) negotiations. This qualified vendor will help HHSC improve pricing and terms in IT-related agreements. HHSC has engaged in discussions with Software Contract Solutions. HHSC publishes this notice to determine the existence of any other vendors with this skill set and knowledge base. The requirements for submitting a proposal are published on the HHSC website at http://www.hhsc.state.tx.us/about_hhsc/BusOpp/BO_opportunities.html under HHSC Procurement #529-10-0021. If competing proposals are received, HHSC will base its selection on the criteria set forth in HHSC Procurement #529-10-0021.

HHSC will procure IT-related services utilizing the skills and experience the vendor possesses that relate to licensing trends, specific contracts between vendors and public or private entities, maintenance rates and pricing, risks and exposures and changing technologies and the impacts of these factors on the IT industry and IT contracts. The vendor will assist in identifying cost-savings potential, optimal business terms and additional leverage for HHSC in these types of contracts.

HHSC intends to negotiate a one-year term agreement with the successful vendor with an option for two (2) additional one-year periods. The vendor compensation will be based on an agreed percentage of the value of the savings achieved. The method of calculating that savings is more fully described in the Statement of Work included in HHSC Procurement #529-10-0021. The successful contractor will be expected to begin work on or about August 28, 2009.

HHSC's Sole Point-of-Contact for Procurement #529-10-0021 is Steve R. Bailey, Texas Health and Human Services Commission, 4405 North Lamar Boulevard, Austin, Texas 78756; Telephone: (512) 206-4653; Fax: (512) 206-5475; e-mail: steve.bailey@hhsc.state.tx.us.

All questions regarding this procurement must be sent in writing to the above-referenced contact by 2:00 p.m. Central Time on August 14, 2009. HHSC will post all written questions received with HHSC's responses on its website on August 18, 2009, or as they become available. All proposals must be received at the above-referenced address on or before 4:00 p.m. Central Time on August 21, 2009. Proposals received after this time and date will not be considered.

TRD-200903215

David Brown

Assistant General Counsel

Texas Health and Human Services Commission

Filed: July 29, 2009



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. This notice amends the original notice published in the June 26, 2009, issue of the *Texas Register* (34 TexReg 4373).

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 rate components prior to any case mix adjustment will, on average, be equal to the rate components in effect August 31, 2009 plus 7.12 percent. The amend-

ment will also adjust the pediatric care facility payment rate to be equal to the pediatric care facility payment rate in effect on August 31, 2009 and 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 \$14,178,181 for the remainder of federal fiscal year (FFY) 2009 (September 1, 2009, through September 30, 2009), with approximately \$9,748,917 in federal funds and approximately \$4,429,264 in state general revenue. For FFY 2010, the proposed adjustment of payment rates is estimated to result in additional annual aggregate expenditures of \$170,177,113, with approximately \$118,868,713 in federal funds and approximately \$51,308,400 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 \$13,913,296 for the remainder of FFY 2009, with approximately \$9,566,782 in federal funds and approximately \$4,346,514 in state general revenue. For FFY 2010, the proposed amendment is estimated to result in additional annual aggregate expenditures of \$166,998,489, with approximately \$116,648,444 in federal funds and approximately \$50,350,045 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-200903036

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: July 22, 2009



Texas Department of Insurance

Notice of Application by a Small Employer Health Benefit Plan Issuer to be a Risk-Assuming Health Benefit Plan Issuer

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under Insurance Code §1501.312. A small employer health benefit plan issuer is defined by Insurance Code §1501.002(16) as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to the Insurance Code, Chapter 1501, Subchapters C - H. A risk-assuming health benefit plan issuer is defined by Insurance Code §1501.301(4) as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

Trustmark Life Insurance Company

The application is subject to public inspection at the offices of the Texas Department of Insurance, Legal Division - Nick Hoelscher, 333 Guadalupe, Tower I, Room 920, Austin, Texas.

If you wish to comment on the application of Trustmark Life Insurance Company to be a risk-assuming health benefit plan issuer, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Upon consideration of the application and comments and a determination that all requirements of law have been met, the Commissioner or his designee may take final action on the applicant's election to be a risk-assuming health benefit plan issuer.

TRD-200903047
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: July 23, 2009

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North Central Texas Council of Governments

Funding Available for Local Government, Construction, and Idle Reduction Projects

The North Central Texas Council of Governments (NCTCOG) is now accepting applications for the Heavy-Duty Vehicle and Equipment Grant Program. NCTCOG has partnered with the Texas Commission on Environmental Quality and the U.S. Environmental Protection Agency to implement approximately \$10.7 million in clean vehicle and equipment projects in North Central Texas. This call has three focus areas: local government projects, construction equipment projects, and idle-reduction projects including on-board and on-site technology. Projects will be selected on a modified first-come, first-served basis with applications due to NCTCOG offices by 5:00 p.m. each Friday through March 26, 2010 or until funds are fully awarded, whichever occurs first. For more information, visit www.nctcog.org/AQFunding or call (817) 608-2328.

Regulations:

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-200903214
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: July 29, 2009

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Texas Department of Public Safety

Pre-Disaster Mitigation and Repetitive Flood Claims Grant Program for Fiscal Year 2010 Announced

The Pre-Disaster Mitigation (PDM) and Repetitive Flood Claims (RFC) for Fiscal Year (FY) 2010 grant application window is open, offering an opportunity to obtain grant funding for projects that mitigate risks from natural hazards.

The State encourages PDM projects that address acquisition and demolition of residences on flood prone properties or the elevation of residences or non-residential properties to reduce flood damage; individual or community safe rooms for tornado and high wind hazards; and localized drainage and flood management projects. A PDM grant may also be used to create or update a local mitigation plan. The RFC program addresses the acquisition or elevation of current National Flood Insurance Program (NFIP) insured properties with repetitive losses.

Eligible applicants are state agencies, local jurisdictions, recognized Indian Tribal governments, state supported colleges/universities and councils of government. Private non-profit agencies are not themselves eligible but may be able to find a local government entity to apply on their behalf. All eligible applicants applying for projects other than mitigation planning grants must have a Federal Emergency Management Administration (FEMA)-approved local mitigation plan in accordance with the 44 CFR 201.6.

To submit an application, a web-based account managed by FEMA is set up through the Governor's Division of Emergency Management (GDEM). The chief elected officer must mail a letter to GDEM requesting access for identified individuals to create and submit an application. Information for requesting e-Grant access and submitting applications can be found at [ftp://ftp.txdps.state.tx.us/dem/mitigation/pdm_fy10_guidance.pdf](http://ftp.txdps.state.tx.us/dem/mitigation/pdm_fy10_guidance.pdf).

