
TEXAS REGISTER

Volume 34 Number 48

November 27, 2009

Pages 8423 - 8580



Diego Rodriguez

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

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

Texas Register, (ISSN 0362-4781, USPS 120-090), is published weekly (52 times per year) for \$211.00 (\$311.00 for first class mail delivery) by LexisNexis Matthew Bender & Co., Inc., 1275 Broadway, Albany, N.Y. 12204-2694.

Material in the *Texas Register* is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person without permission of the *Texas Register* director, provided no such republication shall bear the legend *Texas Register* or "Official" without the written permission of the director.

The *Texas Register* is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Albany, N.Y. and at additional mailing offices.

POSTMASTER: Send address changes to the *Texas Register*, 136 Carlin Rd., Conklin, N.Y. 13748-1531.

TEXAS REGISTER

a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(512) 463-5561
FAX (512) 463-5569

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

Secretary of State –
Hope Andrade

Director –
Dan Procter

Staff
Leti Benavides
Dana Blanton
Kris Hogan
Belinda Kirk
Roberta Knight
Jill S. Ledbetter
Juanita Ledesma
Preeti Marasini

IN THIS ISSUE

ATTORNEY GENERAL

Requests for Opinion8429

PROPOSED RULES

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

COORDINATED PLANNING AND DELIVERY OF HEALTH AND HUMAN SERVICES

1 TAC §351.38431

TEXAS DEPARTMENT OF AGRICULTURE

FUEL QUALITY

4 TAC §§5.1, 5.3, 5.4, 5.6, 5.78433

TEXAS EDUCATION AGENCY

ASSESSMENT

19 TAC §101.3003, §101.30048435

TEXAS FUNERAL SERVICE COMMISSION

CEMETERIES AND CREMATORIES

22 TAC §205.38436

TEXAS BOARD OF NURSING

ADVANCED PRACTICE REGISTERED NURSES WITH PRESCRIPTIVE AUTHORITY

22 TAC §§222.1 - 222.128437

DEPARTMENT OF STATE HEALTH SERVICES

GENERAL SANITATION

25 TAC §§265.301 - 265.3088448

TEXAS DEPARTMENT OF INSURANCE

TRADE PRACTICES

28 TAC §21.32028455

28 TAC §21.43018458

TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

DISABILITY MANAGEMENT

28 TAC §137.58460

TEACHER RETIREMENT SYSTEM OF TEXAS

CERTIFICATION BY COMPANIES OFFERING QUALIFIED INVESTMENT PRODUCTS

34 TAC §§53.3, 53.5, 53.6, 53.15, 53.168461

TEXAS BOND REVIEW BOARD

BOND REVIEW BOARD

34 TAC §181.5, §181.108463

34 TAC §181.98465

TEXAS DEPARTMENT OF PUBLIC SAFETY

PRIVATE SECURITY

37 TAC §35.428465

37 TAC §35.438467

37 TAC §35.468467

37 TAC §35.708469

37 TAC §35.718470

37 TAC §35.728471

37 TAC §35.1828472

37 TAC §35.1858472

37 TAC §35.2028473

37 TAC §§35.251 - 35.253, 35.256, 35.257, 35.260 - 35.265, 35.2678474

37 TAC §§35.251 - 35.253, 35.256, 35.257, 35.260 - 35.265, 35.2678474

37 TAC §35.3118478

WITHDRAWN RULES

TEXAS ETHICS COMMISSION

REGULATION OF LOBBYISTS

1 TAC §§34.22 - 34.258481

TEXAS HIGHER EDUCATION COORDINATING BOARD

NATIONAL RESEARCH UNIVERSITIES

19 TAC §15.28481

TEXAS MEDICAL BOARD

TELEMEDICINE

22 TAC §§174.1, 174.2, 174.6 - 174.88481

22 TAC §174.48481

REHABILITATION ORDERS

22 TAC §180.18481

TEXAS PHYSICIAN HEALTH PROGRAM AND REHABILITATION ORDERS

22 TAC §§180.1 - 180.3, 180.78482

TEXAS YOUTH COMMISSION

PROGRAM SERVICES

37 TAC §§91.87 - 91.908482

37 TAC §§91.87 - 91.908482

SECURITY AND CONTROL

37 TAC §97.458482

37 TAC §97.458482

ADOPTED RULES

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS	19 TAC §§13.150 - 13.152	8521
COMPLIANCE ADMINISTRATION	NATIONAL RESEARCH UNIVERSITIES	
10 TAC §§60.101, 60.109 - 60.112, 60.116 - 60.118, 60.120 - 60.123, 60.126, 60.127	19 TAC §15.1, §15.10	8522
8483	STUDENT SERVICES	
PUBLIC UTILITY COMMISSION OF TEXAS	19 TAC §21.122, §21.129	8523
SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS	19 TAC §§21.251 - 21.263	8524
16 TAC §26.25	19 TAC §§21.251 - 21.262	8524
8496	19 TAC §21.566	8527
TEXAS ALCOHOLIC BEVERAGE COMMISSION	19 TAC §§21.610 - 21.614	8527
MARKETING PRACTICES	19 TAC §21.2101, §21.2102	8528
16 TAC §45.131	19 TAC §§21.2220 - 21.2222	8528
8504	19 TAC §§21.2230 - 21.2232	8529
16 TAC §45.131	19 TAC §§21.2240 - 21.2250	8530
8504	TEXAS MEDICAL BOARD	
TEXAS HIGHER EDUCATION COORDINATING BOARD	LICENSURE	
AGENCY ADMINISTRATION	22 TAC §§163.1, 163.2, 163.4 - 163.7, 163.11	8530
19 TAC §1.16	PHYSICIAN REGISTRATION	
8505	22 TAC §§166.1 - 166.4, 166.6	8531
RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS	CRIMINAL HISTORY EVALUATION LETTERS	
19 TAC §4.36	22 TAC §168.1, §168.2	8531
8506	POSTGRADUATE TRAINING PERMITS	
19 TAC §§4.151, 4.153, 4.155, 4.161	22 TAC §§171.3 - 171.5	8532
8507	TEMPORARY AND LIMITED LICENSES	
19 TAC §4.177	22 TAC §172.8	8532
8507	22 TAC §172.16	8532
19 TAC §§4.210 - 4.214	PHYSICIAN PROFILES	
8508	22 TAC §173.1, §173.4	8533
19 TAC §§4.225 - 4.229	FEES, PENALTIES AND FORMS	
8508	22 TAC §175.1	8533
RULES APPLYING TO PUBLIC UNIVERSITIES, HEALTH-RELATED INSTITUTIONS, AND/OR SELECTED PUBLIC COLLEGES OF HIGHER EDUCATION IN TEXAS	22 TAC §175.4	8533
19 TAC §5.48	INVESTIGATIONS	
8512	22 TAC §179.4	8534
19 TAC §§5.120 - 5.122	REHABILITATION ORDERS	
8512	22 TAC §180.1	8534
19 TAC §§5.130 - 5.134	TEXAS PHYSICIAN HEALTH PROGRAM AND REHABILITATION ORDERS	
8512	22 TAC §§180.1 - 180.3, 180.7	8534
HEALTH EDUCATION, TRAINING, AND RESEARCH FUNDS	PROCEDURAL RULES	
19 TAC §§6.81 - 6.83	22 TAC §§187.25 - 187.27	8535
8513	22 TAC §187.37	8535
DEGREE GRANTING COLLEGES AND UNIVERSITIES OTHER THAN TEXAS PUBLIC INSTITUTIONS		
19 TAC §§7.1 - 7.17		
8515		
19 TAC §§7.1 - 7.13		
8515		
INSTITUTIONAL EFFECTIVENESS IN PUBLIC TWO-YEAR COLLEGES		
19 TAC §§10.1 - 10.3		
8520		
19 TAC §§10.21 - 10.24		
8521		
FINANCIAL PLANNING		

DISCIPLINARY GUIDELINES		Invitation for Bid.....	8557
22 TAC §190.2.....	8536	Coastal Coordination Council	
22 TAC §190.14.....	8536	Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program	8557
OFFICE-BASED ANESTHESIA SERVICES AND PAIN MANAGEMENT CLINICS		Office of Consumer Credit Commissioner	
22 TAC §§192.1, 192.4 - 192.7	8540	Notice of Rate Ceilings	8558
STANDING DELEGATION ORDERS		Credit Union Department	
22 TAC §193.6, §193.7.....	8540	Application to Amend Articles of Incorporation.....	8558
NON-CERTIFIED RADIOLOGIC TECHNICIANS		Applications to Expand Field of Membership.....	8558
22 TAC §§194.2, 194.3, 194.5.....	8541	Notice of Final Action Taken.....	8559
TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS		Employees Retirement System of Texas	
APPLICATIONS AND EXAMINATIONS		Contract Award Announcement.....	8559
22 TAC §463.7.....	8541	Contract Award Announcement.....	8559
COMPLAINTS AND ENFORCEMENT		Request for Applications.....	8559
22 TAC §469.7.....	8542	Request for Proposal - Actuarial Audit Services	8560
ADMINISTRATIVE PROCEDURE		Texas Commission on Environmental Quality	
22 TAC §470.2.....	8542	Agreed Orders.....	8560
FEES		Enforcement Orders.....	8564
22 TAC §473.5.....	8542	Notice of District Petition	8568
TEXAS YOUTH COMMISSION		Notice of Water Quality Applications.....	8569
PROGRAM SERVICES		Notice of Water Rights Applications	8570
37 TAC §§91.87 - 91.90	8543	Proposal for Decision.....	8572
37 TAC §§91.87 - 91.90	8543	Texas Facilities Commission	
SECURITY AND CONTROL		Request for Proposals #303-0-10703.....	8572
37 TAC §97.45.....	8544	Texas Health and Human Services Commission	
37 TAC §97.45.....	8544	Notice of Award of a Major Consulting Contract.....	8572
RULE REVIEW		Public Notice.....	8572
Agency Rule Review Plan		Public Notice.....	8573
State Securities Board.....	8545	Public Notice.....	8573
Proposed Rule Review		Request for Public Comment.....	8573
Texas Department of Agriculture.....	8545	Texas Department of Insurance	
TABLES AND GRAPHICS		Company Licensing	8573
.....	8547	Legislative Budget Board	
IN ADDITION		Request for Proposal.....	8574
Texas State Affordable Housing Corporation		North Central Texas Council of Governments	
Notice of Request for Proposals	8557	Request for Qualifications to Provide Services for a Brownfield Qualified Environmental Professional (Revised)	8574
Replacement Reserve Guidelines Now Available for Public Comment	8557	Texas Public Finance Authority	
Ark-Tex Council of Governments		Texas Public Finance Authority Charter School Finance Corporation Request for Applications Concerning Texas Credit Enhancement Program	8575

Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority8575
Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority8575
Announcement of Application for State-Issued Certificate of Franchise Authority8576
Notice of Application for Service Provider Certificate of Operating Authority8576

Texas Department of Transportation

Aviation Division - Request for Proposal for Aviation Engineering Services8576
Port Authority Advisory Committee Meeting8577

University of Houston System

Request for Proposal for PeopleSoft IT Security Review8577

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>.)

Requests for Opinion

RQ-0837-GA

Requestor:

The Honorable C. R. (Kit) Bramblett

Hudspeth County Attorney

Post Office Box 221528

El Paso, Texas 79913-1528

Re: Whether fees collected on behalf of a company that contracts with a county for the provision of solid waste disposal services may be included on a person's county water bill (RQ-0837-GA)

Briefs requested by December 17, 2009

RQ-0838-GA

Requestor:

The Honorable Jeff Wentworth

Chair, Committee on Jurisprudence

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether the transfer of certain duties and funds from the Texas Department of Transportation to the Texas Department of Motor Vehicles in section 17.30 of article IX of the 2011-12 General Appropriations Act constitutes an "item of appropriation" (RQ-0838-GA)

Briefs requested by December 17, 2009

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

TRD-200905311

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: November 18, 2009



PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 351. COORDINATED PLANNING AND DELIVERY OF HEALTH AND HUMAN SERVICES

1 TAC §351.3

The Texas Health and Human Services Commission (HHSC) proposes to amend §351.3, Purpose, Task and Duration of Advisory Committees, under Title 1, Part 15, Chapter 351 of the Texas Administrative Code.

Background and Justification

This amendment describes two new HHSC advisory committees - the Advisory Committee on Qualifications for Health Care Translators and Interpreters and the Electronic Health Information Exchange Advisory Committee. The amendment complies with Texas Government Code §2110.005 and §2110.008, which require the following information regarding advisory committees to be included in rules:

the purpose and task of the committee;

the manner in which the committee will report to the agency; and
the date on which the committee will be abolished.

House Bill (H.B.) 233, 81st Legislature, Regular Session, 2009, added Subchapter R to Chapter 531 of the Texas Government Code, which requires HHSC to establish the Advisory Committee on Qualifications for Health Care Translators and Interpreters. The committee is to provide recommendations to HHSC concerning health care interpreters and translators on: qualification requirements; certification requirements for language proficiency; training requirements; standards of practice; requirements, content, and administration of certification examinations; procedures for testing, qualifying and certifying; and reciprocity agreements with other states. H.B. 233 also requires that the committee develop strategies for implementing the regulation of health care interpreters and health care translators. The committee is required to make recommendations to HHSC for any legislation necessary to establish and enforce qualifications for health care interpreters and health care translators or for the adoption of rules by state agencies regulating health care providers and facilities that hire health care interpreters or health care translators.

House Bill (H.B.) 1218, 81st Legislature, Regular Session, 2009, added §531.904 to the Texas Government Code, which requires HHSC to establish the Electronic Health Information Exchange

System Advisory Committee. The committee will advise HHSC on issues regarding the development and implementation of an electronic health information exchange system that HHSC is required to develop under H.B. 1218 to improve the quality, safety and efficiency of health care services provided under Medicaid and the Children's Health Insurance Program (CHIP). The committee is to advise HHSC on data to be included in an electronic health record; presentation of data; useful measures for quality of service and patient health outcomes; federal and state laws regarding privacy and management of private patient information; incentives for increasing health care provider adoption and usage of an electronic health record and the health information exchange system; data exchange with local or regional health information exchanges; and any other issue specified by HHSC.

Section-by-Section Summary

The proposed amendment adds new paragraphs (14) and (15) to describe the new advisory committees' purpose and task, the manner in which the committees will report to the agency, and the date on which the committees will be abolished.

Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the amended rule is in effect there will be no fiscal impact to state government. The proposed rule will not result in any fiscal implications for local health and human services agencies. There are no fiscal implications for local governments as a result of enforcing or administering the section.

Small and Micro-business Impact Analysis

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

Public Benefit

Susan Johnson, Associate Commissioner for Consumer Support and Workforce Services, and Chris Traylor, Associate Commissioner for Medicaid and CHIP, have determined that for each year of the first five years the section is in effect, the public will benefit from the adoption of the section. The anticipated public benefit, as a result of enforcing the section, will be that HHSC will receive advice on qualifications for health care translators and interpreters and the electronic health information exchange system.

Regulatory Analysis

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

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted to Paula Traffas, at the Health and Human Services Commission Civil Rights Office, 701 West 51st Street, Austin, Texas 78751, by fax to (512) 438-4755, or by e-mail to HHSCivilRightsOffice@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Government Code §531.012, which provides the authority to establish advisory committees.

The proposed rule affects the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§351.3. Purpose, Task and Duration of Advisory Committees.

The Health and Human Services Commission (HHSC) receives recommendations from advisory committees established through state and federal laws, rules, and regulations. The following advisory committees are approved by the HHSC Executive Commissioner:

(1) - (13) (No change.)

(14) Advisory Committee on Qualifications for Health Care Translators and Interpreters.

(A) The Advisory Committee on Qualifications for Health Care Translators and Interpreters is established under the authority of the Government Code, §531.704. The committee advises HHSC on qualifications and standards for health care translators and interpreters for persons with limited English proficiency and persons who are deaf and hard of hearing.

(B) The Advisory Committee on Qualifications for Health Care Translators and Interpreters, through regularly scheduled meetings and verbal or written recommendations to HHSC staff assigned to the committee, establishes and recommends qualifications for health care interpreters and health care translators. The committee will:

(i) develop strategies for implementing the regulation of health care interpreters and health care translators;

(ii) make recommendations to HHSC for any legislation necessary to establish and enforce qualifications for health care interpreters and health care translators or for the adoption of rules by state agencies regulating health care practitioners, hospitals, physician

offices, and health care facilities that hire health care interpreters or health care translators; and

(iii) perform other activities assigned by HHSC related to health care interpreters or health care translators.

(C) The Advisory Committee on Qualifications for Health Care Translators and Interpreters will be automatically abolished January 1, 2021.

(15) Electronic Health Information Exchange System Advisory Committee.

(A) The Electronic Health Information Exchange System Advisory Committee is established under the authority of the Government Code §531.904. The committee advises HHSC on the development and implementation of the electronic health information exchange system for Medicaid and the Children's Health Insurance Program, including any issue specified by HHSC and the following specific issues:

(i) data to be included in an electronic health record;

(ii) presentation of data;

(iii) useful measures for quality of service and patient health outcomes;

(iv) federal and state laws regarding privacy and management of private patient information;

(v) incentives for increasing health care provider adoption and usage of an electronic health record and the health information exchange system; and

(vi) data exchange with local or regional health information exchanges to enhance:

(I) the comprehensive nature of the information contained in electronic health records; and

(II) health care provider efficiency by supporting integration of the information into the electronic health record used by health care providers.