The deadline for requesting e-Grant access through GDEM is August 16, 2009. The deadline for submitting an RFC application is October 16, 2009. The deadline for submitting a PDM application is October 30, 2009.

TRD-200903053
Lamar Beckworth
Director
Texas Department of Public Safety
Filed: July 24, 2009

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Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on July 27, 2009, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Time Warner Cable for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 37286 before the Public Utility Commission of Texas.

The requested amendment is to expand the service area footprint to include the City Limits of McKinney, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at (800) 735-2989. All inquiries should reference Project Number 37286.

TRD-200903200

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 28, 2009

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**Announcement of Application for Amendment to a
State-Issued Certificate of Franchise Authority**

The Public Utility Commission of Texas received an application on July 27, 2009, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Etan Industries, Inc. d/b/a CMA Communications for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 37287 before the Public Utility Commission of Texas.

The requested amendment is to expand the service area footprint to include the city limits of Jasper, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at (800) 735-2989. All inquiries should reference Project Number 37287.

TRD-200903201
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 28, 2009

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**Announcement of Application for Amendment to a
State-Issued Certificate of Franchise Authority**

The Public Utility Commission of Texas (commission) received an application on July 27, 2009, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of VersaLink Enterprises, LLC for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 37284 before the Public Utility Commission of Texas.

The requested amendment is to expand the service area footprint to include the city limits of Livingston, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at (800) 735-2989. All inquiries should reference Project Number 37284.

TRD-200903202
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 28, 2009

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**Notice of Application for Designation as a Resale Eligible
Telecommunications Provider**

Notice is given to the public of an application filed with the Public Utility Commission of Texas on July 21, 2009, for designation as a resale eligible telecommunications provider (ETP), pursuant to P.U.C. Substantive Rule §26.419.

Docket Title and Number: Application of Global Connection Inc. of America for Designation as a Resale Eligible Telecommunications Provider Pursuant to P.U.C. Substantive Rule §26.419. Docket Number 37261.

The Application: The company is requesting Resale ETP designation in order to be eligible to receive funds from the Texas Universal Service Fund for reimbursement of the discounts provided through the Lifeline program. The Company holds Service Provider Certificate of Operating Authority No. 60682.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by August 27, 2009. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477. All comments should reference Docket Number 37261.

TRD-200903078
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 24, 2009

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**Notice of Application for Service Provider Certificate of
Operating Authority**

Notice is given to the public of the filing with the Public Utility Commission (commission) of Texas of an application on July 24, 2009, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of East Texas Telecommunications LLC for a Service Provider Certificate of Operating Authority, Docket Number 37278 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, ISDN, HDSL, SDSL, Optical Services, T1-Private Line, Fractional T1, and long distance services.

Applicant's requested SPCOA geographic area includes the area of Texas currently served by United Telephone Company of Texas d/b/a Embarq.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than August 12, 2009. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 37278.

TRD-200903199

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 28, 2009



Notice of Application for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on July 24, 2009, for waiver of denial by the Pooling Administrator (PA) of Southwestern Bell Telephone Company d/b/a AT&T Texas' (AT&T Texas) request for one thousand-block of numbers on behalf of its customer, the Presbyterian Hospital of Flower Mound in the 469 NPA, in the Lewisville rate center.

Docket Title and Number: Petition of Southwestern Bell Telephone Company d/b/a AT&T Texas for Waiver of Denial of Numbering Resources, Docket Number 37280.

The Application: AT&T Texas submitted an application to the PA for the requested NPA/NXX in accordance with the current guidelines. The PA denied the request because AT&T Texas did not meet the months-to-exhaust and utilization criteria established by the Federal Communications Commission.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than August 8, 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 37280.

TRD-200903198
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 28, 2009



Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on July 24, 2009, to amend a certificate of convenience and necessity for a proposed transmission line in Childress County, Texas.

Docket Style and Number: Application of AEP Texas North Company to Amend a Certificate of Convenience and Necessity for a 69/138-Kv Transmission Line in Childress County, Texas. Docket Number 37248.

The Application: The application of AEP Texas North Company (TNC) for a proposed transmission line is designated as the Brazos Electric Cooperative, Inc. Henry Substation to AEP TNC Childress 20th Street Substation Transmission Line Project. TNC stated that transmission service reliability to distribution load in the Childress area would be improved by constructing this requested transmission line segment from the Henry Substation to the Childress 20th Street Substation. TNC has also determined that it would be prudent to construct the new transmission line as 138 kV capable with the line initially being operated at 69 kV. The miles of right-of-way for this project will be approximately 0.57 to 0.91 miles (depending on route approved). The estimated date to energize facilities is December 31, 2009.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this proceeding is September 7, 2009. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 37248.

TRD-200903197
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 28, 2009



Notice of Application to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on July 21, 2009, for an amendment to certificated service area boundaries within Real County, Texas.

Docket Style and Number: Joint Application of Pedernales Electric Cooperative, Inc. and Bandera Electric Cooperative, Inc. to amend a Certificate of Convenience and Necessity for Service Area Boundaries within Real County. Docket Number 37259.

The Application: The proposed boundary change is for release of territory from Bandera Electric Cooperative to Pedernales Electric Cooperative so that Pedernales can provide service to Mr. Dean Enright who has requested service from Pedernales Electric Cooperative. Pedernales has existing facilities which are closer and more easily served than with Bandera Electric Cooperative.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than August 14, 2009 by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 37259.

TRD-200903170
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 27, 2009



Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing on July 22, 2009, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on or about July 31, 2009.

Docket Title and Number: Application of United Telephone Company of Texas, Inc. d/b/a Embarq for Approval of LRIC Study for Individual Voice Channels with ISDN-PRI Functionality Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 37266.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 37266. Written

comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 37266.

TRD-200903079
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 24, 2009



Notice of Proceeding for 2009 Annual Compliance Affidavit Attesting to Proper Use of Texas Universal Service Fund

Notice is given to the public of the 2009 annual compliance affidavit proceeding initiated by the Public Utility Commission of Texas (commission) for eligible telecommunications providers (ETP) to attest to the proper use of Texas universal service funds.

Project Title and Number: Annual Compliance Affidavit Attesting to Proper Use of Texas Universal Service Fund Pursuant to PURA §56.030. Project Number 32567.