(B) The Electronic Health Information Exchange System Advisory Committee makes recommendations to HHSC through regularly scheduled meetings and verbal or written recommendations to HHSC staff assigned to the committee.

(C) The Electronic Health Information Exchange System Advisory Committee will be automatically abolished August 31, 2013.

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

Filed with the Office of the Secretary of State on November 16, 2009.

TRD-200905277

Steve Aragon

General Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: December 27, 2009

For further information, please call: (512) 424-6576

◆ ◆ ◆
TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 5. FUEL QUALITY

4 TAC §§5.1, 5.3, 5.4, 5.6, 5.7

The Texas Department of Agriculture (department) proposes amendments to §§5.1, 5.3, 5.4, and 5.6, concerning a motor fuel testing fee, and new §5.7 concerning minimum motor fuel standards. The amendments are proposed to implement the changes made to Texas Agriculture Code (the Code), Chapters 13 and 17, by House Bill 2925, 81st Texas Legislature (HB 2925). The amendments will also bring the department into compliance with cost recovery provisions in state law. More specifically, the proposed amendments and new section increase the motor fuel testing fee paid by dealers of motor fuel licensed under Texas Agriculture Code, Chapter 13, and expand the fee to distributors, jobbers, suppliers, and wholesalers of motor fuel in order to fund expanded testing of motor fuel quality. New §5.7 establishes minimum motor fuel standards for motor fuel sold or offered for sale in this state.

Statutory changes made to Chapter 17 of the Code by HB 2925 require the department to expand motor fuel testing to include motor fuel quality standards. These statutory changes extend the scope of testing to all motor fuels, including diesel and those containing ethanol and methanol. Test samples may be collected at any location where motor fuel is kept, transferred, sold, or offered for sale, rather than only testing at the retail location. Under existing rules, the department collects a yearly fee for the purpose of motor fuel octane testing from dealers who hold, or are required to hold, a weights and measures certificate of registration, and who operate a liquid measuring device used to deliver gasoline. The current fee is \$2.50 per single product gasoline device, and \$7.50 per multi-product gasoline device. The proposed amendments expand the collection of the fee to all locations at which motor fuel samples may be drawn for quality testing. This includes pumps dispensing diesel, ethanol and methanol, and bulk meter devices, as well as persons who operate as distributors, jobbers, suppliers, and wholesalers of motor fuel. The proposed fee increase on devices is an additional \$0.80 per single product device, and \$2.40 per multi-product device per year. The fee for distributors, jobbers, and wholesalers of motor fuel is proposed to be \$20 per year. The fee for suppliers of motor fuel is proposed to be \$1500 per year. This fee structure is designed to evenly divide the anticipated expanded revenue with suppliers paying half and dealers, distributors, jobbers, and wholesalers paying half. This is to accomplish legislative intent.

Amended §5.3 requires a motor fuel dealer to post the automotive fuel rating for each grade of gasoline offered for sale in this state in the manner as provided by the United States Federal Trade Commission rule published at 16 CFR Part 306. Amended §5.6(a) makes changes to update statutory references and expand the motor fuel test fee to distributors, jobbers, suppliers, and wholesalers. In accordance with Chapter 17 of the code Amended §5.6(b) increases the motor fuel fee amount by \$0.80 for liquid measuring devices used to deliver one gasoline product per nozzle and by \$2.40 for liquid measuring devices used to deliver multiple gasoline products per nozzle. It also expands collection of the fee to other motor fuels in the amount of \$.80 for single product devices and \$2.40 for multi-product devices. The section is further amended to require a fee of \$20 from distributors, jobbers, and wholesalers of motor fuel and a fee of \$1500 from suppliers of motor fuel. Amended §5.6(c) provides

a method for distributors, jobbers, suppliers, and wholesalers to pay the fee. Amendments to §§5.1, 5.4, and 5.6(d) make changes to update statutory references. New §5.7 establishes minimum motor fuel standards.

Joe Benavides, Regulatory Branch Chief, has determined that for the first five-year period the new and amended sections are in effect, there will be fiscal implications for state government as a result of enforcing or administering the sections. The proposed fee increase on retail fuel devices and distributors, jobbers, suppliers, and wholesalers found in §5.6(b) will result in an approximate increase in revenue of \$513,600 per year. This revenue will be applied to the enforcement of the expanded fuel quality standards required by statute. There will be no fiscal implications for local government as a result of enforcing or administering the sections as proposed.

Mr. Benavides also has determined that for the first five-year period the new and amended sections are in effect, the public benefit of enforcing and administering the sections will be enhanced consumer protection related to motor fuel quality. There will be fiscal implications to an estimated range of 14,000 to 15,000 small businesses and/or microbusinesses as a result of the proposed amendments. There are approximately 74,799 multi-product fuel dispensers, and 72,209 single product fuel dispensers registered with the department. Those devices are licensed to approximately 13,292 license holders. These license holders will pay an increased fee of \$0.80 per single product device and \$2.40 per multi-product device. In accordance with Chapter 17 of the Code, a "distributor" has the meaning assigned by Section 162.001, Tax Code. A "jobber" means a person who purchases tax-paid gasoline for resale or distribution at wholesale. A "wholesaler" means a person who purchases tax-paid gasoline for resale or distribution at wholesale. A "supplier" has the meaning assigned by Section 162.001, Tax Code. There are approximately 968 distributors, jobbers, and wholesalers of motor fuel operating in Texas who will pay a new fee of \$20. There are approximately 173 suppliers of motor fuel operating in Texas who will pay a new fee of \$1500. The increase is necessary to cover the costs of testing for new fuel quality standards required by statute. The department does not operate its own fuel testing lab and must contract for these tests with outside vendors. The department will be required to collect 520 samples to test for compliance to ASTM specifications. Testing costs will range from \$300 to \$3000 per sample depending upon the number of ASTM specifications the sample is tested for. The total testing costs is estimated at \$493,500. In addition to the testing costs, an estimated \$6500 will be required for supplies and administrative costs. The department believes that not increasing fees to cover the expanded range of lab tests will result in increasing costs to the state for every year the fee is not increased, which could lead to an inability of the department to test for fuel quality standards. The alternative, of not performing lab tests for fuel quality, is not feasible since standards are mandated and no other way exists to verify the standards outside of certified lab validation of fuel samples.

Comments on the proposal may be submitted to Joe Benavides, Regulatory Branch Chief, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amended and new sections are proposed under the Texas Agriculture Code (the Code), §12.0144 and Senate Bill 1, Appropriations Act, 81st Legislative Session, 2009, Art. VI, page

4, Rider 3, which provide that the department shall set fees in an amount which offsets, when feasible, the direct and indirect state costs of administering its regulatory activities and Rider 28, which requires the department to assess fees sufficient to generate, during the 2010-11 biennium revenue sufficient to cover costs of the program for testing and enforcement of fuel quality; the Code, §13.021, which provides the department with the authority to adopt rules to establish standard weights and measures and bring about uniformity between the standards established under Chapter 13, and the standards established by federal law; the Code, §17.104, as established by HB 2925, which authorizes the department to impose by rule a fee for testing, inspection, or the performance of duties necessary in the administration of Chapter 17; HB 2925, Section 29, which provides the intent of the Legislature to be that fees, fines and other miscellaneous revenues authorized by HB 2925 at a minimum cover the costs of the fuel quality program; and Texas Government Code, §2001.006, which provides the department with the authority to adopt rules in preparation for the implementation of legislation that has become law, but has not taken effect.

The code affected by the proposal is the Texas Agricultural Code, Chapters 12, 13 and 17.

§5.1. Definitions.

In addition to the definitions set out in Texas Agriculture Code, Chapter 17 [Article 8614, Vernon's Texas Civil Statutes (1997), as amended by Senate Bill 665, 75th Legislature, 1997], and the standards set by the American Society for Testing and Materials (ASTM), the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) ASTM--The American Society for Testing and Materials; the national voluntary consensus standards organization formed for the development of standards on characteristics and performance of materials, products, systems and services and the promotion of related knowledge.

(2) Department--Texas Department of Agriculture.

(3) Gasoline--That term as defined in Texas Tax Code, Chapter 162 [§153.001 of the Texas Tax Code Annotated (Vernon 1992)].

§5.3. Automotive Fuel Rating.

(a) - (d) (No change.)

(e) A motor fuel dealer shall post the automotive fuel rating for each grade of gasoline offered for sale in this state in the manner as provided by the United States Federal Trade Commission rule published at 16 CFR Part 306.

§5.4. Records.

Any [In addition to the right of inspection any] records or other documents required to be maintained under Texas Agriculture Code, Chapter 17, [Article 8614, Vernon's Texas Civil Statutes (1997)] shall be submitted to the department upon request in the manner specified in the request, including immediate inspection.

§5.6. Fees.

(a) Motor fuel testing fee. An annual fee, as provided in subsection (b) of this section, is imposed on ~~every dealer; as defined in Vernon's Texas Civil Statutes; Article 8614 (Article 8614), Section 4, who~~:

(1) every dealer, as defined in Texas Agriculture Code, Chapter 17, who operates a liquid measuring device used to deliver

motor fuel and holds, or is required to hold, a weights and measures certificate of registration under Texas Agriculture Code, Chapter 13; and

(2) every distributor, jobber, supplier, and wholesaler, as defined in Texas Agriculture Code, Chapter 17 [operates a liquid measuring device used to deliver gasoline].

(b) Motor fuel fee amount.

(1) The fee for a dealer is \$3.30 [§2-50] per liquid measuring device used to deliver one gasoline product per nozzle.

(2) The fee for a dealer is \$9.90 [§7-50] per liquid measuring device used to deliver multiple gasoline products per nozzle.

(3) The fee for a dealer is \$0.80 per liquid measuring device used to deliver one motor fuel product other than gasoline per nozzle.

(4) The fee for a dealer is \$2.40 per liquid measuring device used to deliver multiple motor fuel products other than gasoline per nozzle.

(5) The fee for a distributor, jobber, and wholesaler is \$20.

(6) The fee for a supplier is \$1500.

(c) Payment of motor fuel testing fee.

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

(3) Every distributor, jobber, supplier, and wholesaler shall remit annually to the department the motor fuel testing fee amount using a form prescribed by the department.

(d) Penalties. Failure to comply with the requirements of this section may result in the imposition of an administrative penalty or license sanction by the department in accordance with Texas Agriculture Code, Chapter 17 [Article 8614, Section 7A] and/or civil or criminal penalties in accordance with Texas Agriculture Code, Chapters 12 and 17 [Article 8614, Sections 7 and 8].

§5.7. Minimum Motor Fuel Standards.

(a) In accordance with Texas Agriculture Code, Chapter 17, the department adopts by reference, ASTM D 4814, "Standard Specification for Automotive Spark-Ignition Engine Fuel" as standard specification for gasoline with the following modification: Vapor pressure and vapor/liquid ratio seasonal specifications as listed in this section may be extended for a maximum period of 15 days to allow for the disbursement of old stocks. However, new stocks of a higher volatility classification shall not be offered for retail sale prior to the effective date of the higher volatility classification.

(b) In accordance with Texas Agriculture Code, Chapter 17, the department adopts by reference, ASTM D 4814, "Standard Specification for Automotive Spark-Ignition Engine Fuel" as standard specification for alcohol blends with the following modifications:

(1) A vapor pressure tolerance not exceeding one pound per square inch for motor fuels blended with ethanol, excluding the time period from May 1 through October 1 for counties required to have low emissions fuels;

(2) Vapor pressure seasonal specifications as listed in this subsection may be extended for a maximum period of 15 days to allow for the disbursement of old stocks. However, new stocks of a higher volatility classification shall not be offered for retail sale prior to the effective date of the higher volatility classification;

(3) The minimum temperature at 50 percent evaporated shall be 150 degrees F (66 degrees C) as determined by ASTM Test Method D 86 for motor fuels blended with ethanol;

(4) The vapor/liquid ratio specification shall be waived for motor fuels blended with ethanol.

(c) In accordance with Texas Agriculture Code, Chapter 17, the department adopts by reference, ASTM D 975, "Standard Specification for Diesel Fuel Oils" as standard specification for diesel motor fuels and renewable diesel fuels.

(d) In accordance with Texas Agriculture Code, Chapter 17, the department adopts by reference, ASTM D 5798, "Standard Specification for Fuel Ethanol (Ed75-Ed85) for Automotive Spark-Ignition Engines" as standard specification for E85 fuel ethanol.

(e) ASTM documents adopted by reference may be obtained from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959 or their Web site - www.astm.org.

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

Filed with the Office of the Secretary of State on November 16, 2009.

TRD-200905270

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: December 27, 2009

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



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 101. ASSESSMENT

SUBCHAPTER CC. COMMISSIONER'S

RULES CONCERNING IMPLEMENTATION OF TESTING PROGRAM

19 TAC §101.3003, §101.3004

The Texas Education Agency (TEA) proposes amendment to §101.3003 and new §101.3004, concerning implementation of the testing program. Section 101.3003 establishes graduation testing requirements for certain students. The proposed amendment and new section would implement requirements of House Bill (HB) 3, 81st Texas Legislature, 2009, relating to performance standards and end-of-course assessment requirements for graduation.

In June 2009, the 81st Texas Legislature enacted HB 3, which made significant changes to the Texas student assessment program. These changes include the transfer of statutory authority to determine satisfactory performance levels for assessment from the State Board of Education (SBOE) to the commissioner of education. HB 3 also addressed requirements for end-of-course assessments. To implement the requirements of HB 3, proposed revisions to 19 TAC Chapter 101, Subchapter CC, would add new 19 TAC §101.3004, Performance Standards, and amend 19 TAC §101.3003, Graduation Requirements, as follows. The proposed new 19 TAC §101.3004 would specify that responsibility of setting all performance standards on all state-developed assessments belongs to the commissioner of educa-

tion based on the TEC, §39.0241(a). This commissioner rule would replace 19 TAC §101.23, Performance Standards, which will be presented to the SBOE for repeal at its November 2009 meeting. Proposed new 19 TAC §101.3004 would establish in commissioner rule the same scale scores that had been set by the SBOE. The effective date for the repeal of 19 TAC §101.23 will be coordinated with the adoption of proposed new 19 TAC §101.3004 in order to maintain established performance standards.

The proposed amendment to 19 TAC §101.3003 would add new subsection (g) to specify that students entering Grade 9 or lower in the 2011-2012 school year will be subject to end-of-course testing requirements for graduation, as outlined in the TEC, §39.023 and §39.025. In addition, the section title would change from "Graduation Requirements" to "Assessment Requirements for Graduation."

The proposed amendment and new section would have no new procedural and reporting implications. The proposed amendment and new section would have no new locally maintained paperwork requirements.

Criss Cloudt, associate commissioner for assessment, accountability, and data quality, has determined that for the first five-year period the amendment and new section are in effect there will be no additional costs for state or local government as a result of enforcing or administering the rule actions.

Dr. Cloudt has determined that for each year of the first five years the amendment and new section are in effect the public benefit anticipated as a result of enforcing the rule actions will be informing educators and the public of new requirements governing the participation of students in state assessments and the transfer of statutory authority for setting of performance standards. There is no anticipated economic cost to persons who are required to comply with the proposed amendment and new section.

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

The public comment period on the proposal begins November 27, 2009, and ends December 28, 2009. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on November 27, 2009.

The amendment and new section are proposed under the Texas Education Code (TEC), §39.0241, which authorizes the commissioner of education to determine the level of performance considered to be satisfactory on assessment instruments, and the TEC, §39.025, which authorizes the commissioner of education to adopt rules requiring the administration of end-of-course assessment instruments.

The amendment and new section implement the Texas Education Code, §39.0241 and §39.025.

§101.3003. Assessment Requirements for Graduation [Requirements].

(a) Students who were enrolled in Grade 8 or lower on January 1, 2001, and who did not complete all coursework required to graduate by September 1, 2004, must fulfill testing requirements for graduation with the exit level Texas Assessment of Knowledge and Skills (TAKS) tests, as required by the Texas Education Code (TEC), §39.023(c), as that section existed before amendment by Senate Bill (SB) 1031, 80th Texas Legislature, 2007. For purposes of this section, coursework necessary to graduate means all of the coursework required under the student's graduation plan.

(b) With the exception of students who meet the criteria described in subsection (c) of this section, students who were enrolled as follows shall fulfill testing requirements for graduation with the exit level TAKS under applicable performance standards established by the commissioner of education and published on the Texas Education Agency (TEA) website, in lieu of the exit level Texas Assessment of Academic Skills (TAAS):

(1) in Grade 9 or higher on January 1, 2001, regardless of when they are scheduled to graduate; or

(2) in Grade 8 or lower on January 1, 2001, if they were on an accelerated track and fulfilled all coursework necessary to graduate by September 1, 2004.

(c) A student who entered Grade 11 in the 1989-1990 school year or an earlier school year shall fulfill testing requirements for graduation with the exit level TAKS under an applicable performance standard established by the commissioner of education that corresponds to the performance standard in effect for the exit level Texas Educational Assessment of Minimum Skills (TEAMS) when the student was first eligible to take the exit level TEAMS. Performance standards that apply to TEAMS students will be published on the TEA website.

(d) A student fulfilling testing requirements under subsection (b) of this section will be required to take only those sections of the exit level TAKS that correspond to the subject areas formerly assessed by the exit level TAAS (reading, writing, and mathematics) for which the student has not yet met the passing standard.

(1) If a student has not yet met the passing standard on TAAS reading, the student will be administered only the reading multiple-choice items from the TAKS English language arts (ELA) test.

(2) If a student has not yet met the passing standard on TAAS writing, the student will be administered only the writing prompt and the revising and editing multiple-choice items from the TAKS ELA test.

(e) A student fulfilling testing requirements under subsection (c) of this section will be required to take only those sections of the exit level TAKS that correspond to the subject areas formerly assessed by the exit level TEAMS (reading and mathematics) for which the student has not yet met the passing standard. If a student has not yet met the passing standard on TAAS reading, the student will be administered only the reading multiple-choice items from the TAKS ELA test.

(f) Notwithstanding any of the requirements in [these] subsections (a) - (e) of this section, students who pass all of the required exit level TAKS tests have fulfilled their testing requirements for graduation.

(g) Beginning with the 2011-2012 school year, students first enrolled in Grade 9 or lower must fulfill testing requirements for graduation with the end-of-course assessment instruments, as specified in the TEC, §39.023(c), as amended by SB 1031, 80th Texas Legislature, 2007.

§101.3004. Performance Standards.

(a) The commissioner of education shall determine the level of performance considered to be satisfactory on the assessment instruments. The figures in this section identify the performance standards established by the commissioner of education for state-developed assessments, as required by the Texas Education Code (TEC), Chapter 39, Subchapter B, for all grades, assessments, and subjects.

(b) The figure in this subsection identifies the performance standards established by the commissioner for the Texas Assessment of Knowledge and Skills (TAKS) for all grades and subjects other than reading and mathematics in Grades 3-8. Except as otherwise provided by this subsection, the "commended" and "met" standards are based on spring 2003 operational test forms. Future forms will be equated by the Texas Education Agency to the 2003 assessments in order to ensure that equivalent standards are maintained. The "commended" and "met" standards for the TAKS Grade 8 science assessment are based on the spring 2006 operational test form. Future forms of the Grade 8 science assessment will be equated by the Texas Education Agency to the 2006 assessment in order to ensure that equivalent standards are maintained. The exit-level standard in place when a student enters Grade 10 is the standard that will be maintained throughout the student's high school career.

Figure: 19 TAC §101.3004(b)

(c) The figure in this subsection identifies the performance standards established by the commissioner for the TAKS reading and mathematics assessments in Grades 3-8. The "commended" and "met" standards are based on the spring 2008 operational test forms following the implementation of the vertical scale required under the TEC, §39.036. Future forms of the test will be equated by the Texas Education Agency to the 2008 assessment in order to ensure that equivalent standards are maintained.

Figure: 19 TAC §101.3004(c)

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

Filed with the Office of the Secretary of State on November 16, 2009.

TRD-200905272

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: December 27, 2009

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



TITLE 22. EXAMINING BOARDS

PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 205. CEMETERIES AND CREMATORIES

22 TAC §205.3

The Texas Funeral Service Commission (commission) proposes an amendment to §205.3, Crematory License Requirement and Procedure.

The proposed amendments to §205.3 are designed to delete requirements for licensure of crematory establishments that have

become obsolete and to streamline the process of license renewal.

O.C. "Chet" Robbins, Executive Director, has determined that for the first five-year period the amendment is in effect, there will be no fiscal implication for state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Robbins further has determined that for each year of the first five-year period the amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be increased efficiency in the handling of the licensing of crematory establishments. Mr. Robbins also has determined that there will be no effect on large, small or micro-businesses, that there is no anticipated economic costs to persons who are required to comply with the amendment as proposed and that there will be no impact on local employment or economies.

Comments on the proposal may be submitted to Mr. Robbins at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, (512) 479-5064 (fax), or electronically to chet.robbins@tfsc.state.tx.us.

The amendment is proposed under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

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

§205.3. *Crematory License Requirement and Procedure.*

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

~~{(e)}~~ The establishment shall submit the licensing fee after it has passed inspection. The amount of the licensing and renewal fees are posted on the commission's website at www.tfsc.state.tx.us.

(c) ~~{(d)}~~ A license is for one year.

~~{(d)}~~ ~~{(e)}~~ The license may be renewed by filing with the commission a renewal application accompanied by the renewal fee and the Crematory Annual Report required by Texas Occupations Code, §651.658(a)(1) and §205.9 of this chapter (relating to Crematory Annual Report, Extensions for Good Cause, and Late Fees).

~~{(e)}~~ ~~{(f)}~~ The renewal application must contain the information required by Texas Occupations Code, §651.657 and subsection (a) of this section or a statement that the information previously furnished has not changed.

~~{(f)}~~ ~~{(g)}~~ The commission may not renew an application until the applicant has met the requirements of Texas Occupations Code, §651.658(a).

~~{(g)}~~ ~~{(h)}~~ A crematory that fails to renew its license by its renewal date shall pay, in addition to the renewal fee, a late payment penalty equal in amount to the renewal fee.

~~{(h)}~~ ~~{(i)}~~ The license that is not renewed within 30 days of its expiration date may ~~{not}~~ be renewed by paying the renewal fee and late payment penalty. ~~{In this circumstance a new license is required.}~~

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

Filed with the Office of the Secretary of State on November 10, 2009.

TRD-200905183

O.C. Robbins
Executive Director
Texas Funeral Service Commission
Earliest possible date of adoption: December 27, 2009
For further information, please call: (512) 936-2466

◆ ◆ ◆
PART 11. TEXAS BOARD OF NURSING
CHAPTER 222. ADVANCED PRACTICE REGISTERED NURSES WITH PRESCRIPTIVE AUTHORITY

22 TAC §§222.1 - 222.12

INTRODUCTION. The Texas Board of Nursing (Board) proposes amendments to Chapter 222, §§222.1 - 222.12, concerning *Advanced Practice Nurses With Prescriptive Authority*. These amendments are proposed under the Occupations Code §301.151 and §301.152 and are necessary to: (i) clarify changes made to the Medical Practice Act by Senate Bill (SB) 532, enacted by the 81st Legislature, Regular Session, effective September 1, 2009, which amends the Occupations Code Chapter 157; and (ii) provide guidance to advanced practice registered nurses (APRNs) who exercise prescriptive authority in this state. Specifically, the proposed amendments: (i) amend and add new definitions to Chapter 222; (ii) eliminate references to "provisional authorization" throughout Chapter 222; (iii) clarify the content requirements of a Clinical Nurse Specialist's course work; (iv) clarify the content requirements of a prescription for a controlled substance; (v) clarify the circumstances under which an APRN may issue a prescription for the partner of an established patient; (vi) clarify the limitations associated with prescribing "off label" medications; and (vii) update outdated references and correct grammatical and typographical errors.

The proposed amendments were considered at the July 30, 2009, and September 23, 2009, meetings of the Advanced Practice Nursing Advisory Committee (Committee). The Committee reviewed SB 532 and considered its impact on the prescriptive authority of APRNs in this state. The Committee also considered issues associated with prescribing medications for the treatment of sexually transmitted infections for the partners of established patients. Further, the Committee considered limitations associated with writing "off label" prescriptions. Following its discussions, the Committee approved the proposed amendments and recommended their adoption to the Board. At the October 2009, Board meeting, the Board approved the proposed amendments to Chapter 222.

SB 532

SB 532, enacted by the 81st Legislature, Regular Session, effective September 1, 2009, amends portions of the Medical Practice Act relating to a physician's delegation of prescriptive authority. These amendments directly impact the prescriptive authority of APRNs in this state. The proposed amendments to Chapter 222 are necessary (i) to clarify the provisions of SB 532 that affect the prescriptive authority of APRNs and (ii) for consistency with the provisions of SB 532.

Prior to the enactment of SB 532, a physician was not able to delegate the carrying out or signing of a prescriptive drug order for a controlled substance if the prescription period exceeded 30 days. Further, it was unclear as to whether a refill of the pre-

scription was included in this restriction. SB 532 amends the Occupations Code §157.0511(b) to permit a physician to delegate the carrying out or signing of a prescriptive drug order for a controlled substance for a period not to exceed 90 days. SB 532 also clarifies that this time period includes a refill of the prescription. A physician may delegate the carrying out or signing of a prescriptive drug order for a controlled substance to an APRN. In such event, the limitations of §157.0511(b) also apply to the APRN prescribing the medication. As such, proposed amended §222.6(b) clarifies that an APRN may not authorize or issue a prescription for a controlled substance, including a refill of the prescription, for a period exceeding 90 days. Further, proposed amended §222.6(b) prohibits an APRN from authorizing the refill of a prescription for a controlled substance beyond 90 days without consulting the delegating physician. These proposed amendments are necessary for consistency with the limitations imposed by §157.0511(b). SB 532 also expands the definition of *primary practice site* in §157.053(a). Under the new definition, a physician's primary practice site may include a location where an APRN who practices on-site with the physician more than 50 percent of the time provides health care services for established patients. The physician's primary practice site may also include a location where an APRN practices on-site with the physician more than 50 percent of the time and provides, without remuneration, voluntary charity health care services at a clinic run or sponsored by a nonprofit organization or voluntary health care services during a declared emergency or disaster at a temporary facility established for that purpose. The proposed amendments to §222.1(14) are necessary for consistency with the new definition of *primary practice site* in §157.053(a). Proposed amended §222.1(14) clarifies that an APRN may prescribe medications in a setting in which health care services are provided for established patients if the APRN spends at least 50 percent of the time in a setting with the delegating physician. Further, proposed amended §222.1(14) clarifies that an APRN may prescribe medications in a clinic run or sponsored by a nonprofit organization that provides voluntary charity health care services if the APRN spends at least 50 percent of the time in a setting with the delegating physician and if the APRN is not remunerated for his or her services. Proposed amended §222.1(14) also clarifies that an APRN may prescribe medications in a setting where voluntary health care is provided during a declared emergency or disaster, at a temporary facility operated or sponsored by a governmental entity or nonprofit organization, if the APRN spends at least 50 percent of the time in a setting with the delegating physician and if the APRN is not remunerated for his or her services. SB 532 also amends §157.0541(a) to expand the allowable distance between a delegating physician's residence or primary practice site and the physician's alternate practice site. Prior to the enactment of SB 532, a delegating physician's alternate site was required to be located within 60 miles of the physician's primary practice site. SB 532 amends §157.0541(a) to allow a delegating physician's alternate site to be located within 75 miles of the physician's *residence* or primary practice site. This change expands the permitted distance between a delegating physician's alternate site and primary practice site and allows a delegating physician's alternate site to be located within a certain distance from the physician's residence. The proposed amendments to §222.1(5), which require an alternate practice site to be located within 75 miles of a delegating physician's residence or primary practice site, are necessary for consistency with the provisions of §157.0541(a). The Medical Practice Act, §157.0541(b), permits a physician at an alternate site to delegate the act of administering, providing, carrying out, or signing a prescription drug order

to an APRN, provided that the APRN acts under adequate physician supervision. SB 532 enacts several new requirements that a delegating physician must meet in order to comply with the supervision requirements of §157.0541(b). First, §157.0541(c) requires the delegating physician to be on-site with the APRN at least 10 percent of the hours of operation of the site each month that the APRN is acting with delegated prescriptive authority. Further, §157.0541(c) requires the delegating physician to be available while on-site to see, diagnose, treat, and provide care to patients whose services are provided, or will be provided, by the APRN to whom the physician has delegated prescriptive authority. Section 157.0541(c) also requires the delegating physician to be available through direct telecommunication for consultation, patient referral, or assistance with a medical emergency. The proposed amendments to §222.9 are necessary for consistency with the requirements of §157.0541(c). Proposed amended §222.9 requires an APRN to be available on-site with a delegating physician at least 10 percent of the hours of operation of the site each month that the APRN is acting with delegated prescriptive authority. Further, proposed amended §222.9 requires an APRN to have access to a delegating physician through direct telecommunication for consultation, patient referral, or assistance with a medical emergency.

Limitations on Prescriptive Authority

Over time, the Board has received multiple inquiries regarding the ability of an APRN to prescribe medications for the treatment of a sexually transmitted infection for the partner of an established patient. The Committee considered this issue at its July 30, 2009, and September 23, 2009, meetings and recommended the Board's adoption of proposed new §222.4(e) in order to address this serious public health issue. The proposed new subsection to §222.4 is intended to permit APRNs to treat sexually transmitted infections as early as possible and to prevent individuals from contracting sexually transmitted infections from their partners. Specifically, proposed new §222.4(e) authorizes an APRN to prescribe medications for a sexually transmitted infection for the partner of an established patient, if the APRN assesses the patient and determines that the patient may have been infected with a sexually transmitted infection. Proposed new §222.4(e) also makes clear that an APRN is not required to issue such prescriptions. APRNs who elect to issue prescriptions for the partners of established patients, however, are required to do so in compliance with current laws relating to a physician's delegation of prescriptive authority. Further, this issue has also been addressed by the Texas Medical Board. The provisions of proposed new §222.4(e) are consistent with amendments that were adopted by the Texas Medical Board on June 24, 2009, to address this issue. Those amendments, located at 22 Texas Administrative Code §190.8(1)(L)(iii), permit a physician to prescribe medications for sexually transmitted diseases for partners of a physician's established patient, if the physician determines that the patient may have been infected with a sexually transmitted disease.

The Board has also received an increased number of inquiries regarding the prescription of medications for "off label" use, as well as prescriptions for medications that have not been approved by the Food and Drug Administration (FDA). The Committee considered issues associated with prescribing "off label" medications at its July 30, 2009, and September 23, 2009, meetings and recommended the Board's adoption of proposed new §222.4(f) in order to provide additional clarification to APRNs regarding this issue. Proposed new §222.4(f) makes clear that an APRN may prescribe only those medications that

are FDA approved or are part of a United States Institutional Review Board approved research protocol. Proposed new §222.4(f) also clarifies that the prescription of "off label" medications are acceptable only if such use is within the current standard of care for the disease or condition and there is evidenced based research to support such practices. The Texas Medical Board has also addressed this issue. The provisions of proposed new §222.4(f) are consistent with the rules that have been adopted by the Texas Medical Board, located at 22 Texas Administrative Code §190.8(1)(K), to address this issue. Those rules prohibit the prescription or administration of a drug in a manner that is not approved by the FDA for use in human beings or does not meet standards for "off-label" use, unless an exemption has otherwise been obtained from the FDA.

Definitions

The proposal amends and adds several new definitions to Chapter 222. The proposed amended and new definitions are necessary for consistency with (i) the 2008 National Council of State Boards of Nursing (NCSBN) APRN Model Act/Rules and Regulations and (ii) other Board rules relating to APRNs. The proposed amended and new definitions are also necessary to clarify Board intent and meaning.

Proposed new §222.1(1) and (2) adds a definition of *advanced health assessment course* and *advanced pathophysiology course* to the chapter. These proposed new definitions are necessary for consistency with the requirements of §222.2 of this chapter (relating to *Approval for Prescriptive Authority*). Section 222.2(a)(2) prescribes the graduate level courses that an APRN must successfully complete in order to be eligible to receive prescriptive authority. In particular, §222.2(a)(2) refers to advanced health assessment and pathophysiology courses. The proposed new definitions of *advanced health assessment course* and *advanced pathophysiology course* provide additional guidance to APRNs regarding the specific content that a course must contain in order to meet the requirements of §222.2(a)(2). Specifically, *advanced health assessment course* is defined in proposed new §222.1(1) as a course that offers content supported by related clinical experience such that students gain the knowledge and skills needed to perform comprehensive assessments, including histories and physical examinations, to make diagnoses and formulate effective clinical management plans. *Advanced pathophysiology course* is defined in proposed new §222.1(2) as a course that offers content that provides a comprehensive, systems-based study of pathophysiology that provides students with the knowledge and skills to analyze the relationship between normal physiology and pathophysiological phenomena. These proposed new definitions are also necessary for consistency with the APRN educational requirements of §221.3 of this title (relating to *Education*). Section 221.3(e) requires applicants for APRN authorization to demonstrate evidence of the completion of separate, dedicated courses in advanced assessment and pathophysiology. Further, §221.3(e)(5)(A) and (C) contain definitions of the terms *advanced assessment course* and *pathophysiology*, which are consistent with the proposed new definitions of *advanced health assessment course* and *advanced pathophysiology course* in §222.1(1) and (2).

The proposed amendment to §222.1(3) is also necessary for consistency with the requirements of §222.2 of this chapter. Section 222.2(a)(2) prescribes the graduate level courses that an APRN must successfully complete in order to be eligible for prescriptive authority. In particular, §222.2(a)(2) refers to

advanced pharmacotherapeutics courses. The proposed new definition of *advanced pharmacotherapeutics course* provides additional guidance to APRNs regarding the specific content that a course must contain in order to meet the requirements of §222.2(a)(2). Specifically, *advanced pharmacotherapeutics course* is defined in proposed amended §222.1(3) as a course that offers advanced content in pharmacokinetics and pharmacodynamics, encompassing a broad range of drug classifications, including the application of drug therapy to the treatment of disease and/or the promotion of health. Further, the proposed amended definition is necessary for consistency with the APRN educational requirements of §221.3 of this title. Section 221.3(e) requires applicants for APRN authorization to demonstrate evidence of the completion of separate, dedicated courses in advanced pharmacotherapeutics. Further, §221.3(e)(5)(B) contains the definition of the term *pharmacotherapeutics*, which is consistent with the proposed amended definition of *advanced pharmacotherapeutics course* in §222.1(3).