The Public Utility Commission of Texas initiated this proceeding pursuant to Public Utility Regulatory Act (PURA) §56.030 and P.U.C. Substantive Rule §26.417. PURA §56.030 requires that on or before September 1 of each year, a telecommunications provider that receives disbursements from the TUSF file with the commission an affidavit certifying that the telecommunications provider complies with the requirements for receiving money from the TUSF and requirements regarding the use of money from TUSF program for which the telecommunications provider receives disbursements.

This certification requirement applies to every ETP receiving support from the TUSF. In accordance with PURA §56.030 and P.U.C. Substantive Rule §26.417, each ETP receiving TUSF support must file with the commission a sworn affidavit (using the commission prescribed form) certifying that the provider complies with the requirements for receiving money from the TUSF and the requirements regarding the use of money from each TUSF program for which the provider receives funds.

Therefore, on or before August 31, 2009, carriers designated as ETPs should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll-free at 1-800-735-2989. Persons contacting the commission regarding this certification proceeding should refer to Project Number 32567.

TRD-200903203
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 28, 2009



Notice of Proceeding for 2009 Annual State Certification for Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds

Notice is given to the public of the 2009 annual certification proceeding initiated by the Public Utility Commission of Texas (commission) for state certification of common carriers as eligible telecommunications carriers (ETC) to receive federal universal service funds (FUSF).

Project Title and Number: Designation of Common Carriers as Eligible Telecommunications Carriers (ETC) to Receive Federal Universal Service Funds Pursuant to the Federal Communications Commission's Fourteenth Report and Order Adopting a State Certification Process. Project Number 24481.

The Public Utility Commission of Texas initiated this proceeding in response to the Federal Communications Commission's (FCC) Fourteenth Report and Order adopting a state certification process. Under §254(e) of the Federal Telecommunications Act (FTA), carriers must use federal universal service support "only for the provision, maintenance, and upgrading of facilities and services for which the support was intended." The FCC concluded that it is appropriate for the state to certify that all federal high-cost funds flowing to carriers within the state of Texas are being used in a manner consistent with FTA §254(e). The commission is required to file such annual certification with the FCC and the Universal Service Administrative Company (USAC) on or before October 1 of each year. Absent such certification, carriers will not receive federal universal service support.

The certification requirement is applicable to all rural carriers and competitive eligible telecommunications carriers seeking high-cost support in the service area of a rural local exchange carrier that the state commission certifies as eligible to receive federal high-cost support during that annual period. In accordance with P.U.C. Substantive Rule §26.418(j), carriers shall certify directly to the commission in the form of a sworn affidavit executed by a corporate officer which certifies that the carrier is complying with the federal requirements for the receipt of FUSF support. All carriers within the state of Texas that request certification by the commission shall submit an affidavit on or before September 1, 2009.

Therefore, on or before September 1, 2009, carriers seeking to be certified should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll-free at 1-800-735-2989. Persons contacting the commission regarding this certification proceeding should refer to Project Number 24481.

TRD-200903205
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 29, 2009



Public Notice of Workshop

The staff of the Public Utility Commission of Texas (commission) will hold a workshop to discuss issues related to the Commission's present protections for disconnections and issues raised in previous proceedings related to disconnections, on Friday, August 28, 2009, at 10:00 a.m. in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 36131, *Rulemaking Relating to Disconnection of Electric Service and Deferred Payment Plans* has been established for this proceeding.

This notice is not a formal notice of proposed rulemaking; however, the comments of persons participating in the workshop will assist the

commission in developing policy changes or determining the necessity for amending existing rules or adopting new rules to address severe weather.

Ten days prior to the workshop the commission shall make available in Central Records under Project Number 36131, an agenda for the format of the workshop.

Questions concerning the workshop or this notice should be referred to Christine Wright, Competitive Markets Division, at (512) 936-7376. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200903206
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 29, 2009



Texas Department of Transportation

Aviation Advisory Committee Meeting

Aviation Advisory Committee

Telephone Conference

August 19, 2009, 3:30 p.m.

Texas Department of Transportation, Aviation Division
150 E. Riverside Drive, South Tower, Conference Room 108
Austin, Texas 78704

Agenda

1. Convene
2. Approval of Aviation Capital Improvement Program (Action Item)
3. Open Comments
4. Adjourn

TRD-200903217
Jack Ingram
Associate General Counsel
Texas Department of Transportation
Filed: July 29, 2009



Public Hearing Notice - Statewide Transportation Improvement Program

The Texas Department of Transportation (department) will hold a public hearing on Wednesday, August 26, 2009 at 10:00 a.m. at the Texas Department of Transportation, 200 East Riverside Drive, Room 1A-2, Austin, Texas to receive public comments on the August Quarterly 2009 Revisions to the Statewide Transportation Improvement Program (STIP) for FY 2008-2011. The STIP reflects the federally funded transportation projects in the FY 2008-2011 Transportation Improvement Programs (TIPs) for each Metropolitan Planning Organization (MPO) in the state. The STIP includes both state and federally funded projects for the nonattainment areas of Beaumont, Dallas-Fort Worth, El Paso, and Houston. The STIP also contains information on federally funded projects in rural areas that are not included in any MPO area, and other statewide programs as listed.

Title 23, United States Code, §134 and §135 require each designated MPO and the state, respectively, to develop a TIP as a condition to

securing federal funds for transportation projects under Title 23 or the Federal Transit Act (49 USC §5301, et seq.).

Section 134(j) requires an MPO to develop its TIP in cooperation with the state and affected transportation operators, to provide an opportunity for interested parties to participate in the development of the program, and further requires the TIP to be updated at least once every four years and approved by the MPO and the Governor or Governor's designee. Section 135(g) requires the state to develop an STIP for all areas of the state in cooperation with the designated MPOs and, with respect to non-metropolitan areas, in consultation with affected local officials, and further requires an opportunity for participation by interested parties as well as approval by the Governor or the Governor's designee.

In accordance with 43 TAC §15.8(d), a copy of the proposed August Quarterly 2009 Revisions to the FY 2008-2011 STIP will be available for review, at the time the notice of hearing is published, at each of the department's district offices, at the department's Transportation Planning and Programming Division offices located in Building 118, Second Floor, 118 East Riverside Drive, Austin, Texas, and on the department's website at:

www.txdot.gov

Persons wishing to review the August Quarterly 2009 Revisions to the FY 2008-2011 STIP may do so online or contact the Transportation Planning and Programming Division at (512) 486-5033.

Persons wishing to speak at the hearing may register in advance by notifying Lori Morel, Transportation Planning and Programming Division, at (512) 486-5033 not later than Tuesday, August 25, 2009, or they may register at the hearing location beginning at 9:00 a.m. on the day of the hearing. Speakers will be taken in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony. Persons with disabilities who have special communication or accommodation needs or who plan to attend the hearing may contact the Government and Public Affairs Division, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-9957. Requests should be made no later than three days prior to the hearing. Every reasonable effort will be made to accommodate the needs.

Further information on the FY 2008-2011 STIP may be obtained from Lori Morel, Transportation Planning and Programming Division, 118 East Riverside Drive, Austin, Texas 78704, (512) 486-5033. Interested parties who are unable to attend the hearing may submit comments to James L. Randall, P.E., Director, Transportation Planning and Programming Division, 118 East Riverside Drive, Austin, Texas 78704. In order to be considered, all written comments must be received at the Transportation Planning and Programming office by Monday, September 21, 2009 at 4:00 p.m.

TRD-200903048
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: July 23, 2009



Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site:

http://www.txdot.gov/public_involvement/hearings_meetings.

Or visit www.txdot.gov, click on Public Involvement and click on Hearings and Meetings.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 1-800-68-PI-LOT.

TRD-200903181

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: July 28, 2009

University of North Texas System

Notice of Intent to Amend and Extend Consulting Contract

The University of North Texas System ("UNT System") intends to extend and amend a contract for consulting services related to federal government relations. The consulting services have been provided by Congressional Solutions, Inc. under a contract with an initial term beginning September 5, 2008, and ending August 31, 2009. The contract provides that UNT System may, in its sole option, extend the term of the contract for up to two additional periods of twelve months each. UNT System intends to extend the term of the contract through August 31, 2011.

In addition to the extension, at this time it is necessary for UNT System to amend its contract with Congressional Solutions, Inc. Additional compensation for consultant is necessary in order to more accurately reflect the value of the services provided. The amendment will increase the monthly fee payment from \$13,000 to \$15,000.

As required by Chapter 2254 of the Texas Government Code, prior to amending and extending its contract with Congressional Solutions, Inc., UNT System is posting this Notice of Intent to Amend and Extend the Consulting Contract, and hereby extends this invitation to qualified and experienced consultants interested in providing the consulting services described in this notice.

Scope of Work:

The federal government relations consulting firm will assist UNT System and its member institutions in: developing and executing a government relations strategy to attract support for research facilities, equipment, technology, and programs through federal initiatives pertaining, but not limited to, the United States Congress, federal agencies, and related entities; evaluating research resources, developing concepts and themes for agreed upon research initiatives, developing objectives and strategies in presenting opportunities to utilize the available resources of UNT Institutions for existing and new initiatives, formulating strategies and timetables for presentation of research initiatives, assisting in preparation of supporting documentation, coordinating meetings with pertinent representatives and their staff, serving as a liaison to all federal entities, and preparing testimony for presentation; developing legislative and other strategies; and monitoring and reporting on govern-

ment and other programs relevant to research initiatives and other areas of interest to UNT System and UNT Institutions.

How to Respond; Submittal Deadline:

To respond to this invitation, consultants must submit the information requested in the Specifications section of this invitation and any other relevant information in a clear and concise written format to: Carrie Stoekert, Assistant Director of PPS, University of North Texas, 1155 Union Circle #310499, Denton, Texas 76203-5017 (2310 North Interstate 35-E, Denton, Texas 76201). Offers must be submitted in an envelope or other appropriate container and the name and return address of the consultant must be clearly visible. All offers must be received at the above address no later than 2:00 p.m. CST August 25, 2009. Submissions received after the submittal deadline will not be considered.

Specifications:

Any consultant submitting an offer in response to this invitation must provide the following: (1) the consultant's legal name, type of entity (individual, partnership, corporation, etc.), and address; (2) background information regarding the consultant, including the number of years in business and the number of employees; (3) information regarding the qualifications, education, and experience of the team members proposed to conduct the requested services; (4) the monthly fee to be charged for providing the services and any applicable hourly rate for any team member providing services; (5) the earliest date by which the consultant could begin providing the services; (6) a list of five client references, including any complex institutions or systems of higher education for which the consultant has provided similar consulting services; (7) a statement of the consultant's approach to providing the services described in the Scope of Work section of this invitation, any unique benefits the consultant offers UNT System, and any other information the consultant desires UNT System to consider in connection with the consultant's offer; (8) information to assist UNT System in assessing the consultant's demonstrated competence and experience providing consulting services similar to the services requested in this invitation; (9) information to assist UNT System in assessing the consultant's experience performing the requested services for other complex institutions or systems of higher education; (10) information to assist UNT System in assessing whether the consultant will have any conflicts of interest in performing the requested services; (11) information to assist UNT System in assessing the overall cost to UNT System; and (12) information to assist UNT System in assessing the consultant's capability and financial resources to perform the requested services.

Selection Process:

The consulting services sought herein relate to services previously provided to UNT System by Congressional Solutions, Inc. UNT System intends to amend and extend its contract with Congressional Solutions, Inc. unless a better offer, as determined by UNT System in its sole discretion, is received in response to this invitation.

The successful offer must be submitted in response to this invitation no later than the submittal deadline and will be the offer that is the most advantageous to UNT System in UNT System's sole discretion. Offers will be evaluated by UNT System and member institution personnel. The evaluation of offers and the selection of the successful offer will be based on information provided to UNT System by the consultant in response to the Specifications section of this invitation. Consideration may also be given to any additional information and comments if such information or comments increase the benefits to UNT System. The successful consultant will be required to enter into a contract acceptable to UNT System.

Finding by Chancellor:

The Chancellor of UNT System finds that the consulting services are necessary because UNT System does not have the specialized experience or the staff resources available in Washington, D.C. to support existing and proposed programs of UNT System and its member institutions. UNT System believes that such expert consulting services will be cost effective by expanding federal investment in research, teaching, and related programs in Texas throughout UNT System's member institutions.

Questions:

Questions concerning this invitation should be directed to: Carrie Stoeckert, Assistant Director of Purchasing, University of North Texas, via e-mail carries@unt.edu or phone (940) 565-3203. UNT System may in its sole discretion respond in writing to questions concerning this invitation. Only UNT System's responses made by formal written addenda to this invitation shall be binding. Oral or other written interpretations or clarifications shall be without legal effect.

TRD-200903193

Carrie Stoeckert

Assistant Director of PPS

University of North Texas System

Filed: July 28, 2009



Texas State University System

Reposting of Request for Proposals

RFP ISSUE DATE: July 27, 2009

PROPOSALS DUE: September 1, 2009

Notice: THIS IS A REPOSTING of the Request for Proposals (RFP) issued on July 1, 2009 and published in July 17, 2009, issue of the *Texas Register* (34 TexReg 4793); with proposals due July 15, 2009. Any bidder, who previously posted can renew its continued interest merely by emailing that interest to Melissa.dix@tsus.edu. No additional materials will be required.