The proposal also amends the existing definition of *advanced practice registered nurse* and adds two new definitions of *population focus area* and *prescribing* to the chapter. The proposed amendments to §222.1(4) and proposed new §222.1(15) and (16) are necessary for consistency with the 2008 NCSBN APRN Model Act/Rules and Regulations. The APRN Model Act/Rules and Regulations were promulgated by NCSBN during its August, 2008, Delegate Assembly. NCSBN is comprised of 60 member boards and operates as the collective voice of nursing regulation in the United States and its territories. Collectively, NCSBN develops nursing examinations, monitors trends in nursing practice and education, promotes uniformity in the regulation of nursing, conducts research on nursing practice issues, provides opportunities for collaboration among its members and other nursing and health care organizations, and promulgates model rules and regulations. The APRN Model Act/Rules and Regulations, which were promulgated by NCSBN, are designed to promote a common understanding of the appropriate scope of practice for an APRN, assist in the standardization of programs leading to APRN preparation, facilitate the mobility of APRNs, ensure public safety, and increase access to health care. As such, the Board has determined that it is important to model the proposed amended definition of *advanced practice registered nurse* in Chapter 222 after the APRN Model Act/Rules and Regulations. The proposed amended definition of *advanced practice registered nurse* in §222.1(4) more fully describes the scope of practice of an APRN and clarifies the requirements that a registered nurse must meet in order to qualify as an APRN. Further, the proposed amended definition of *advanced practice registered nurse* contains all of the substantive components set forth by the APRN Model Act/Rules and Regulations. The proposed new definitions of *prescribing* and *population focus area* in §222.1(15) and (16) are also consistent with the definitions of *prescribing* and *population focus* contained in the APRN Model Act/Rules and Regulations and better clarify the meaning of the terms.

The remaining amendments to §222.1 add clarity to existing definitions, correct references to reflect current state agency names, and re-designate the remaining paragraphs appropriately.

November, 2008 Amendments

The proposal also eliminates references to "provisional authorization" and "provisional authority" throughout the chapter and includes references to advanced practice *registered nurses*

(APRNs). These proposed amendments are necessary for consistency with changes made to Chapter 221 of this title (relating to *Advanced Practice Nurses*) in November, 2008.

In October, 2007, the Board charged the Committee with considering whether Texas should refer to nurses in advanced practice as APRNs rather than as APNs (advanced practice nurses). In order to be consistent with the Occupations Code Chapter 305, the Committee recommended that the Board refer to such nurses as APRNs. Chapter 305 utilizes the term APRN to refer to nurses in advanced practice and prescribes requirements related to the APRN Compact. As a result, the Board adopted amendments to Chapter 221 in November, 2008, that replaced references to APNs with references to APRNs. In order for the Board to ensure consistency among its rules, the proposal also replaces references to APNs with references to APRNs. Further, based upon additional Committee recommendations, the Board adopted amendments in November, 2008, that eliminated provisional authorization for practice for new graduates. As such, references to "provisional authority" and "provisional authorization" were removed from Chapter 221. In order for the Board to ensure consistency among its rules, references to "provisional authority" and "provisional authorization" have also been removed from Chapter 222.

Remaining Amendments

The remaining proposed amendments are necessary for clarification of existing Board rules and for consistency with state laws relating to controlled substances. Section 222.2(a)(2) currently prescribes the requirements that a registered nurse must meet in order to be eligible to receive prescriptive authority from the Board. The proposed amendments to §222.2(a)(2)(A) are necessary to further clarify the course content that a Clinical Nurse Specialist must successfully complete before being eligible to receive prescriptive authority from the Board. Specifically, the proposed amendments clarify that a Clinical Nurse Specialist's course content must consist of separate, dedicated, graduate level courses. Further, the proposed amendments specify that the courses must be academic courses with a minimum of 45 clock hours per course from a nursing program accredited by an organization recognized by the Board. These proposed amendments do not prescribe new or additional educational requirements that a Clinical Nurse Specialist must meet in order to be eligible to receive prescriptive authority from the Board. Rather, the proposed amendments clarify the educational requirements that have been, and are currently, in place for Clinical Nurse Specialists seeking prescriptive authority from the Board. The amendments to §222.2(a)(2)(A) are intended to provide additional guidance to Clinical Nurse Specialist regarding the specific content that a course must contain in order to satisfy the requirement of §222.2(a)(2).

The proposed amendments to §222.4(c) are necessary for consistency with state laws regarding prescriptions for controlled substances. Pursuant to the Health and Safety Code §481.074(k)(9), the Texas Department of Public Safety (DPS) and United States Drug Enforcement Administration (DEA) numbers of a delegating physician must be provided on each prescription written by an APRN. As such, proposed amended §222.4(c)(9) requires DPS and DEA numbers to be included on each prescription written by an APRN. Further, proposed amended §222.6(a) makes clear that APRNs must comply with all federal and state laws and regulations relating to the prescription of controlled substances in Texas, including requirements set forth by the DPS and DEA. These proposed

amendments reiterate an APRN's responsibility to know and meet all federal and state regulations related to the prescription of controlled substances. Further, the proposed amendments clarify that the receipt of prescriptive authority from the Board does not, by itself, permit an APRN to prescribe controlled substances. Rather, all requirements of state law relating to the prescription of controlled substances must be met before an APRN may prescribe controlled substances in this state. Proposed amended §222.6 makes clear that an APRN who receives prescriptive authority from the Board may be eligible to receive DPS and DEA registrations in compliance with state and federal law.

The remaining amendments in the proposal are necessary to update outdated references and correct grammatical and typographical errors.

Section-by-Section Overview. The following is a section-by-section overview of the proposal.

The proposed amended title of Chapter 222 reads as: *Advanced Practice Registered Nurses with Prescriptive Authority*. Proposed amended §222.1 defines the terms to be used throughout Chapter 222. Proposed amended §222.2(a) provides that, to be approved by the Board to sign prescription drug orders and be issued a prescription authorization number, a Registered Nurse (RN) shall have full licensure from the Board to practice as an advanced practice registered nurse. RNs with Interim Approval to practice as advanced practice registered nurses are not eligible for prescriptive authority. Further, proposed amended §222.2(a) provides that, to be approved by the Board to sign prescription drug orders and be issued a prescription authorization number, a Registered Nurse shall file a complete application for prescriptive authority and submit such evidence as required by the Board to verify the following educational qualifications: (i) to be eligible for prescriptive authority, advanced practice registered nurses must have successfully completed graduate level courses in advanced pharmacotherapeutics, advanced pathophysiology, advanced health assessment, and diagnosis and management of diseases and conditions within the role and population focus area; (ii) Nurse Practitioners, Nurse-Midwives and Nurse Anesthetists will be considered to have met the course requirements of §222.2 on the basis of courses completed in the advanced practice nursing educational program; and (iii) Clinical Nurse Specialists shall submit documentation of successful completion of separate, dedicated, graduate level courses in the content areas described in §222.2(a). Such courses shall be academic courses with a minimum of 45 clock hours per course from a nursing program accredited by an organization recognized by the Board. Further, the Board, by policy, may determine that certain specialties of Clinical Nurse Specialists meet one or more of the course requirements on the basis of the advanced practice nursing educational program. Additionally, Clinical Nurse Specialists who were previously approved by the Board as advanced practice registered nurses by petition on the basis of completion of a non-nursing master's degree shall not be eligible for prescriptive authority. Proposed amended §222.2(c) provides that requirements for utilizing prescriptive authority may be modified or waived if a delegating physician has received a modification or waiver from the Texas Medical Board of any site or supervision requirements for a physician to delegate the carrying out or signing of prescription drug orders to the advanced practice registered nurse. Proposed amended §222.3(a) provides that the advanced practice registered nurse shall renew the privilege to sign prescription drug orders in conjunction with the RN and advanced practice

license renewal application. Proposed amended §222.3(b) provides that the advanced practice registered nurse seeking to maintain prescriptive authority shall attest, on forms provided by the Board, to completing at least five contact hours of continuing education in pharmacotherapeutics within the preceding biennium. Proposed amended §222.3(c) provides that the continuing education requirement in §222.3(b) shall be in addition to continuing education required under Chapter 216 of this title (relating to *Continuing Competency*). Proposed amended §222.4(a) provides that the advanced practice registered nurse with a valid prescription authorization number shall (i) sign prescription drug orders for only those drugs that are prescribed for patient populations within the accepted scope of professional practice for the advanced practice registered nurse's license and (ii) comply with the requirements for adequate physician supervision published in the rules of the Texas Medical Board relating to Delegation of the Carrying Out or Signing of Prescription Drug Orders to Physician Assistants and Advanced Practice Nurses, as well as other applicable laws. Proposed amended §222.4(b) provides that protocols or other written authorization shall be defined in a manner that promotes the exercise of professional judgment by the advanced practice registered nurse commensurate with the education and experience of that person. Further, a protocol or other written authorization is not required to describe the exact steps that the advanced practice registered nurse must take with respect to each specific condition, disease, or symptom. Further, protocols or other written authorization shall be written, agreed upon and signed by the advanced practice registered nurse and the physician and maintained in the practice setting of the advanced practice registered nurse. Proposed amended §222.4(c) provides that the format and essential elements of the prescription shall comply with the requirements of the Texas State Board of Pharmacy. The following information must be provided on each prescription: (i) the name, address, telephone number, and, if the prescription is for a controlled substance, the United States Drug Enforcement Administration number of the delegating physician; and (ii) the name, prescription authorization number, original signature, and, if the prescription is for a controlled substance, the Texas Department of Public Safety and United States Drug Enforcement Administration numbers of the advanced practice registered nurse signing or co-signing the prescription drug order. Proposed amended §222.4(d) provides that the advanced practice registered nurse shall authorize or prevent generic substitution on a prescription in compliance with the current rules of the Texas State Board of Pharmacy relating to Generic Substitution. Proposed new §222.4(e) provides that an advanced practice registered nurse may prescribe medications for sexually transmitted diseases for partners of an established patient, if the advanced practice registered nurse assesses the patient and determines that the patient may have been infected with a sexually transmitted disease. Further, nothing in proposed new §222.4(e) shall be construed to require the advanced practice registered nurse to issue prescriptions for partners of patients. Proposed new §222.4(f) provides that advanced practice registered nurses may prescribe only those medications that are FDA approved unless done through protocol registration in a United States Institutional Review Board or Expanded Access authorized clinical trial. Further, "off label" use, or prescription of FDA-approved medications for uses other than that indicated by the FDA, is permitted when such practices are (i) within the current standard of care for treatment of the disease or condition and (ii) supported by evidence-based research. Proposed amended §222.5 provides that advanced

practice registered nurses with full licensure and valid prescription authorization numbers are eligible to sign prescription drugs orders for dangerous drugs in accordance with the standards and requirements set forth in Chapter 222. Proposed amended §222.6(a) provides that advanced practice registered nurses with full licensure and valid prescription authorization numbers are eligible to obtain authority to prescribe certain categories of controlled substances. Further, the advanced practice registered nurse must comply with all federal and state laws and regulations relating to the prescribing of controlled substances in Texas, including but not limited to, requirements set forth by the Texas Department of Public Safety and the United States Drug Enforcement Administration. Proposed amended §222.6(b) provides that advanced practice registered nurses who authorize or issue prescriptions for controlled substances shall: (i) limit prescriptions for controlled substances to those medications listed in Schedules III through V as established by the commissioner of public health under Chapter 481, Health and Safety Code (Texas Controlled Substances Act); (ii) issue prescriptions, including a refill of the prescription, for a period not to exceed 90 days; and (iii) not authorize the refill of a prescription for a controlled substance beyond the initial 90 days prior to consultation with the delegating physician and notation of the consultation in the patient's chart. Proposed amended §222.7 provides that, when signing prescription drug orders at a site serving a medically underserved population, the advanced practice registered nurse shall: (i) maintain protocols or other written authorization that must be reviewed and signed by both the advanced practice registered nurse and the delegating physician at least annually; (ii) provide a daily status report to the physician on any problems or complications encountered that are not covered by protocol; and (iii) be available during on-site visits by the physician which shall occur at least once every 10 business days that the advanced practice registered nurse is on site providing care. Proposed amended §222.8 provides that when signing prescription drug orders at a physician's primary practice site, the advanced practice registered nurse shall maintain protocols or other written authorization that must be reviewed and signed by both the advanced practice registered nurse and the delegating physician at least annually. Proposed amended §222.9 provides that, when signing prescription drug orders at an alternate site, the advanced practice registered nurse shall: (i) maintain Protocols or other written authorization that must be reviewed and signed by both the advanced practice registered nurse and the delegating physician at least annually; (ii) be available on-site with the physician at least 10 percent of the hours of operation of the site each month that the advanced practice registered nurse is acting with delegated prescriptive authority; and (iii) have access to the delegating physician through direct telecommunication for consultation, patient referral, or assistance with a medical emergency. Proposed amended §222.10 provides that, when signing prescription drug orders at a facility-based practice site, the advanced practice registered nurse shall maintain protocols or other written authorization developed in accordance with facility medical staff policies and review the authorizing documents with the appropriate medical staff at least annually. Proposed amended §222.11 provides that the advanced practice registered nurse with a valid prescription authorization number may request, receive, possess and distribute prescription drug samples provided: (i) all requirements for the advanced practice registered nurse to sign prescription drug orders are met; (ii) protocols or other physician orders authorize the advanced practice registered nurse to sign the prescription drug orders;

and (iii) the samples are for only those drugs that the advanced practice registered nurse is eligible to prescribe in accordance with the standards and requirements set forth in Chapter 222. Proposed amended §222.12(a) provides that any advanced practice registered nurse who violates these rules or prescribes in a manner that is not consistent with the standard of care shall be subject to removal of the authority to prescribe under this rule and disciplinary action by the Board under Occupations Code §301.452. Proposed amended §222.12(b) provides that the Board shall report to the Texas Department of Public Safety and the United States Drug Enforcement Administration any of the following: (i) any significant changes in the status of the RN license or advanced practice license, or (ii) disciplinary action impacting an advanced practice registered nurse's ability to authorize or issue prescription drug orders. Proposed amended §222.12(c) provides that the practice of the advanced practice registered nurse approved by the Board to sign prescription drug orders is subject to monitoring by the Board on a periodic basis.

FISCAL NOTE. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments are in effect, there will be no additional fiscal implications for state or local government as a result of implementing the proposed amendments.

PUBLIC BENEFIT/COST NOTE. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, there will be public benefits, and there will be potential costs for individuals required to comply with the proposal.

Anticipated Public Benefits. The anticipated public benefits will be the adoption of requirements that: (i) promote consistency with APRN national nursing standards; (ii) provide guidance to APRNs regarding their prescriptive authority in this state; and (iii) promote consistency among Board rules.

The proposed amendments to Chapter 222 promote consistency with the APRN standards promulgated and adopted by NCSBN during its August, 2008, Delegate Assembly. APRNs have expanded in number and capability over the past several decades and have become increasingly more important in meeting the healthcare needs of the public. As a result, NCSBN has promulgated model rules and regulations designed to promote a common understanding of the appropriate scope of practice of APRNs, assist in the standardization of programs leading to APRN preparation, facilitate the mobility of APRNs, ensure public safety, and increase access to health care. The proposed amendments to Chapter 222 incorporate many of the definitions contained in the model rules and regulations promulgated by NCSBN, including the definition of APRN. By adopting definitions that are consistent with the model rules and regulations promulgated by NCSBN, the proposed amendments promote a common understanding of the scope of practice of an APRN and facilitate the standardization of APRN regulation across jurisdictions.

Many significant changes affecting an APRN's prescriptive authority in Texas were enacted during the 81st Legislative Session. The proposed amendments to Chapter 222 clarify the effect of these changes on an APRN's prescriptive authority. For example, the proposed amendments clarify that an APRN may not authorize or issue a prescription for a controlled substance, including a refill of the prescription, for a period exceeding 90 days. Further, the proposed amendments prohibit an APRN from authorizing the refill of a prescription for a controlled sub-

stance beyond 90 days without consulting the delegating physician. The proposed amendments also specify new locations where an APRN meeting certain conditions may prescribe medications. The proposed amendments also clarify the additional supervision requirements prescribed by SB 532. Collectively, the proposed amendments are designed to inform APRNs of these changes in law and provide guidance to APRNs regarding the changes that may affect their practice. By clarifying these changes in law, the proposed amendments promote compliance with these requirements, which results in more effective regulation and better protection of the public.

The proposed amendments to Chapter 222 also address two important public health concerns that many APRNs routinely encounter in their day to day practice. Further, the Board has received an increasing number of inquiries from the public regarding these public health issues. By directly addressing these public health concerns, the proposed amendments provide guidance to APRNs so that they may be better able to respond to these issues. First, the proposed amendments clarify that an APRN may prescribe medications for the treatment of a sexually transmitted infection for the partner of an established patient. This proposed amendment is designed to provide for the treatment of a sexually transmitted infection at the earliest possible time and to prevent the further transmission of a sexually transmitted infection. Because this proposed amendment makes clear that an APRN may provide such treatment, members of the public may be able to receive treatment more quickly. Second, the proposed amendments clarify the restrictions that apply to the prescription of "off label" medications, or medications that have not been approved by the FDA. Because such medications may be inappropriate or ineffective for the treatment of certain illnesses and sicknesses, the proposed amendments make clear that such medications should only be prescribed in certain, limited circumstances. By providing this additional clarification and guidance, the proposed amendments seek to protect members of the public from dangerous or ineffective treatment and care. Further, the proposed amendments also clarify that the prescription of "off label" medications may be used only if such use is within the current standard of care for the disease or condition and there is evidenced based research to support such practices. These limitations serve to protect the public from the use of potentially dangerous or ineffective medications.

The proposed amendments to Chapter 222 also correct and eliminate outdated or incorrect references for consistency with other Board rules. Consistency among Board rules results in clear and more efficient regulation, which benefits regulated individuals, as well as the public at large.

Potential Costs for Individuals To Comply with the Proposal.

The proposal requires an APRN signing or co-signing a prescription drug order to include his or her DPS and DEA numbers on the prescription. Further, the proposal requires an APRN to comply with all federal and state laws and regulations relating to prescribing controlled substances in Texas, including but not limited to, requirements set forth by the DPS and DEA. A registered nurse is not required by law to obtain prescriptive authority from the Board in order to practice as an APRN in this state. For those APRNs who choose to obtain prescriptive authority from the Board, there may be associated costs of compliance with proposed amended §222.4(c)(9) and §222.6(a). The probable costs of compliance with proposed amended §222.4(c)(9) and §222.6(a) will result from registering and obtaining a DPS and DEA number. The costs to comply with these proposed amend-

ments, however, result from the enactment of the Health and Safety Code §481.074(k)(9) and are not a result of the adoption, enforcement, or administration of the proposal. Section 481.074(k)(9) provides that a prescription for a controlled substance must show: (i) the quantity of the substance prescribed; (ii) the date of issue; (iii) the name, address, and date of birth or age of the patient or, if the controlled substance is prescribed for an animal, the species of the animal and the name and address of its owner; (iv) the name and strength of the controlled substance prescribed; (v) the directions for use of the controlled substance; (vi) the intended use of the substance prescribed unless the practitioner determines the furnishing of this information is not in the best interest of the patient; (vii) the legibly printed or stamped name, address, DEA registration number, and telephone number of the practitioner at the practitioner's usual place of business; (viii) if the prescription is handwritten, the signature of the prescribing practitioner; and (ix) if the prescribing practitioner is licensed in this state, the practitioner's department registration number. The Board anticipates the costs of registering and obtaining a DPS number to be \$25 per yearly registration period. DPS requires all persons that dispense controlled substances in Texas to register and receive a registration number. The Board anticipates that the total probable cost of registering with DPS will include completing an application and sending in payment to DPS. The Board anticipates this cost to be minimal. The issuance of a DEA registration to prescribe controlled substances is predicated on the successful completion of all of the requirements imposed by the state in which a practitioner will conduct business and obtain a state license. If the practitioner fails to obtain the required state license or has the license revoked or rescinded, then the DEA cannot issue the requested registration. The Board anticipates the cost of registering and obtaining a DEA number to be \$551 per every three year registration period. Further, the Board anticipates that the total probable cost of registering with DEA will include completing an application and sending in payment to DEA. The Board anticipates this cost to be minimal. Any other costs to comply with the proposal result from the enactment of the Occupations Code Chapters 157 and 301 and the Health and Safety Code Chapter 481 and are not a result of the adoption, enforcement, or administration of the proposal.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES.

As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposal will not have an adverse economic effect on any individual, Board regulated entity, or other entity required to comply with the proposal because no individual, Board regulated entity, or other entity required to comply with the proposal meets the definition of a small or micro business under the Government Code §2006.001(1) or (2). The Government Code §2006.001(1) defines a micro business as a legal entity, including a corporation, partnership, or sole proprietorship that: (i) is formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has not more than 20 employees. The Government Code §2006.001(2) defines a small business as a legal entity, including a corporation, partnership, or sole proprietorship, that: (i) is formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has fewer than 100 employees or less than \$6 million in annual gross receipts. Each of the elements in §2006.001(1) and (2) must be met in order for an entity to qualify as a micro business or small business. The only entities subject to the proposal are individuals. Because individuals are not indepen-

dently owned and operated legal entities that are formed for the purpose of making a profit, no individual licensee or applicant qualifies as a micro business or small business under the Government Code §2006.001(1) or (2). Therefore, in accordance with the Government Code §2006.002(c) and (f), the Board is not required to prepare a regulatory flexibility analysis.

TAKINGS IMPACT ASSESSMENT. The Board has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 5:00 p.m. on December 27, 2009, to James W. 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 faxed to (512) 305-8101. An additional copy of the comments on the proposal or any request for a public hearing must be simultaneously submitted to Jolene Zych, Advanced Practice Consultant, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to jolene.zych@bon.state.tx.us, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

STATUTORY AUTHORITY. The amendments are proposed under the Occupations Code §§157.0511(b), 157.053(a), 157.0541(a) - (c), 301.151, 301.152, and 305.001, Article 2(a). Section 157.0511(b) provides that a physician may delegate the carrying out or signing of a prescription drug order for a controlled substance only if: (i) the prescription is for a controlled substance listed in Schedule III, IV, or V as established by the commissioner of public health under Chapter 481, Health and Safety Code; (ii) the prescription, including a refill of the prescription, is for a period not to exceed 90 days; (iii) with regard to the refill of a prescription, the refill is authorized after consultation with the delegating physician and the consultation is noted in the patient's chart; and (iv) with regard to a prescription for a child less than two years of age, the prescription is made after consultation with the delegating physician and the consultation is noted in the patient's chart. Section 157.053(a) provides that *primary practice site* means: (i) the practice location of a physician at which the physician spends the majority of the physician's time; (ii) a licensed hospital, a licensed long-term care facility, or a licensed adult care center where both the physician and the physician assistant or advanced practice nurse are authorized to practice; (iii) a clinic operated by or for the benefit of a public school district to provide care to the students of that district and the siblings of those students, if consent to treatment at that clinic is obtained in a manner that complies with Chapter 32, Family Code; (iv) the residence of an established patient; (v) another location at which the physician is physically present with the physician assistant or advanced practice nurse; or (vi) a location where a physician assistant or advanced practice nurse who practices on-site with the physician more than 50 percent of the time and in accordance with Board rules provides health care services for established patients; without remuneration, voluntary charity health care services at a clinic run or sponsored by a nonprofit organization; or without remuneration, voluntary health care services during a declared emergency or disaster at a temporary facility operated or sponsored by a governmental entity or nonprofit organization and established to serve persons

in this state. Section 157.0541(a) provides that *alternate site* means a practice site: (i) where services similar to the services provided at the delegating physician's primary practice site are provided; and (ii) located within 75 miles of the delegating physician's residence or primary practice site. Section 157.0541(b) provides that at an alternate site, a physician licensed by the Board may delegate to an advanced practice nurse or physician assistant, acting under adequate physician supervision, the act of administering, providing, or carrying out or signing a prescription drug order as authorized through a physician's order, a standing medical order, a standing delegation order, or another order or protocol as defined by the Board. Section 157.0541(c) provides that physician supervision is adequate for the purposes of §157.0541 if: (i) the delegating physician is on-site with the advanced practice nurse or physician assistant at least 10 percent of the hours of operation of the site each month that the physician assistant or advanced practice nurse is acting with delegated prescriptive authority and is available while on-site to see, diagnose, treat, and provide care to those patients for services provided or to be provided by the physician assistant or advanced practice nurse to whom the physician has delegated prescriptive authority; and is not prohibited by contract from seeing, diagnosing, or treating a patient for services provided or to be provided by the physician assistant or advanced practice nurse under delegated prescriptive authority; (ii) the delegating physician reviews at least 10 percent of the medical charts, including through electronic review of the charts from a remote location, for each advanced practice nurse or physician assistant at the site; and (iii) the delegating physician is available through direct telecommunication for consultation, patient referral, or assistance with a medical emergency. Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (1) perform its duties and conduct proceedings before the Board; (2) regulate the practice of professional nursing and vocational nursing; (3) establish standards of professional conduct for license holders under Chapter 301; and (4) determine whether an act constitutes the practice of professional nursing or vocational nursing. Section 301.152(a) provides that "advanced practice nurse" means a registered nurse approved by the Board to practice as an advanced practice nurse on the basis of completion of an advanced educational program. The term includes a nurse practitioner, nurse midwife, nurse anesthetist, and clinical nurse specialist. The term is also synonymous with *advanced nurse practitioner*. Section 301.152(b) authorizes the Board to adopt rules to: (i) establish any specialized education or training, including pharmacology, that a registered nurse must have to carry out a prescription drug order under §157.052 and a system for assigning an identification number to a registered nurse who provides the Board with evidence of completing the specialized education and training requirement under §301.152(b)(1)(A); (ii) approve a registered nurse as an advanced practice nurse; and (iii) initially approve and biennially renew an advanced practice nurse's authority to carry out or sign a prescription drug order under Chapter 157. Section 301.152(c) provides that the rules adopted under §301.152(b)(3) must: (i) require completion of pharmacology and related pathology education for initial approval; (ii) require continuing education in clinical pharmacology and related pathology in addition to any continuing education otherwise required under §301.303; and (iii) provide for the issuance of a prescription authorization number to an advanced practice nurse approved under this section. Section 301.152(d) provides that the signature of an advanced practice nurse attesting to the provision of a legally authorized service

by the advanced practice nurse satisfies any documentation requirement for that service established by a state agency. Section 305.001, Article 2(a) defines *advanced practice registered nurse* or *APRN* as a nurse anesthetist, nurse practitioner, nurse midwife, or clinical nurse specialist to the extent a party state licenses or grants authority to practice in that APRN role and title.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: §§222.1 - 222.12, Occupations Code §§157.0511(b), 157.053(a), 157.0541(a) - (c), 301.151, 301.152, and 305.001, Article 2(a)

§222.1. *Definitions.*

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

(1) Advanced health assessment course--A course that offers content supported by related clinical experience such that students gain the knowledge and skills needed to perform comprehensive assessments, including histories and physical examinations, to make diagnoses and formulate effective clinical management plans.

~~{(1) Advanced practice nurse--A registered nurse approved by the board to practice as an advanced practice nurse based on completing an advanced educational program acceptable to the board. The term includes a nurse practitioner, nurse midwife, nurse anesthetist, and a clinical nurse specialist. The advanced practice nurse is prepared to practice in an expanded role to provide health care to individuals, families, and/or groups in a variety of settings including but not limited to homes, hospitals, institutions, offices, industry, schools, community agencies, public and private clinics, and private practice. The advanced practice nurse acts independently and/or in collaboration with other health care professionals in the delivery of health care services.}~~

(2) Advanced pathophysiology course--A course that offers content that provides a comprehensive, systems-based study of pathophysiology that provides students with the knowledge and skills to analyze the relationship between normal physiology and pathophysiological phenomena.

~~{(2) Alternate site--A practice site:}~~

~~{(A) Where services similar to the services provided at the delegating physician's primary practice site are provided; and}~~

~~{(B) Located within 60 miles of the delegating physician's primary practice site.}~~

(3) Advanced pharmacotherapeutics course--A course that offers advanced content in pharmacokinetics and pharmacodynamics, encompassing a broad range of drug classifications, including the application of drug therapy to the treatment of disease and/or the promotion of health.

~~{(3) Board--The Board of Nurse Examiners for the State of Texas.}~~

(4) Advanced practice registered nurse--A registered nurse who:

(A) has completed a graduate-level education program accredited by an organization recognized by the Board that prepares him/her for one of the four following recognized advanced practice roles:

(i) nurse anesthetist,

(ii) nurse-midwife,

(iii) nurse practitioner; or

(iv) clinical nurse specialist;

(B) has demonstrated current competence by:

(i) passing a national certification examination recognized by the Board that measures advanced practice role and population-focused competencies and demonstrating continuing competence as evidenced by certification maintenance/recertification in the role and population through a national certification program; or

(ii) meeting requirements set forth by the Board for those advanced practice registered nurses not required by §221.7 of this title (relating to Petitions for Waiver and Exemptions) to hold national certification;

(C) has acquired advanced clinical knowledge and skills preparing him/her to provide direct and indirect care to patients with greater role autonomy;

(D) has been educationally prepared to assume responsibility and accountability for health promotion and/or maintenance as well as the assessment, diagnosis, and management of patient problems that includes the use and prescription of pharmacologic and non-pharmacologic interventions;

(E) has clinical experiences of sufficient depth and breadth to reflect the area of licensure; and

(F) holds current licensure in one of the four advanced practice roles and a Board-approved population focus area.

~~[(4) Carrying out or signing a prescription drug order—Completing a prescription drug order presigned by the delegating physician or signing (writing) a prescription by an advanced practice nurse after that person has been designated to the Board of Medical Examiners by the delegating physician as a person delegated to sign a prescription.]~~

(5) Alternate site--A practice site:

(A) where the services provided are similar to the services provided at the delegating physician's primary practice site; and

(B) located within 75 miles of the delegating physician's residence or primary practice site.

(6) Board--The Texas Board of Nursing.

(7) [(5)] Controlled substance--A substance, including a drug, an adulterant, and a dilutant, listed in Schedules I through V or Penalty Groups 1, 1-A, or 2 through 4 of chapter 481 Texas Health and Safety Code (Texas Controlled Substances Act). The term includes the aggregate weight of any mixture, solution, or other substance containing a controlled substance.

(8) [(6)] Dangerous drug--A device or a drug that is unsafe for self medication and that is not included in schedules I-V or penalty groups I-IV of chapter 481 Texas Health and Safety Code (Texas Controlled Substances Act). The term includes a device or a drug that bears or is required to bear the legend: "Caution: federal law prohibits dispensing without prescription" or "RX only" or another legend that complies with federal law.

(9) [(7)] Diagnosis and management course--A course of offering both didactic and clinical content in clinical decision-making and aspects of medical diagnosis and medical management of diseases and conditions. Supervised clinical practice must include the opportunity to provide pharmacological and non-pharmacological management of diseases and conditions [problems] considered within the scope of practice of the advanced practice registered nurse's population focus area [specialty] and role.

(10) [(8)] Eligible sites--Sites serving medically underserved populations; a physician's primary practice site; an alternate site; or a facility-based practice site.

(11) [(9)] Facility-based practice site--A licensed hospital or licensed long term care facility that serves as the practice location for the advanced practice registered nurse.

(12) [(10)] Health Manpower Shortage Area--An urban or rural area, population group, or public or nonprofit private medical facility or other facility that the Secretary of the United States Department of Health and Human Services (USDHHS) designates as having a health manpower shortage, as described by 42 USC Section 254e(a)(1) or a successor federal statute or regulation.

(13) [(11)] Medically Underserved Area (MUA)--

(A) An urban or rural area or population group that the Secretary of the United States Department of Health and Human Services (USDHHS) designates as having a shortage of those services as described by 42 USC Section 300e-1(7) or a successor federal statute or regulation; or

(B) an area defined as medically underserved by rules adopted by the Texas Department of State Health Services [Texas Board of Health (Texas Department of Health)] based on demographics specific to this state [State], geographic factors that affect access to health care, and environmental health factors.

~~[(12) Pharmacotherapeutics course--A course that offers content in pharmacokinetics and pharmacodynamics, pharmacology of current/commonly used medications, and the application of drug therapy to the treatment of disease and/or the promotion of health.]~~

(14) [(13)] Physician's primary practice site--

(A) the practice location at which the physician spends the majority of his/her [the physician's] time;

(B) a licensed hospital, a licensed long-term care facility, or a licensed adult care center where both the physician and the advanced practice registered nurse [APN] are authorized to practice;

(C) a clinic operated by or for the benefit of a public school district to provide care to the students of that district and the siblings of those students, if consent to treatment at that clinic is obtained in a manner that complies with Chapter 32, Family Code;

(D) the residence of an established patient; [ø]

(E) another location at which the physician is physically present with the advanced practice registered nurse; and[-]

(F) provided an advanced practice registered nurse spends at least 50 percent of the time in a setting with the delegating physician, she/he may also prescribe in the following settings:

(i) a site in which health care services are provided for established patients only;

(ii) a clinic run or sponsored by a nonprofit organization that provides voluntary charity health care services where the advanced practice registered nurse is not remunerated; or

(iii) a setting where voluntary health care services are provided during a declared emergency or disaster at a temporary facility operated or sponsored by a governmental entity or nonprofit organization and established to serve persons in this state where the advanced practice registered nurse is not remunerated.

(15) Population focus area--The section of the population with which the advanced practice registered nurse has been licensed to practice by the Board.

(16) Prescribing--Determining the dangerous drugs or controlled substances that shall be used by or administered to a patient exercised in compliance with state and federal law.

(17) [(14)] Protocols or other written authorization--Written authorization to provide medical aspects of patient care that are agreed upon and signed by the advanced practice registered nurse [APN] and the physician, reviewed and signed at least annually, and maintained in the practice setting of the advanced practice registered nurse [APN]. Protocols or other written authorization shall be defined to promote the exercise of professional judgment by the advanced practice registered nurse [APN] commensurate with his/her education and experience. Such protocols or other written authorization need not describe the exact steps that the advanced practice registered nurse [APN] must take with respect to each specific condition, disease, or symptom and may state types or categories of drugs that may be prescribed rather than just list specific drugs.

(18) [(15)] Shall and must--Mandatory requirements.

(19) [(16)] Should--A recommendation.

(20) Signing a prescription drug order--Completing a prescription drug order presigned by the delegating physician or the signing of a prescription by an advanced practice registered nurse. The advanced practice registered nurse must be designated to the Texas Medical Board by the delegating physician as a person delegated to sign a prescription.