The Texas State University System (System) solicits responses to this RFP from law firms interested in providing outside counsel services in the intellectual property area to the System and its component institutions for a one year renewable contract. The System may extend the agreement for these services for an additional period of up to 12 months. Based upon consideration of the responses to this RFP, the System may select one or more firms with which to contract for intellectual matters. The time and number of contracts resulting from this RFP and all procedures relating to such contracts are within the discretion of the System, contingent upon approval of the Office of the Attorney General.

It is the policy of the System to make a good faith effort to include participation of Historically Underutilized Businesses (HUB) certified firms in its contracts. A "HUB" is a for profit business that meets the requirements of Texas Government Code, Chapter 2161 and administrative rules of the Texas Comptroller of Public Accounts in 34 TAC Chapter 20, Subchapter B. In order to comply with the System's HUB policy, the System may select, from firms responding to this RFP, one or more firms to serve as intellectual property counsel.

THE SYSTEM

The System was created by the Texas Legislature in 1911; its institutional components include Lamar University, Sam Houston State University, Sul Ross State University (including Sul Ross Rio Grande College), Texas State University - San Marcos, Lamar Institute of Tech-

nology, Lamar State College - Orange, and Lamar State College - Port Arthur.

The System is governed by a nine-member Board plus one non-voting student regent. Regents are appointed by the Governor with consent of the Senate for six-year, staggered terms. The student regent is appointed by the Governor for a one-year term. The current members of the Board are: Ron Blatchley, Chairman; Trisha S. Pollard, Vice Chairman; Charlie Amato, Michael J. Truncale, Kevin Lilly, David Montagne, Ron Mitchell, Greg Wilkinson, and Donna Williams. The current student regent is William Patterson. Charles R. Matthews is Chancellor of the Texas State University System.

SCOPE OF SERVICES

Responses to this RFP should be based upon performance, under the direction of the Vice Chancellor and General Counsel, of the following tasks:

- (1) Assisting in making presentations and required submissions and obtaining approval of patents and other intellectual property.
- (2) Preparing resolutions, agreements, contracts, and other documents to which the System is a party and which will be necessary in connection with the issuance of patents.
- (3) Attending meetings as requested.
- (4) Preparing patents, licensing agreements, and other such documents.
- (5) Representing the System and its component institutions in presentations and proceedings involving patent applications.
- (6) Rendering advice to the System and its component institutions on intellectual property matters.
- (7) Assisting on other matters necessary or incidental to the intellectual property operations of the System and its component institutions.

Contract(s) resulting from this RFP shall be in the form provided by the Office of the Attorney General. With the approval of the Attorney General's office, a contract may include the following sentence: "This contract does not include litigation or contested case services." No other provision relating to the exclusion of services will be accepted.

SCHEDULE OF EVENTS

The System anticipates that the intellectual counsel RFP process will proceed in accordance with the following schedule:

July 27, 2009 - RFP Issued

September 1, 2009 - DEADLINE FOR SUBMISSION OF PROPOSALS (2:00 p.m.)

Evaluation Completed by September 18, 2009

Selection of firm(s) September 30, 2009

The System reserves the right to change this schedule. Notice of any changes will be posted on the System's website www.tsus.edu.

FORM OF RESPONSE

1. Overview of the Firm

Provide a brief description of your firm, including the total number of attorneys and employees, the number of attorneys practicing in the intellectual property area, and the number of years the firm has been engaged in such practice in Texas. Explain how your firm is organized and how its resources will be applied to the System's work.

2. Qualifications

Provide a brief narrative updating your firm's work since JANUARY 2006 assisting higher education clients with intellectual property work.

3. Resumes

Provide resumes of those persons who would be assigned to serve the System, and indicate specifically the proposed role of each individual. The resumes must clearly specify the number of years the attorney has been licensed to practice law in Texas, and/or other jurisdiction, and the number of years experience in intellectual property work. Further, identify who would be assigned as the primary, day-to-day contact for the System.

4. Business Practices

A. Participation of minorities and women.

(1) Describe your previous experience and involvement working with HUB certified firms (if your firm is not HUB certified) or as a HUB certified firm in a co-bond counsel relationship. Please describe your firm's approach to working with co-bond counsel, including level of effort, division of duties and providing opinions.

(2) Describe efforts made by the firm to encourage and develop the participation of minorities and women in the provision both of the firm's legal services generally and bond matters in particular. Specify whether the firm has adopted formal Equal Employment Opportunity and Affirmative Action policies, and provide a summary of the firm's hiring and promotion statistics for women and minority attorneys from January 2006 to date. Complete the grid describing workforce composition of your firm, which is attached as Exhibit B, and return it as part of your proposal. **Exhibit B is posted on the Texas State University System website at www.tsus.edu.**

5. Conflicts of Interest

Please disclose any actual or potential conflicts of interest. In addition, identify each matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the System or to State of Texas, or any of its boards, agencies, commissions, universities, or elected or appointed officials.

6. References

Please provide names, addresses, and phone numbers of three references.

PROPOSAL MODIFICATION

Any response to this RFP may be modified or withdrawn at any time prior to the proposal due date. No changes will be allowed after the expiration of the proposal due date. The System reserves the right to make amendments to the RFP by giving written notice to all firms who receive the RFP or posting notice thereof as indicated in the RFP Notice published at www.tsus.edu.

TIME SCHEDULE AND SUBMISSION DIRECTIONS

Proposals are due no later than **2:00 p.m., September 1, 2009**. Proposals may be submitted electronically or by mail. If you submit your proposal electronically, email it to: melissa.dix@tsus.edu and enter the phrase PROPOSAL - OUTSIDE COUNSEL in the subject line of the email message. If you submit your proposal by mail, please mail four (4) copies to: Fernando Gomez, Vice Chancellor and General Counsel, Texas State University System, 200 E. 11th Street, Suite 600, Austin, Texas 78701. Additional information may be found at www.tsus.edu regarding Exhibit B.

If you submit your proposal by mail, mark the outside of the envelope or shipping container as "PROPOSAL - OUTSIDE COUNSEL." All proposals become the property of the System. Proposals must set forth accurate and complete information as required by this RFP. Oral instructions or offers will not be considered. **Contact with Board Members, System or component institution officials regarding this RFP**

is expressly prohibited and will result in disqualification of your firm from consideration.

The System's staff will review the proposals.