(21) [(17)] Site serving a medically underserved population--

(A) a site located in a medically underserved area;

(B) a site located in a health manpower shortage area;

(C) a clinic designated as a rural health clinic under 42 USC 1395x(aa);

(D) a public health clinic or a family planning clinic under contract with the Texas Health and Human Services Commission [Texas Department of Human Services] or the Texas Department of State Health Services [Texas Department of Health];

(E) a site located in an area in which the Texas Department of State Health Services [Texas Department of Health] determines there is an insufficient number of physicians providing services to eligible clients of federal, state, or locally funded health care programs; or

(F) a site that the Texas Department of State Health Services [Texas Department of Health] determines serves a disproportionate number of clients eligible to participate in federal, state, or locally funded health care programs.

§222.2. *Approval for Prescriptive Authority.*

(a) Credentials: To be approved by the Board [board] to [carry out or] sign prescription drug orders and issued a prescription authorization number, a Registered Nurse (RN) shall:

(1) have full licensure from [or provisional authorization by] the Board [board] to practice as an advanced practice registered nurse. RNs with Interim Approval to practice as advanced practice registered nurses are not eligible for prescriptive authority.

[(A) RNs with provisional authorization to practice as graduate advanced practice nurses who are eligible for prescription authorization numbers shall be limited to prescribing for categories of dangerous drugs only.]

[(B) RNs with Interim Authorization to practice as advanced practice nurses are not eligible for a prescription authorization number.]

(2) file a complete application for Prescriptive Authority and submit such evidence as required by the Board [board] to verify the following educational qualifications:

(A) To be eligible for Prescriptive Authority, advanced practice registered nurses must have successfully completed graduate level courses in advanced pharmacotherapeutics, advanced pathophysiology, advanced health assessment, and diagnosis and management of diseases and conditions [problems] within the role and population focus area [clinical specialty].

(i) Nurse Practitioners, Nurse-Midwives and Nurse Anesthetists will be considered to have met the course requirements of this section on the basis of courses completed in the advanced practice nursing educational program.

(ii) Clinical Nurse Specialists shall submit documentation of successful completion of separate, dedicated, graduate level courses in the content areas described in subsection (a) [(A)] of this section. These courses shall be academic courses with a minimum of 45 clock hours per course from a nursing program accredited by an organization recognized by the Board [regionally accredited institution with a minimum of 45 clock hours per course].

(iii) The Board [board], by policy, may determine that certain specialties of Clinical Nurse Specialists meet one or more of the course requirements on the basis of the advanced practice nursing educational program.

(B) Clinical Nurse Specialists who were previously [have been] approved by the Board [board] as advanced practice registered nurses by petition on the basis of completion of a non-nursing master's degree shall not be eligible for prescriptive authority.

(b) (No change.)

(c) Exceptions Granted by the Texas Medical [State] Board [of Medical Examiners]: Requirements for utilizing [limited] prescriptive authority may be modified or waived if a delegating physician has received a modification or waiver from the Texas Medical [State] Board [of Medical Examiners] of any site or supervision requirements for a physician to delegate the carrying out or signing of prescription drug orders to the advanced practice registered nurse.

§222.3. *Renewal of Prescriptive Authority.*

(a) The advanced practice registered nurse shall renew the privilege to [carry out or] sign prescription drug orders in conjunction with the RN and advanced practice license renewal application.

(b) The advanced practice registered nurse seeking to maintain prescriptive authority shall attest, on forms provided by the Board [board], to completing at least five contact hours of continuing education in pharmacotherapeutics within the preceding biennium.

(c) The continuing education requirement in subsection (b) of this section, shall be in addition to continuing education required under Chapter 216 of this title (relating to Continuing Competency [Education]).

§222.4. *Minimum Standards for [Carrying Out or] Signing Prescriptions.*

(a) The advanced practice registered nurse with a valid prescription authorization number:

(1) shall [carry out or] sign prescription drug orders for only those drugs that are:

(A) (No change.)

(B) prescribed for patient populations within the accepted scope of professional practice for the advanced practice registered nurse's license [~~specialty area~~]; and

(2) shall comply with the requirements for adequate physician supervision published in the rules of the Texas Medical Board [~~of Medical Examiners~~] relating to Delegation of the Carrying Out or Signing of Prescription Drug Orders to Physician Assistants and Advanced Practice Nurses as well as other applicable laws.~~]~~

(b) Protocols or other written authorization shall be defined in a manner that promotes the exercise of professional judgement by the advanced practice registered nurse commensurate with the education and experience of that person.

(1) A protocol or other written authorization:

(A) is not required to describe the exact steps that the advanced practice registered nurse must take with respect to each specific condition, disease, or symptom; and

(B) (No change.)

(2) Protocols or other written authorization shall be:

(A) [~~shall be~~] written, agreed upon and signed by the advanced practice registered nurse and the physician;

(B) (No change.)

(C) maintained in the practice setting of the advanced practice registered nurse.

(c) Prescription Information: The format and essential elements of the prescription shall comply with the requirements of the Texas State Board of Pharmacy. The following information must be provided on each prescription:

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

(5) the name, address, telephone number, and, if the prescription is for a controlled substance, the United States Drug Enforcement Administration [~~DEA~~] number of the delegating physician;

(6) - (8) (No change.)

(9) the name, prescription authorization number, original signature, and, if the prescription is for a controlled substance, the Texas Department of Public Safety and United States Drug Enforcement Administration numbers [~~DEA number~~] of the advanced practice registered nurse signing or co-signing the prescription drug order.

(d) Generic Substitution. The advanced practice registered nurse shall authorize or prevent generic substitution on a prescription in compliance with the current rules of the Texas State Board of Pharmacy relating to Generic Substitution.

(e) An advanced practice registered nurse may prescribe medications for sexually transmitted diseases for partners of an established patient, if the advanced practice registered nurse assesses the patient and determines that the patient may have been infected with a sexually transmitted disease. Nothing in this subsection shall be construed to require the advanced practice registered nurse to issue prescriptions for partners of patients.

(f) Advanced practice registered nurses may prescribe only those medications that are FDA approved unless done through protocol registration in a United States Institutional Review Board or Expanded Access authorized clinical trial. "Off label" use, or prescription of FDA-approved medications for uses other than that indicated by the FDA, is permitted when such practices are:

(1) within the current standard of care for treatment of the disease or condition, and

(2) supported by evidence-based research.

§222.5. *Prescriptions for Dangerous Drugs.*

Advanced practice registered nurses with full licensure [~~or provisional authorization to practice~~] and valid prescription authorization numbers are eligible to [~~carry out or~~] sign prescription drugs orders for dangerous drugs in accordance with the standards and requirements set forth in this chapter.

§222.6. *Prescriptions for Controlled Substances.*

(a) Advanced practice registered nurses with full licensure [~~authorization to practice~~] and valid prescription authorization numbers are eligible to obtain authority to prescribe certain categories of controlled substances. The advanced practice registered nurse must comply with all federal and state laws and regulations relating to the prescribing of controlled substances in Texas, including but not limited to, requirements set forth by the Texas Department of Public Safety and the United States Drug Enforcement Administration. [~~Graduate advanced practice nurses who hold provisional authorization to practice shall not authorize or issue prescriptions for controlled substances until they have been issued full authorization to practice by the board.~~]

(b) Advanced practice registered nurses, [~~with full authorization to practice and valid prescription authorization numbers~~] who authorize or issue prescriptions for controlled substances shall:

(1) Limit prescriptions for controlled substances to those medications listed in Schedules III through [~~IV, or~~] V as established by the commissioner of public health under Chapter 481, Health and Safety Code (Texas Controlled Substances Act);

(2) Issue prescriptions, including a refill of the prescription, for a period not to exceed 90 [~~30~~] days;

(3) Not authorize the refill of a prescription for a controlled substance beyond the initial 90 days prior to consultation with the delegating physician and notation of the consultation in the patient's chart; and

(4) (No change.)

(c) [~~All other standards and requirements as set forth in this chapter relating to carrying out or signing prescription drug orders by advanced practice nurses must be met. In addition, advanced~~] Advanced practice registered nurses with [~~full authorization to practice and~~] valid prescription authorization [~~numbers~~] must comply with all federal~~]~~ and state [~~and local~~] laws and regulations relating to the prescribing of controlled substances in Texas, including but not limited to, requirements set forth by the Texas Department of Public Safety and the United States Drug Enforcement Administration.

§222.7. *Prescribing at Sites Serving Certain Medically Underserved Populations.*

When [~~carrying out or~~] signing prescription drug orders at a site serving a medically underserved population, the advanced practice registered nurse shall:

(1) maintain Protocols or other written authorization that must be reviewed and signed by both the advanced practice registered nurse and the delegating physician at least annually;

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

(4) shall be available during on-site visits by the physician which shall occur at least once every 10 business days that the advanced practice registered nurse is on site providing care.

§222.8. *Prescribing at Physicians' Primary Practice Sites.*

When ~~carrying out or~~ signing prescription drug orders at a physician's primary practice site, the advanced practice registered nurse shall:

- (1) maintain Protocols or other written authorization that must be reviewed and signed by both the advanced practice registered nurse and the delegating physician at least annually; and
- (2) (No change.)

§222.9. *Prescribing at Alternate Sites.*

When ~~carrying out or~~ signing prescription drug orders at an alternate site, the advanced practice registered nurse shall:

- (1) maintain Protocols or other written authorization that must be reviewed and signed by both the advanced practice registered nurse and the delegating physician at least annually;
- (2) be available on-site with the physician at least 10 ~~[twenty]~~ percent of the hours of operation of the site each month that the advanced practice registered nurse is acting with delegated prescriptive authority ~~[time]~~; and
- (3) have access to the delegating physician through direct telecommunication for consultation, patient referral, or assistance with a medical emergency. ~~[;]~~

§222.10. *Prescribing at Facility-based Practice Sites.*

When ~~carrying out or~~ signing prescription drug orders at a facility-based practice site, the advanced practice registered nurse shall:

- (1) maintain Protocols or other written authorization developed in accordance with facility medical staff policies and review ~~[re-viewing]~~ the authorizing documents with the appropriate medical staff at least annually;
- (2) - (3) (No change.)

§222.11. *Conditions for Obtaining and Distributing Drug Samples.*

The advanced practice registered nurse with a valid prescription authorization number may request, receive, possess and distribute prescription drug samples provided:

- (1) all requirements for the advanced practice registered nurse to sign prescription drug orders are met;
- (2) Protocols or other physician orders authorize the advanced practice registered nurse to sign the prescription drug orders;
- (3) the samples are for only those drugs that the advanced practice registered nurse is eligible to prescribe in accordance with the standards and requirements set forth in this chapter; and
- (4) (No change.)

§222.12. *Enforcement.*

(a) Any advanced practice registered nurse who violates these sections or prescribes in a manner that is not consistent with the standard of care ~~[rules]~~ shall be subject to removal of the authority to prescribe under this section ~~[rule]~~ and disciplinary action by the Board ~~[board]~~ under Texas Occupations Code §301.452.

(b) The Board ~~[board]~~ shall report to the Texas Department of Public Safety and the United States Drug Enforcement Administration any of the following:

- (1) Any significant changes in the status of the RN license or ~~[/]~~ advanced practice license ~~[authorization]~~, or
 - (2) Disciplinary action impacting an advanced practice registered nurse's ability to authorize or issue prescription drug orders.
- (c) The practice of the advanced practice registered nurse approved by the Board ~~[board]~~ to ~~carry out or~~ sign prescription drug

orders is subject to monitoring by the Board ~~[board]~~ on a periodic basis.

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

Filed with the Office of the Secretary of State on November 13, 2009.

TRD-200905235

Jena R. Abel

Assistant General Counsel

Texas Board of Nursing

Earliest possible date of adoption: December 27, 2009

For further information, please call: (512) 305-6822



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 265. GENERAL SANITATION SUBCHAPTER M. INTERACTIVE WATER FEATURES AND FOUNTAINS

25 TAC §§265.301 - 265.308

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes new §§265.301 - 265.308, concerning the regulation of public interactive water features and fountains (PIWFs) in Texas.

BACKGROUND AND PURPOSE

The 81st Texas Legislature, Regular Session, 2009, passed Senate Bill 968, which amended the Health and Safety Code by adding new §341.0695. Section 341.0695 imposed sanitary requirements for PIWFs and required adoption of emergency rules to implement those requirements within 30 days of the effective date of the Act. The Act became effective on June 19, 2009, the date that Senate Bill 968 was signed by the governor. The new rules replace emergency rules adopted by the Executive Commissioner of the Health and Human Services Commission that became effective on July 3, 2009, was published in the July 17, 2009 issue of the *Texas Register*, and will expire on December 29, 2009.

SECTION-BY-SECTION SUMMARY

Section 265.301 describes the scope and purpose of the rules for PIWFs and includes exemptions for certain types of PIWFs. Section 265.302 contains definitions of terms and acronyms used in this subchapter. Section 265.303 establishes requirements for the operation and maintenance of PIWFs, including accreditation requirements for operators, safety signage, sanitation of the facility equipment, and types of operational records that should be retained and how long the records for the facility must be retained by the owner/operator.

Section 265.304 establishes requirements for water supply and disposal of wastewater from PIWFs. Section 265.305 establishes requirements for a water circulation system including the circulation turnover time. Section 265.306 establishes

water quality standards and water disinfection requirements for PIWFs. These requirements are designed to protect users against infection by the parasite, *Cryptosporidium*, which is the cause of most outbreaks of recreational waterborne illness in the United States. This section also establishes parameters for testing the water in PIWFs for the presence of harmful bacteria.

Section 265.307 defines the scope of inspection authority and the authority to charge a fee for inspections and permitting of PIWFs by municipalities, counties, and the department. Section 265.308 provides a municipality, county, or the department the ability to close a PIWF under certain conditions. Section 265.308 also specifies the right of an owner/operator to have a hearing if the facility is closed, and the procedures that must be followed in order to close a PIWF.

FISCAL NOTE

Susan E. Tennyson, Section Director, Environmental and Consumer Safety Section, has determined that for each year of the first five-year period that the sections will be in effect, there will be fiscal implications to local governments as a result of administering and enforcing the sections as proposed. Further, Ms. Tennyson has determined that there will be no fiscal implications to state government as a result of administering and enforcing the sections as proposed.

Although the number of PIWFs in Texas is unknown, the majority of PIWFs are found in municipalities or in counties with large populations. The statute under which these rules are promulgated provides municipalities, counties, and the department with the authority to collect inspection and permitting fees to mitigate the costs of providing these services. The fee amounts are dependent upon the costs to inspect and permit PIWFs. Because the number and the locations of PIWFs are unknown, the revenue generated by licensure of PIWFs and costs incurred by municipalities or counties with PIWFs cannot be determined.

Persons that own/operate a PIWF must provide safety, warning, and notification signage at each PIWF. The cost of this signage can be as little as \$100 or as high as \$1,000 per facility and is dependent upon the characteristics of the signs that will be posted. PIWFs will be required to install a secondary disinfection system. The cost of the system is dependent upon the size of the PIWF, the number of gallons used by the PIWF, and the type of secondary disinfection system that is installed. The estimated cost of retrofitting with the more expensive systems can begin at \$5,000 and go as high as \$20,000 for the initial installation. Operating costs would be dependent upon the rate charged for electricity, the size of the system, and proper maintenance of the system and facility. Retrofitting with the least expensive secondary disinfection system for the largest facility could cost approximately a maximum of \$3,000 annually. Other costs would be obtaining certification of operators for these facilities, which is approximately \$250 for a five-year certification. Most of these costs will be experienced within the first year after the rule is in effect.

SMALL AND MICRO-BUSINESS ECONOMIC IMPACT ANALYSIS

Ms. Tennyson has also determined that there will not be anticipated adverse economic costs to micro-businesses as a result of these rules. Micro-businesses do not own/operate PIWFs.

In addition, Ms. Tennyson has determined that there are anticipated economic costs to small and large businesses required to comply with the new rules as proposed. Businesses that operate

PIWFs will have to add a secondary disinfection system, warning and notification signage, and provide training for their operators to become certified. Without information about the number of PIWFs, their locations, or ownership information, the number of small businesses that may be directly affected by these rules cannot be determined.

REGULATORY FLEXIBILITY ANALYSIS

There are no alternative methods of achieving the purpose of the proposed new rules that are consistent with the health, safety, and environmental welfare of the state so no alternative regulatory methods have been considered.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons other than local governments or small or large businesses required to comply with the new rules as proposed. There is no anticipated impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Tennyson has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the rules. The public benefit anticipated as a result of enforcing or administering the rules is to ensure the health and safety of anyone using a PIWF by preventing the transmission of disease caused by bacteria and the parasite, *Cryptosporidium*.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Paula Anderson, Public Health Sanitation and Consumer Product Safety Group, Department of State Health Services, P.O. Box 149347, Mail Code 1987, Austin, Texas 78714-9347, (512) 834-6770, extension 2303, or by email to paula.anderson@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

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

STATUTORY AUTHORITY

The new rules are required and authorized by Health and Safety Code, §341.0695, Interactive Water Features and Fountains; Health and Safety Code, §341.002, which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules and standards for sanitation and protection of health; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The new rules affect Health and Safety Code, Chapters 341 and 1001; and Government Code, Chapter 531.

§265.301. General Provisions.

(a) Purpose of the rules. These rules implement Texas Health and Safety Code, §341.0695.

(b) Scope of rules. These rules address minimum sanitation requirements for a public interactive water feature and fountain (PIWF). These standards are based in part on the American National Standards Institute and International Aquatic Foundation Standards for Aquatic Recreation Facilities (ANSI/IAF-9), "Designing Public Swimming Facilities Guidelines," and the Centers for Disease Control and Prevention "Operating Public Swimming Pools Guidelines." These rules are in addition to any county, municipal, or federal laws applicable to public interactive water features and fountains.

(1) These rules apply to all PIWFs whether the PIWF shares or does not share a water supply, disinfection system, filtration system, circulation system, or any other treatment system that allows water to co-mingle with any other recreational water feature or system including, but not limited to a pool, spa, therapy pool, wave action pool, activity pool, catch pool, leisure river, amusement park attraction or wade pool.

(2) A PIWF that is connected with or shares a water supply, disinfection system, filtration system, circulation system, or any other treatment system, or for which the water supply is treated in common with any other recreational water feature or system including, but not limited to a pool, spa, therapy pool, wave action pool, activity pool, catch pool, leisure river, amusement park attraction, or wade pool shall be subject to the most stringent standards to which any of the water bodies or features are subject except as otherwise indicated in this subchapter.

(3) A PIWF that is supplied entirely by drinking water that is not recirculated is not subject to §265.306 of this title (relating to Water Quality at Public Interactive Water Features and Fountains).

(4) These rules do not apply to a PIWF that uses freshwater originating from a natural water course for recreational purposes and that releases the freshwater back into the same natural water course.

(c) PIWF standards. Where a local regulatory authority has jurisdiction for the regulation of PIWFs, such authorities may adopt standards that vary from these standards; however, such standards shall be the same as, equivalent to, or more stringent than these standards.

§265.302. Definitions.

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

(1) Act--Refers to Health and Safety Code, §341.0695, relating to Interactive Water Features and Fountains.

(2) Activity pool--A pool designed for casual water play including splashing activities and the use of attractions placed in the pool for recreational purposes.

(3) Amusement park attraction--Rides or attractions usually located in amusement parks that permit user contact with water.

(4) ANSI--American National Standards Institute, 25 West 43rd Street (4th Floor), New York, New York 10036, telephone (212) 642-4900, website: www.ansi.org.

(5) ANSI/IAF-9 2005--American National Standards Institute and International Aquatic Foundation Standards for Aquatic Recreation Facilities.

(6) AquaTech--Starfish Aquatics Institute, Human Kinetics Aquatic Education Center, P.O. Box 5076, Champaign, Illinois, 61825-5076, telephone (800) 747-4457, website: www.aquaticeducationcenter.com.

(7) APSP--Association of Pool and Spa Professionals, 2111 Eisenhower Avenue, Suite 500, Alexandria, Virginia 22314-4695, telephone (703) 838-0083, website: www.apsp.org.

(8) ASPSA--American Swimming Pool and Spa Association, 1108 Little River Drive, Elizabeth City, North Carolina 27909, telephone (252) 331-2301, website: www.swimmingpooloperator.com.

(9) Automatic chemical feeder--An automatic device for adding chemical to water in a public interactive water feature and fountain (PIWF). An automatic chemical feeder has valves controlled by electronic equipment that dispense chemicals based on signals from probes continuously monitoring the water's properties.

(10) Available chlorine--Rating of chlorine-containing products for total oxidizing power (See definition number (30) "Free available chlorine.")

(11) Backflow prevention device--A device that is designed to prevent a physical connection between a potable water system and a non-potable source such as a pool, spa, or PIWF, or to prevent a physical connection between a pool, spa, or PIWF and a sanitary sewer or wastewater disposal system. (See definition number (22) "Cross-connection control device.")

(12) Bacteria--Single-celled microorganisms of various forms, some of which cause infections or disease.

(13) Bromine--A chemical element (Br) that exists as a liquid in its elemental form or as part of a chemical compound that is a biocide agent used to disinfect water in a pool, spa, or PIWF.

(14) CDC--Centers for Disease Control and Prevention, 1600 Clifton Road, Atlanta, Georgia 30333, telephone (800) 232-4636, website: www.cdc.gov.

(15) Catch pool--A pool located at the terminus of a waterslide and intended for terminating the slide action and providing an exit to a deck or walkway.

(16) Chlorine--A chemical element (Cl) that exists as a gas in its elemental form or as part of a chemical compound that is an oxidant. Chlorine is a biocide agent used to disinfect water in a pool, spa, or PIWF.

(17) Chloramine--A compound formed when chlorine combines with nitrogen or ammonia that, when found in significant amounts in the water of a PIWF, may cause eye and skin irritation and may have an objectionable odor.

(18) Circulation equipment--The mechanical components that are part of a circulation system for a PIWF. Circulation equipment may include but is not limited to, categories of pumps; treatment tanks; hair and lint strainers; filters; valves; gauges; meters; heaters; inlet/outlet fittings; and chemical feeding devices. The components have separate functions, but when connected to each other by piping, perform as a coordinated system for purposes of maintaining PIWF water in a clear, sanitary, and desirable condition for use.

(19) Circulation system--An arrangement of mechanical equipment or components, connected by piping to a PIWF in a closed circuit. The function of a circulation system is to direct water from the PIWF, causing it to flow through the various system components for purposes of clarifying, heating, purifying, and returning the water back to the PIWF.

(20) Coliform bacteria--Bacteria found in the intestines and fecal matter of warm-blooded animals.

(21) Combined chlorine--The portion of total chlorine in a water chemical combination with ammonia, nitrogen, and/or organic compounds, mostly comprised of chloramines. Combined chlorine plus free available chlorine equals total residual chlorine.

(22) Cross-connection control device--A device that is designed to prevent a physical connection between a potable water system and a non-potable source such as a pool, spa, or PIWF, or to prevent a physical connection between a pool, spa, or PIWF and a sanitary sewer or wastewater disposal system. (See definition number (11) "Backflow prevention device.")

(23) Cryptosporidiosis--A diarrheal disease caused by microscopic parasites of the genus *Cryptosporidium*. Water is the most common method of transmission and *Cryptosporidium* is one of the most frequent causes of waterborne illness among humans in the United States.

(24) Cyanuric acid--A chemical that reduces the loss of chlorine in water due to the ultraviolet rays of the sun. Also known by the names stabilizer, isocyanuric acid, conditioner and triazinetrione.

(25) Department--Department of State Health Services, Environmental and Consumer Safety Unit, Policy, Standards, and Quality Assurance, P.O. Box 149347, MC 1987, Austin, Texas 78714-9347, telephone (512) 834-6788, website: www.dshs.state.tx.us.

(26) Disinfectant--Energy or chemicals used to kill undesirable or pathogenic (disease causing) organisms at a level adequate to make the desired kill.

(27) Disinfection equipment--Equipment designed to apply or deliver a disinfectant (such as chlorine) at a controlled rate.

(28) DPD--A chemical testing reagent (N,N-Diethyl-P-Phenylenediamine) used to measure the levels of available chlorine or bromine in water by yielding a series of colors ranging from light pink to dark red.

(29) Filter--A device that removes undissolved particles from water by recirculating the water through a porous substance (filter media or element).

(30) Free available chlorine--That portion of the total chlorine remaining in the chlorinated water that is not combined with ammonia or nitrogen compounds and that will react chemically with undesirable or pathogenic organisms. Free chlorine is also known as free available chlorine. Combined chlorine plus free available chlorine equals total residual chlorine.

(31) Free residual chlorine--For purposes of this rule free residual chlorine means free available chlorine. (See definition number (30) "Free available chlorine.")

(32) Interactive water feature or fountain--An installation that includes water sprays, dancing water jets, waterfalls, dumping buckets, or shooting water cannons in various arrays for the purpose of wetting the persons playing in the spray streams. An interactive water feature or fountain may include devices or activities such as slides, climbing and crawling structures, visual effects, user-actuated mechanical devices, and other user-controlled play elements.

(33) Labeled--Equipment or material to which has been attached a label, symbol, or other identifying mark of an organization that is acceptable to the authority having jurisdiction and concerned with product evaluation that maintains periodic inspection of production of labeled equipment or materials and by whose labeling the manufacturer indicates compliance with appropriate standards of performance in a specified manner.

(34) Leisure river--A pool with a near-constant depth in which the water and user are propelled by pumps in a river-like flow over a prescribed course or path. Leisure river pools are also known as lazy rivers.

(35) Local regulatory authority--The local enforcement body or authorized representative having jurisdiction over PIWFs and associated facilities.

(36) mJ--Millijoule, a unit of work or energy.

(37) mJ/cm²--Millijoules per centimeter squared.

(38) NRPA--National Recreation and Parks Association, 22377 Belmont Ridge Road, Ashburn, Virginia 20148-4501, telephone (800) 626-6772, website: www.nrpa.org.

(39) NSF--National Sanitation Foundation International, P.O. Box 130140, 789 N. Dixboro Drive, Ann Arbor, Michigan 48113-0140, telephone (800) 673-6275, website: www.nsf.org.

(40) NSF/ANSI-50 Standard--National Sanitation Foundation International/American National Standard Institute Standard 50, Equipment for Swimming Pools, Spas, Hot Tubs and other Recreational Water Facilities.

(41) NSPF--National Swimming Pool Foundation, 4775 Granby Circle, Colorado Springs, Colorado 80919-3131, telephone (719) 540-9119, website: www.nspf.com.

(42) ONPG-MUG--Ortho-nitrophenyl-beta-D-galactopyranoside-4-methylumbelliferyl-beta-D-glucuronide, an enzyme substrate assay used for measuring total coliform and *E. coli* in water as described in the Code of Federal Regulations, Title 40, Part 141.

(43) Owner/operator--The owner of the property upon which the PIWF is located, and/or operator, business manager, complex manager, property owners association manager, rental agent, lessee, licensee, concessionaire, or other individual who is in charge of the day to day operations or maintenance of the property. The owner/operator is responsible to ensure that the PIWF complies with state and local standards.

(44) Ozone (O₃)--A gas composed of oxygen that is generated on site and used to oxidize organic matter in water. It can be used as a supplemental sanitizer.

(45) Ozone generator--A device that produces ozone, usually by exposing air or oxygen to a corona discharge or ultraviolet light.

(46) Parts per million (ppm)--A unit measurement in chemical testing that indicates the parts by weight in relation to one million

parts by weight of water. For the purposes of PIWF water chemistry, ppm is considered to be essentially identical to the term milligrams per liter (mg/L).

(47) pH--A value expressing the relative acidic or basic tendencies of a substance, such as water, as indicated by the hydrogen ion concentration. The pH is expressed as a number on the scale of zero to 14, less than one being most acidic, 1 to 6.9 being acidic, 7 being neutral, 7.1 to 14 being basic, and 14 being most basic.

(48) Pool--Any man-made permanently installed or non-portable structure, basin, chamber, or tank containing an artificial body of water that is used for swimming, diving, aquatic sports, or other aquatic activity other than a residential pool and that is operated by an owner, lessee, operator, licensee or concessionaire, regardless of whether a fee is charged for use. The pool may be either publicly or privately owned. The term does not include a spa or a decorative fountain that is not used as a pool. References within the standard to various types of pools are defined by the following categories.

(A) Class A pool--Any pool used, with or without a fee, for accredited competitive aquatic events such as Federation Internationale De Natation Amateur (FINA), United States Swimming, United States Diving, National Collegiate Athletic Association (NCAA), National Federation of State High School Associations (NFSHSA) events. A Class A pool may also be used for recreation.

(B) Class B pool--Any pool used for public recreation and open to the general public with or without a fee.

(C) Class C pool--Any pool operated for and in conjunction with:

(i) lodging such as hotels, motels, apartments, condominiums, or mobile home parks;

(ii) property owner associations, private organizations, or clubs; or

(iii) a school, college or university while being operated for academic or continuing education classes. The use of such a pool would be open to occupants, members or students, etc., and their guests but not open to the general public.

(D) Class D pool--A wading pool with a maximum water depth of 24 inches at any point.

(49) Potable water--Water that is bacteriologically safe and otherwise suitable for drinking. Potable water supplies may be regulated by the Texas Commission on Environmental Quality or local regulatory authority as a drinking water system.

(50) Public interactive water feature or fountain (PIWF)--Any indoor or outdoor interactive water feature or fountain that is maintained for public recreation and that is operated by an owner, lessee, operator, licensee, or concessionaire, regardless of whether a fee is charged for use. The term includes, but is not limited to, an interactive water feature or fountain that is open exclusively to members of an organization and their guests, residents of a multi-unit apartment building or apartment complex, residential real estate development, or other multi-family residential area, schools, day care facilities, youth camp, or hotel or other public accommodations facility. A PIWF may be publicly or privately owned. A PIWF does not include an interactive water feature or fountain located on private property under the control of the property owner or the owner's tenant serving a single-family residence or duplex and that is intended for use by not more than two resident families and their guests.

(51) Pump--A mechanical device, usually powered by an electric motor that causes hydraulic flow and pressure for the purpose of filtration, heating, and circulation of the PIWF water.

(52) Recreational water park--A property or any portion thereof upon which one or more PIWFs are located.

(53) Regulatory authority--Any federal, state, or local enforcement body or authorized representative having jurisdiction over PIWFs.

(54) Shall--Indicator of the mandatory provisions of these rules.

(55) Spa--A constructed permanent or portable structure that is 2 feet or more in depth and that has a surface area of 250 square feet or less or a volume of 3,250 gallons or less and that is intended to be used for bathing or other recreational uses and is not drained and refilled after each use. It may include, but is not limited to, hydrojet circulation, hot water, cold water, mineral baths, air induction bubbles, or any combination thereof. A spa, as is defined in these rules, does not refer to a business establishment such as a day spa or a health spa. Industry terminology for a spa includes, but is not limited to, "hydrotherapy pool," "whirlpool," "hot spa," "hot tub," etc.

(56) Stabilizer--A chemical that reduces the loss of chlorine in water due to the ultraviolet rays of the sun. Also known by the names cyanuric acid, isocyanuric acid, conditioner, and triazinetrione.

(57) TCEQ--Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-1000, website: www.tceq.state.tx.us.

(58) Therapy pool--A therapeutic pool or spa that is operated exclusively for therapeutic purposes, such as physical therapy, and is under the direct supervision and control of licensed medical personnel.

(59) Total residual chlorine--The sum of both the free available chlorine and combined chlorine.

(60) Treatment tank--The vessel, chamber, or tank used to collect the water that has been sprayed, dumped, or otherwise used at the PIWF and returned through the drains.

(61) Turnover rate--The period of time (usually in hours) required to circulate a volume of water equal to the total pool, spa, or PIWF capacity.

(62) Ultraviolet light (UV)--Electromagnetic radiation that is invisible to the human eye with wavelengths on the border of x-rays, about 4 nanometers, to just beyond violet in the visible spectrum, about 380 nanometers.

(63) United States Environmental Protection Agency (EPA)--Ariel Rios Building, 12000 Pennsylvania Avenue, N.W., Washington, DC 20450, telephone (202) 272-0167, website: www.epa.gov.

(64) User--A person using a PIWF and any adjoining deck area for the purpose of recreational aquatic activities.

(65) Wade pool--A pool that has a maximum depth of 24 inches at any point.

(66) Water quality testing device or kit--A product designed to measure the level of a specific chemical in the water of a PIWF. A water quality testing device or kit includes a method to provide a visual indication of chemical level, and may include one or more testing reagents and accessory items.

(67) Wave action pool--Any pool designed to simulate breaking or cyclic waves.

§265.303. Operation and Maintenance of Public Interactive Water Features and Fountains.

(a) Public interactive water feature and fountain (PIWF) operation requirements. PIWFs shall be operated and maintained under the supervision and direction of a properly trained and certified operator who is responsible for sanitation and proper maintenance of the PIWF, and who is responsible for maintaining all physical and mechanical equipment and records. Training and certification shall be obtained by completion of one of the following courses or its equivalent:

- (1) the NRPA, "Aquatic Facility Operator" (A.F.O.);
- (2) the NSPF, "Certified Pool Operator" (C.P.O.);
- (3) the ASPSA, "Licensed Aquatic Facility Technician" (L.A.F.T.); or
- (4) AquaTech Pool and Aquatic Facility Operator.

(b) Operator credentials. The operator of the PIWF who is responsible for the sanitation and proper maintenance of the PIWF shall provide evidence of current certification as specified in subsection (a) of this section during inspection by the regulatory authority.

(c) Sanitation of PIWFs. An owner, manager, operator, or other attendant in charge of a PIWF shall maintain the water feature or fountain in a sanitary condition.

(1) The PIWF treatment tank shall be completely drained and cleaned at a frequency necessary to maintain water quality and sanitary conditions.

(2) Any dirt, trash, refuse, animal waste, or debris on the surface of a zero depth PIWF shall be removed from the surface and the surfaces shall be flushed and sanitized with a United States Environmental Protection Agency approved disinfectant as often as is needed to prevent contamination of the water in the PIWF.

(3) The surfaces of zero depth PIWFs and the decks of all PIWFs shall be kept clean and free of pooled water to prevent the growth of algae and bacteria.

(d) Signs for PIWFs. Warning and notification signs shall be posted at all PIWFs when open or in use, and shall be securely mounted, clearly visible, and easily read with letters in a contrasting color to the background. The required signage can be combined into a single sign. The signage shall provide the following notifications and warnings:

- (1) pets prohibited, in letters at least 1 inch in height;
- (2) changing diapers in the public interactive water feature or fountain is prohibited, in letters at least 1 inch in height;
- (3) use of the public interactive water feature or fountain if a person is infected with a contagious disease or condition is prohibited, in 2 inch letters;
- (4) do not drink the water, in 2 inch letters; and
- (5) use of the public interactive water feature or fountain if ill with diarrhea is prohibited, in letters at least 4 inches in height.