CONTRACT FORMATION AND CONTRACT ADMINISTRATION INFORMATION

The System has the sole discretion and reserves the right to reject any and all responses to this RFP and to cancel the RFP if it is deemed in the best interest of the System to do so. Issuance of this RFP in no way constitutes a commitment by the System to award a contract or to pay for any expenses incurred either in the preparation of a response to this RFP or in the production of a contract for legal services. Firms responding must maintain a Texas office staffed with personnel who are responsible for providing legal services to the System.

In accordance with Texas Government Code, §1201.027 and §2254.004, the System will evaluate responses to this RFP to identify the firm it judges to be the most highly qualified. Fees may not be considered and may not be indicated in responses to this RFP. The System will then attempt to negotiate a contract at a fair and reasonable price with such firm(s) deemed to be most highly qualified. If a satisfactory contract cannot be negotiated, the System will proceed with another firm.

The System reserves the right to negotiate all elements of the contract for legal services and to approve all personnel assigned to the System's work. If personnel assignments are to be changed, the firm will have to submit resumes of the to-be assigned attorneys and their addition to the contract will be subject to the System's approval.

Further, the System reserves the right to terminate a resulting contract for legal services, for any reason, subject to thirty (30) days prior written notice, and upon payment of earned fees and expenses accrued as of the date of termination.

Any contract resulting from this RFP must be approved by the General Counsel Division of the Office of the Attorney General.

COST INCURRED IN RESPONDING

All costs directly or indirectly related to preparation of a response to this RFP or any supplemental information required to clarify your original response shall be the sole responsibility of, and shall be borne by, your firm.

RELEASE OF INFORMATION AND OPEN RECORDS

Information submitted in response to this RFP shall not be released by the System during the proposal evaluation process. After the evaluation process is completed as determined by the Board, all proposals and the information contained therein may be subject to public disclosure under the public information act, Texas Government Code, Chapter 552.

EXHIBIT B

The Texas State University System will not participate in any programs, nor will it conduct business, with any entity that is found to knowingly discriminate against persons on the basis of race, color, gender, age, national origin, religion, physical or mental disability.

TRD-200903169

Fernando Gomez

General Counsel

Texas State University System

Filed: July 27, 2009

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Texas Veterans Commission

Notice of Request for Proposals for Internal Auditing Services Contract

In accordance with the provisions of Chapter 2254, Texas Government Code, the Texas Veterans Commission (Commission) is soliciting proposals from qualified individuals or organizations to enter into a contract for internal auditing services which will enable the Commission to comply with the Texas Internal Auditing Act, V.T.C.S, Texas Government Code, Chapter 2102.

The role of the internal auditor will be to provide to the Commission comprehensive audit services, including recommendations for improvement on key internal agency programs. The results of the audits will provide the agency information needed for program management, implementation of changes, improvement of internal program processes and improvement of services.

Contact: The Commission will also make the Request for Proposals (RFP) available electronically on the Electronic State Business Daily website on August 11, 2009 at 8:00 a.m. The web site address is esbd.cpa.state.tx.us. All written inquiries must be received by the Commission (contact information provided in the RFP) prior to 5:00 p.m., CST on August 28, 2009. Questions received after this time and date will not be considered.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP.

Closing Date: Proposals must be received the Commission (contact information provided in the RFP) no later than 5:00 p.m. CST, on September 4, 2009. Proposals received after this time and date will not be considered.

Evaluation and Award Procedure: All proposals will be subject to evaluation based on the evaluation criteria set forth in the RFP. The Commission will make the final decision.

The Commission reserves the right to accept or reject any or all proposals submitted. The Commission is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits the Commission to pay for any costs incurred prior to the execution of a contract.

Anticipated Schedule of Events: Issuance of RFP - August 11, 2009; Questions Due - August 28, 2009, 5:00 p.m. CST; Proposals Due - September 4, 2009, 5:00 p.m. CST; Contract Execution - October 2009; Commencement of Work - October 2009.

TRD-200903050

Tina M. Carnes

General Counsel

Texas Veterans Commission

Filed: July 23, 2009



Texas Water Development Board

Request for Applications for Grants under the FEMA Severe Repetitive Loss Program

The Texas Water Development Board (Board), as administrator of the Severe Repetitive Loss (SRL) Program on behalf of the Federal Emergency Management Agency (FEMA), requests the submission of applications leading to the possible award of SRL Program Grants from communities within the State with the legal authority to mitigate the impacts of flooding, and which participate in the National Flood Insurance Program (NFIP), in accordance with FEMA policy and regulations set forth in Title 44 of the Code of Federal Regulations (CFR) Part 79 (44 CFR 79). A community is defined as (a) a political subdivi-

sion, including any Indian tribe or authorized native organization, that has zoning and building code jurisdiction over a particular area having special flood hazards, and which is participating in the NFIP, or (b) a political subdivision or other authority that is designated to develop and administer a mitigation plan by political subdivisions, all of which meet the requirements of (a). Eligible applicants from any area of the state may submit applications for SRL Program Grants. Eligible applicants for SRL Program Grants must have a FEMA approved Hazard Mitigation Action Plan.

Description of SRL Program Purpose and Objectives. The purpose of the SRL Program is to reduce or eliminate the risk of flood damage to severe repetitive loss residential structures insured under the NFIP. An SRL property is defined by FEMA as a residential property that is covered under an NFIP flood insurance policy and: a) has at least four NFIP claim payments (including building and contents) of over \$5,000 each, and the cumulative amount of such claims exceeding \$20,000; or b) at least two separate claims (building payments only, excluding claims for contents losses) with cumulative claims exceeding the market value of the structure. For both a) and b), at least two of the referenced claims must have occurred within any ten-year period, and must be greater than ten days apart. The long-term goal of the SRL Program is to reduce or eliminate claims under the NFIP. The SRL Program will provide funding assistance for eligible flood mitigation projects which will result in the greatest savings to the National Flood Insurance Fund in the shortest period of time, based on a Benefit-Cost Ratio using FEMA approved methodology to conduct the Benefit-Cost Analysis. Mitigation projects that are funded under SRL program are acquisitions/demolition or relocation; elevation of existing structures; Mitigation reconstruction up to \$150,000 federal share (only the SRL grant program); dry flood proofing; and minor localized flood reduction projects.

Description of Funding Considerations. The SRL Program is subject to the availability of federal funding, as well as any directive or restriction made with respect to such funds. The available state wide allocated amount for Federal Fiscal Year 2010 is expected to be about \$20,000,000. These grants all require a 10 percent local match, of which any part or all may be in the form of in-kind services. There are no award limits or project limits associated with grant requests for the SRL Program.

Consultation with the Property Owner. The consultation process is a required notification and information gathering process which is conducted by the applicant prior to the submittal of the application. The applicant will consult with the property owner on project activity types, estimated costs, and insurance implications, as well as, the property owner's right to appeal. The applicant should be clear to the property owner that the consultation does not represent a formal offer of mitigation assistance. In addition, as part of the consultation process, each interested property owner should sign documentation of Notice of Voluntary Participation which will be provided by the applicant as part of the application submittal.

Deadline, Review Criteria and Contact Person for Additional Information. Following the consultation process, the applicant is required to submit applications electronically through FEMA's web-based Electronic Grants Management System (eGrants). Applicants must request access into the eGrants system. Access requests should be directed to Ms. Kathy Hopkins at (512) 463-6198, or by e-mail to kathy.hopkins@twdb.state.tx.us. Deadline for submitting applications to the Board for SRL Program Grant funds is 5:00 p.m., October 15, 2009. Applications will be evaluated according to federal rules and guidance. For additional information concerning the SRL Program, current program guidance, and links to federal rules, go to <http://www.twdb.state.tx.us/wrpi/flood/srl.htm> or [---

IN ADDITION August 7, 2009 34 TexReg 5441](http://www.fema.gov/gov-</p></div><div data-bbox=)

ernment/grant/srl/index. For additional information on FEMA's eGrant system, go to www.fema.gov/government/grant/egrants. Final awards for grant funding will be as approved by FEMA.

TRD-200903178

Kenneth L. Petersen

General Counsel

Texas Water Development Board

Filed: July 28, 2009



Request for Applications for Grants under the FEMA Severe Repetitive Loss Program - Reopening of the Federal Fiscal Year 2009

The Texas Water Development Board (Board), as administrator of the Severe Repetitive Loss (SRL) Program on behalf of the Federal Emergency Management Agency (FEMA), requests the submission of applications leading to the possible award of SRL Program Grants from communities within the State with the legal authority to mitigate the impacts of flooding, and which participate in the National Flood Insurance Program (NFIP), in accordance with FEMA policy and regulations set forth in Title 44 of the Code of Federal Regulations (CFR) Part 79 (44 CFR 79). A community is defined as (a) a political subdivision, including any Indian tribe or authorized native organization, that has zoning and building code jurisdiction over a particular area having special flood hazards, and which is participating in the NFIP, or (b) a political subdivision or other authority that is designated to develop and administer a mitigation plan by political subdivisions, all of which meet the requirements of (a). Eligible applicants from any area of the state may submit applications for SRL Program Grants. Eligible applicants for SRL Program Grants must have a FEMA approved Hazard Mitigation Action Plan.

Description of SRL Program Purpose and Objectives. The purpose of the SRL Program is to reduce or eliminate the risk of flood damage to severe repetitive loss residential structures insured under the NFIP. An SRL property is defined by FEMA as a residential property that is covered under an NFIP flood insurance policy and: a) has at least four NFIP claim payments (including building and contents) of over \$5,000 each, and the cumulative amount of such claims exceeding \$20,000; or b) at least two separate claims (building payments only, excluding claims for contents losses) with cumulative claims exceeding the market value of the structure. For both a) and b), at least two of the referenced claims must have occurred within any ten-year period, and must be greater than ten days apart. The long-term goal of the SRL Program is to reduce or eliminate claims under the NFIP. The SRL Program will provide funding assistance for eligible flood mitigation projects which will result in the greatest savings to the National Flood Insurance Fund in the shortest period of time, based on a Benefit-Cost Ratio using FEMA approved methodology to conduct the Benefit-Cost Analysis. Examples of projects that could be funded under the SRL grant program are acquisitions/demolition or relocation; elevation of existing structures; dry flood proofing; and minor localized flood reduction projects.

Description of Funding Considerations. FEMA has recently notified the TWDB of the re-opening of the SRL grant program for Federal Fiscal Year 2009 (FY 09) starting June 1, 2009. There is a substantial amount of funds remaining in the FY 09 SRL programs and the objective is to leave the application period open until all funds are awarded. Applications will be reviewed and forwarded to FEMA as they are submitted in order to take advantage of these funds. Once the funds have been fully appropriated, FEMA will close the application period. This grant requires a 10 percent local match, of which not more than one-half

may be in the form of in-kind services. There are no award limits associated with grant requests for the SRL Program.

Consultation with the Property Owner. The consultation process is a required notification and information gathering process which is conducted by the applicant prior to the submittal of the application. The applicant will consult with the property owner on project activity types, estimated costs, and insurance implications, as well as, the property owner's right to appeal. The applicant should be clear to the property owner that the consultation does not represent a formal offer of mitigation assistance. In addition, as part of the consultation process, each interested property owner should sign documentation of Notice of Voluntary Participation which will be provided by the applicant as part of the application submittal.

Deadline, Review Criteria and Contact Person for Additional Information. Following the consultation process, the applicant is required to submit applications electronically through FEMA's web-based Electronic Grants Management System (eGrants). Applicants must request access into the eGrants system. Access requests should be directed to Ms. Kathy C. Hopkins at (512) 463-6198, or by e-mail to kathy.hopkins@twdb.state.tx.us. The application should be submitted as soon as possible as the funds will only be available until the funds are fully appropriated. Deadline for submitting applications to the Board for FMA Planning and/or Project Grant funds is 5:00 p.m., October 15, 2009. Applications will be evaluated according to federal rules and guidance. For additional information concerning the SRL Program, current program guidance, and links to federal rules, go to www.fema.gov/government/grant/srl/index. For additional information on FEMA's e-grant system, go to www.fema.gov/government/grant/egrants. Final awards for grant funding will be as approved by FEMA.

TRD-200903183

Kenneth L. Petersen

General Counsel

Texas Water Development Board

Filed: July 28, 2009



Request for Applications for Planning and Project Grants under the FEMA Flood Mitigation Assistance Program

The Texas Water Development Board (Board), as administrator of the Flood Mitigation Assistance (FMA) Program on behalf of the Federal Emergency Management Agency, requests the submission of applications leading to the possible award of FMA Planning Grants and Project Grants from communities within the State with the legal authority to plan for and mitigate the impacts of flooding, and which participate in the National Flood Insurance Program (NFIP), in accordance with FEMA policy and regulations set forth in Title 44 of the Code of Federal Regulations (CFR) Part 79 (44 CFR 79). A community is defined as (a) a political subdivision, including any Indian tribe or authorized native organization, that has zoning and building code jurisdiction over a particular area having special flood hazards, and which is participating in the NFIP, or (b) a political subdivision or other authority that is designated to develop and administer a mitigation plan by political subdivisions, all of which meet the requirements of (a). Eligible applicants from any area of the State may submit applications for FMA Program Planning and Project grants. Eligible applicants for FMA Project Grants must have a FEMA approved Mitigation Action Plan.

Description of FMA Program Purpose and Objectives. The purpose of the FMA Program is to provide Planning and Project grants to develop or update Flood Mitigation Plans for their planning area, and for implementing flood mitigation projects. Examples of projects

that could be funded under FMA are acquisitions/demolition or relocation; elevation of existing structures; dry flood proofing; and minor localized flood reduction projects. The overall goal of the program is to fund cost-effective measures that reduce or eliminate the long-term risk of flood damage to buildings, manufactured homes, and other NFIP-insurable structures. Specific goals include reducing the number of repetitively or substantially damaged structures and associated claims under the NFIP and encouraging long-term comprehensive mitigation planning.

Description of Funding Considerations. The available allocated amounts for Federal Fiscal Year 2010 are expected to be \$250,000 for Planning Grants and \$2,892,400 for Project Grants. These grants all require a 25 percent local match, of which not more than one-half (12.5 percent) may be in the form of in-kind services. No award for a Planning Grant may exceed \$50,000, and no single community may receive more than one Planning Grant per 5-year period. In addition, there is a \$3,300,000 limit for the total amount of Project Grant funds to any single community over a five-year period.

Deadline, Review Criteria and Contact Person for Additional Information. It is required that applications be submitted electronically through FEMA's web-based Electronic Grants Management System (eGrants). Applicants must request access into the eGrants system. Access requests should be directed to Mr. Gilbert Ward at (512) 463-6418, or by e-mail to gilbert.ward@twdb.state.tx.us. Deadline for submitting applications to the Board for FMA Planning and/or Project Grant funds is 5:00 p.m., October 15, 2009. Applications will be evaluated according to rules provided in 31 TAC Chapter 368, see [http://info.sos.state.tx.us/pls/pub/readtac\\$ext.viewtac](http://info.sos.state.tx.us/pls/pub/readtac$ext.viewtac) (Title 31, Part 10). For additional information on the FMA Program, go to <http://www.twdb.state.tx.us/wrpi/flood/fma.htm> or www.fema.gov/government/grant/fma/index. Go to www.fema.gov/government/grant/egrants for additional information on FEMA's eGrant system. Final awards for grant funding will be as approved by FEMA.

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Kenneth L. Petersen
General Counsel
Texas Water Development Board
Filed: July 28, 2009



Request for Applications for Planning and Project Grants under the FEMA Flood Mitigation Assistance Program - Reopening of Federal Fiscal Year 2009

The Texas Water Development Board (Board), as administrator of the Flood Mitigation Assistance (FMA) Program on behalf of the Federal Emergency Management Agency (FEMA), requests the submission of applications leading to the possible award of FMA Planning Grants and Project Grants from communities within the State with the legal authority to plan for and mitigate the impacts of flooding, and which participate in the National Flood Insurance Program (NFIP), in accordance with FEMA policy and regulations set forth in Title 44 of the Code of Federal Regulations (CFR) Part 79 (44 CFR 79). A community is defined as (a) a political subdivision, including any Indian tribe or authorized native organization, that has zoning and building code jurisdiction over a particular area having special flood hazards, and which is participating in the NFIP, or (b) a political subdivision or other authority that is designated to develop and administer a mitigation plan

by political subdivisions, all of which meet the requirements of (a). Eligible applicants from any area of the State may submit applications for FMA Program Planning and Project grants. Eligible applicants for FMA Project Grants must have a FEMA approved Mitigation Action Plan.

Description of FMA Program Purpose and Objectives. The purpose of the FMA Grant Program is to provide Planning and Project grants to develop or update the flood hazard component of Multi-Hazard Mitigation Plans for their planning area, and for implementing flood mitigation projects. Examples of projects that could be funded under the FMA grant program are acquisitions/demolition or relocation; elevation of existing structures; dry flood proofing; and minor localized flood reduction projects. The overall goal of the program is to fund cost-effective measures that reduce or eliminate the long-term risk of flood damage to buildings, manufactured homes, and other NFIP-insurable structures. Specific goals include reducing the number of repetitively or substantially damaged structures and associated claims under the NFIP and encouraging long-term comprehensive mitigation planning.

Description of Funding Considerations. FEMA has recently notified the TWDB of the re-opening of the FMA grant program for Federal Fiscal Year 2009 (FY 09) starting June 1, 2009. There is a substantial amount of funds remaining in FY 09 FMA program and the objective is to leave the application period open until all funds are awarded. Applications will be reviewed and forwarded to FEMA as they are submitted in order to take advantage of these funds. Once the funds have been fully appropriated, FEMA will close the application period. These grants all require a 25 percent local match, of which not more than one-half (12.5 percent) may be in the form of in-kind services. No award for a Planning Grant may exceed \$50,000, and no single community may receive more than one Planning Grant per 5-year period. In addition, there is a \$3,300,000 limit for the total amount of Project Grant funds to any single community over a five-year period, but this may be waived during the re-opening of FY 09.

Deadline, Review Criteria and Contact Person for Additional Information. It is required that applications be submitted electronically through FEMA's web-based Electronic Grants Management System (eGrants). Applicants must request access into the eGrants system. Access requests should be directed to Mr. Gilbert Ward at (512) 463-6418, or by e-mail to gilbert.ward@twdb.state.tx.us. The application should be submitted as soon as possible as the funds will only be available until the funds are fully appropriated. Deadline for submitting applications to the Board for FMA Planning and/or Project Grant funds is 5:00 p.m., October 15, 2009. Applications will be evaluated according to rules provided in 31 TAC Chapter 368, see [http://info.sos.state.tx.us/pls/pub/readtac\\$ext.viewtac](http://info.sos.state.tx.us/pls/pub/readtac$ext.viewtac) (Title 31, Part 10). For additional information on the FMA Program, go to www.fema.gov/government/grant/fma/index. Go to www.fema.gov/government/grant/egrants for additional information on FEMA's e-grant system. Final awards for grant funding will be as approved by FEMA.

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Kenneth L. Petersen
General Counsel
Texas Water Development Board
Filed: July 28, 2009



How to Use the Texas Register

Information Available: The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 33 (2008) is cited as follows: 33 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "33 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 33 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document format) version

through the Internet. For website subscription information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; TAC stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).