(e) PIWFs without an on-site owner/operator. At PIWFs without an on-site owner/operator a sign shall be posted that provides a contact number to be used in the event of a malfunction, unsanitary condition, or any other non-emergency problem requiring correction at the PIWF. Letters and numbers on the posted sign shall be a minimum of 2 inches in height and the sign shall be clearly visible.

(f) Records for PIWFs. The following records pertaining to the operation, maintenance, cleaning, sanitation, and chemical levels shall be kept for a minimum of 2 years and shall be made available during inspection by the regulatory authority:

- (1) daily chemical log;
- (2) chlorine, bromine, cyanuric acid, and pH test results;
- (3) routine maintenance schedule and activities;
- (4) preventative maintenance schedule and activities;
- (5) documentation that circulation equipment meets the NSF/ANSI-50 Standard, if applicable;

(6) copy of manufacturer's instructions for operation of the disinfection equipment, chemical control equipment, and chemical feed system;

(7) documentation of the facility's method for determining turnover rates as described in §265.305(c) of this title (relating to Circulation and Disinfectant Systems for Public Interactive Water Features and Fountains (PIWFs)); and

(8) documentation that the turnover rates meet the requirements as described in §265.305(c) of this title.

§265.304. Water Supply and Wastewater Disposal.

(a) Water supply. The initial water supply of a public interactive water feature or fountain (PIWF) shall be from a potable water system that:

(1) meets applicable standards of 30 Texas Administrative Code, Chapter 290, "Public Drinking Water," Subchapter D, "Rules and Regulations for Public Water Systems;" or

(2) meets the approval of the department or local regulatory authority.

(b) Water distribution system. All portions of the water distribution system serving a PIWF shall be protected against backflow and back siphonage. No direct mechanical connection shall be made between the chlorinating equipment or system of piping for the PIWF and a sanitary sewer system, septic system, or other wastewater disposal system.

(c) Backwash water. Filter backwash water or drainage water from a PIWF shall be discharged or disposed of as wastewater in accordance with the requirements of the Texas Commission on Environmental Quality or local regulatory authority.

§265.305. Circulation and Disinfectant Systems for Public Interactive Water Features and Fountains.

(a) General circulation requirements. The circulation system consisting of pumps, piping, filters, return inlets, water conditioning equipment, disinfection equipment, surge chamber, treatment tank and other ancillary equipment shall provide adequate circulation of water and be designed to accommodate 100% of the turnover flow rate and maintain the distribution of disinfectant through all parts of the public interactive water feature or fountain (PIWF).

(b) Circulation equipment. Where circulation equipment falls within the scope of NSF and ANSI Standard 50 (NSF/ANSI-50 Standard), such equipment shall meet the standard. Conformity with NSF/ANSI-50 as evidenced by the listing or labeling of such equipment by a testing laboratory or by separate documentation is required.

(c) Turnover time. The turnover time for the circulation of water in a PIWF that is combined or circulated with water from other aquatic facilities such as pools, water slides, or wave pools shall be at least once every 4 hours. The turnover time for circulation of water in a PIWF that is not combined or circulated with water from other aquatic facilities such as pools, water slides or wave pools shall be at least once every hour.

(d) Treatment tank. The treatment tank shall:

(1) be designed to provide ready access for cleaning and inspections, and be capable of complete draining;

(2) have an automatic water level controller; and

(3) have any makeup water introduced into the treatment tank through an air gap or by another method which will prevent back flow and back-siphonage.

§265.306. Water Quality at Public Interactive Water Features and Fountains.

(a) Public interactive water features and fountains (PIWF) shall be equipped with automatic disinfectant and pH feed equipment that provides continuous and effective disinfection and maintains the required pH of the water at all times.

(b) Disinfection, pH, and any other chemical control equipment shall:

(1) be capable of automatically adjusting chemical feed based on demand;

(2) be installed, maintained, operated, and repaired in accordance with manufacturer's instructions;

(3) be provided with make-up water supply lines to chemical feeder solution containers that have an air gap or other acceptable cross-connection control;

(4) be designed to prevent siphoning from the recirculation system to the solution container and to prevent siphoning of the chemical solution into the PIWF; and

(5) incorporate failure-proof features so that the chemical cannot feed into the PIWF, the piping system, or the water supply system if equipment or power fails, or if there is not adequate return flow to properly disperse the chemical.

(c) Disinfectant and cyanuric acid levels shall meet the following criteria at any time a PIWF is open or in use:
Figure: 25 TAC §265.306(c)

(d) The pH shall meet the following criteria at any time a PIWF is open or in use:
Figure: 25 TAC §265.306(d)

(e) Forms of chlorine containing stabilizer (cyanuric acid) shall not be used in indoor PIWFs.

(f) Chemicals used in a PIWF shall:

(1) be registered and labeled for use in recreational aquatic facilities, such as pools and spas, by the United States Environmental Protection Agency (EPA);

(2) be used according to the chemical manufacturer's instructions for the chemical feed system in use; and

(3) comply with the NSF/ANSI-50 Standard certification for the chemical feed system.

(g) In addition to maintaining sanitizer, cyanuric acid, and pH levels as required in subsections (c) and (d) of this section, all PIWFs shall be equipped with a secondary disinfection system that will protect the public against infection by the parasite, *Cryptosporidium*.

(1) Secondary disinfection systems for a PIWF include:

(A) UV light disinfection;

(B) ozone;

(C) a product or process approved by the EPA to remove cryptosporidium from the water in pools, spas, or a PIWF; or

(D) an equivalent product, process, or system approved by the department.

(2) Water from the PIWF shall not be combined or circulated with water for other aquatic facilities such as pools, water slides, or wave pools unless:

(A) all of the water from the PIWF is treated with a secondary disinfection system prior to combining or circulating with water from other aquatic facilities; or

(B) all of the water in other aquatic facilities that is combined or circulated with water from the PIWF is treated with a secondary disinfection system.

(h) UV light disinfection systems shall:

(1) conform to the NSF/ANSI-50 Standard relating to Equipment for Pools, Spas, Hot Tubs, and Other Recreational Water Facilities;

(2) provide a validated dosage confirmed by a third party validation which results in a 3 log kill of *Cryptosporidium*;

(3) provide a validated dosage equivalent to 40mJ/cm² or greater at the end of lamp life;

(4) include an automatic audible alarm to warn of a UV light disinfection unit malfunction or impending shutdown;

(5) be equipped with an automatic mechanism for shutting off the power to the UV light source whenever the protective UV unit cover is removed; and

(6) be installed in an enclosure designed to protect the operator against electrical shock or excessive radiation and that provides protection from UV exposure.

(i) Ozone disinfection systems shall meet the standards in the EPA Guidance Manual for Alternative Disinfectants and Oxidants, EPA Publication 815-R-99-014, April 1999, as amended.

(j) A water quality testing device or kit capable of accurately testing for and measuring pH, free and total chlorine, bromine, and cyanuric acid within the chemical ranges as required in this section shall be provided by the PIWF owner/operator.

(1) Free available chlorine and bromine levels shall be determined by use of the DPD method or its equivalent.

(2) Test reagents shall be properly stored and replaced at frequencies recommended by the manufacturer to assure accuracy of the tests.

(3) The water quality testing device or kit shall conform to the NSF/ANSI-50 Standard relating to Equipment for Pools, Spas, Hot Tubs, and Other Recreational Water Facilities.

(k) When a PIWF is open for use, tests for chlorine or bromine levels and pH shall be conducted at least once every 2 hours to assure compliance with subsections (a) and (b) of this section relating to required water quality parameters.

(1) If a system is used that continually monitors and automatically controls chlorine or bromine levels and pH then testing for chlorine or bromine and pH shall be conducted at least once every 4 hours.

(2) Tests for cyanuric acid levels shall be conducted at least once every 7 days of operation.

(l) Records of the chemical tests performed at a PIWF shall be kept for 2 years and shall be made available during inspection by the regulatory authority.

(m) If the water of a PIWF is sampled and tested for bacterial content the sample shall not:

(1) exceed 200 bacteria per milliliter as determined by heterotrophic plate count; or

(2) indicate the presence of total coliform organisms in a 100 milliliter sample by any of the following methods:

(A) multiple tube;

(B) membrane filter; or

(C) the Minimal Medium ONPG-MUG test described in the Code of Federal Regulations, Title 40, Part 141.

§265.307. Inspections and Permitting of Public Interactive Water Features and Fountains.

(a) A county, municipality, or the department may:

(1) require that the owner or operator of a public interactive water feature and fountain (PIWF) obtain a permit for operation of the water feature or fountain; and

(2) inspect a PIWF for compliance with this subchapter.

(b) A department or local regulatory representative, upon presenting credentials, shall have the right to enter at all reasonable times any area or environment, including but not limited to the PIWF facility, building, storage area, equipment room, or office area to investigate for compliance with these sections, to review records, to question any person, or to locate, to identify, and to assess the condition of the PIWF facility and any other water body or water feature described in §265.301(b) of this title (relating to General Provisions).

(c) Advance notice or permission for inspections or investigations by the department or local regulatory authority is not required.

(d) A department or local regulatory representative shall not be impeded or refused entry in the course of the representative's official duties by reason of any state or federal law or company policy. It is a violation of the Act for a person to interfere with, deny, or delay an inspection or investigation conducted by a department or local regulatory representative.

(e) A county, municipality or the department may impose and collect a reasonable fee in connection with a permit or inspection requirement.

(f) If a county or municipality imposes and collects a fee for a permit or inspection of a PIWF the following conditions shall be met:

(1) the auditor for the county or municipality shall review the program every 2 years to ensure that the fees imposed do not exceed the cost of the program; and

(2) the county or municipality shall refund the permit holders any revenue determined by the auditor to exceed the cost of the program.

§265.308. Closure of a Public Interactive Water Feature or Fountain.

(a) A county, a municipality, or the department may by order close, for the period specified in the order, a public interactive water feature or fountain (PIWF), if the operation of the PIWF:

(1) violates this subchapter; or

(2) violates a permitting or inspection requirement imposed under the Act, this subchapter, or as authorized by the Act or this subchapter.

(b) The closure order is effective immediately with or without notice and without a hearing to the PIWF owner/operator.

(c) If the order is issued under this section without a hearing, the department shall conduct a hearing no later than the 10th calendar day after the closure order to affirm, modify, or set aside the order.

(d) The hearing and appeal are governed by the department's rules in 25 Texas Administrative Code, Chapter 1, Subchapter B, regarding Formal Hearing Procedures, and Government Code, Chapter 2001.

(e) A PIWF shall be considered closed when the following conditions are met:

(1) a notice is posted at the public entrance of the PIWF notifying the public that the PIWF is closed; and

(2) water is shut off to all features of the PIWF.

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

Filed with the Office of the Secretary of State on November 16, 2009.

TRD-200905269

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: December 27, 2009

For further information, please call: (512) 458-7111 x6972



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

SUBCHAPTER X. EVALUATION OF

NETWORK PHYSICIANS AND PROVIDERS

28 TAC §21.3202

The Texas Department of Insurance proposes new §21.3202, concerning requirements for health benefit plan issuers that utilize rankings, tiers, ratings or other comparisons of a physician's performance against standards, measures or other physicians. The proposed new section is necessary to implement House Bill (HB) 1888, 81st Legislature, Regular Session. HB 1888 amends the Insurance Code, Subtitle F, Title 8, by adding Chapter 1460 to address standards required for certain rankings of physicians by health plans.

The Insurance Code §1460.003(a)(1) and (2) provides that a health benefit plan issuer, including a subsidiary or affiliate, may not rank physicians, classify physicians into tiers based on performance, or publish physician-specific information that includes rankings, tiers, ratings, or other comparisons of a physician's performance against standards, measures, or other physicians, unless (i) the standards used by the health benefit plan issuer conform to nationally recognized standards and guidelines adopted by the Commissioner; (ii) the standards and measurements to be used by the health benefit plan issuer are disclosed to each affected physician before any evaluation period used by the benefit plan issuer; and (iii) each affected physician is afforded, before any publication or other public

dissemination, an opportunity to dispute the ranking or classification through a process that, at a minimum, includes due process protections that conform to the protections specified in the Insurance Code §1460.003(a)(3)(A) - (D).

The Insurance Code §1460.005(a) requires the Commissioner to adopt rules as necessary for compliance by a health benefit plan issuer that uses a physician ranking system. The Commissioner, in adopting these rules, is required to consider guidelines, standards and measures prescribed by nationally recognized organizations that establish or promote guidelines and performance measures emphasizing quality of health care, including the National Quality Forum (NQF) and the AQA Alliance. If neither the NQF nor the AQA Alliance has established standards or guidelines regarding an issue, the Commissioner is required to consider the standards, guidelines, and measures prescribed by the National Committee on Quality Assurance (NCQA) and other similar national organizations. If the NQF, AQA Alliance or other national organizations do not have established standards or guidelines for an issue, the Commissioner is required to consider standards, guidelines, and measures based on other bona fide nationally recognized guidelines, expert-based physician consensus quality standards, or leading objective clinical evidence and scholarship. Section 1460.006 requires health benefit plan issuers to ensure that physicians currently in clinical practice are actively involved in the development of the standards used under Chapter 1460. Section 1460.006 further requires that the measures and methodology used in the comparison programs described by the Insurance Code §1460.003 are transparent and valid.

On September 30, 2009, the Department posted a draft rule for informal comment, concerning requirements for health benefit plan issuers that utilize rankings, tiers, ratings or other comparisons of a physician's performance against standards, measures or other physicians. The Department held a meeting on October 8, 2009, for stakeholder comments. The informal comment period ended on October 9, 2009. This proposal includes input from these comments.

Proposed new §21.3202 states the standards, measures and guidelines that health benefit plan issuers are required to utilize for their physician ranking systems. Proposed new §21.3202(a) states the purpose of the section, which is to specify the standards and guidelines that are necessary to ensure that a health benefit plan issuer, including a subsidiary or affiliate, that utilizes rankings, tiers, ratings or other comparisons of a physician's performance against standards, measures, or other physicians, uses a nationally recognized physician ranking system that emphasizes quality of health care in accordance with the Insurance Code §1460.005.

Proposed new §21.3202(b) addresses the applicability of the proposed new section. Proposed new §21.3202(b) provides that this section applies to a health benefit plan issuer as defined in the Insurance Code §1460.001. The Insurance Code §1460.001(1) defines a "health benefit plan issuer" to mean an entity authorized under the Insurance Code or another insurance law of this state that provides health insurance or health benefits in this state, including (i) an insurance company; (ii) a group hospital service corporation operating under Chapter 842; (iii) a health maintenance organization operating under Chapter 843; and (iv) a stipulated premium company operating under Chapter 884. Proposed new §21.3202(b)(2)(A) provides that this section does not apply to a plan specified in the Insurance Code §1460.002. The Insurance Code §1460.002 provides

that Chapter 1460 does not apply to (i) a Medicaid managed care program operated under Chapter 533, Government Code; (ii) a Medicaid program operated under Chapter 32, Human Resources Code; (iii) the child health plan program under Chapter 62, Health and Safety Code or the health benefits plan for children under Chapter 53, Health and Safety Code; or (iv) a Medicare supplement benefit plan, as defined by Chapter 1652. Proposed new §21.3202(b)(2)(B) further provides that this section does not apply to a Medicare plan offered pursuant to Title XVIII, Part C and D of the Social Security Act. This proposed exemption is necessary to clarify the inapplicability of this proposed section to Medicare plans. It is proposed as an additional exemption to those specified in the Insurance Code §1460.002 pursuant to the Commissioner's authority in the Insurance Code §1460.005 to adopt rules as necessary to implement this chapter. Medicare plans under Parts C and D of Title VIII of the Social Security Act are regulated pursuant to federal law and are not subject to state law regulation as provided in 42 U.S.C. §1395w-26(b)(3) and 42 U.S.C. §1395w-112(g). The proposed exemption is necessary for the proper and unambiguous implementation of Chapter 1460 of the Insurance Code.

Proposed new §21.3202(c) provides that if a health benefit plan issuer uses a physician ranking system, it is required to follow the endorsed measures, guidelines, and standards of either the National Quality Forum (NQF) or the endorsed measures, guidelines, and standards of the AQA Alliance. Under this proposed provision, the health benefit plan issuer may utilize either the NQF or AQA endorsed measures, guidelines, and standards regarding an issue involved in the physician ranking process.

Proposed new §21.3202(d) provides that if neither the NQF nor the AQA Alliance has an endorsed measure, guideline, and standard regarding an issue, the health benefit plan issuer is required to follow the endorsed measures, guidelines, and standards of the NCQA.

Proposed new §21.3202(e) provides that if the NQF, AQA Alliance, or NCQA do not have endorsed measures, guidelines, and standards regarding an issue, the health benefit plan issuer is required to follow measures, guidelines, and standards based on other bona fide nationally recognized guidelines, expert-based physician consensus quality standards, or leading objective clinical evidence and scholarship.

Proposed new §21.3202(f) requires a health benefit plan issuer to ensure that physicians currently in clinical practices are actively involved in the development of the standards used in subsections (c) through (e) and that the measures and methodology used in the comparison programs are transparent and valid in accordance with the Insurance Code §1460.006.

This proposal amends the subchapter title by deleting its former title and replacing it with the new title of *Evaluation of Network Physicians and Providers* to more accurately reflect the content of the sections within Subchapter X.

FISCAL NOTE. Margaret Lazaretti, Senior Policy Advisor, Life, Health, and Licensing, has determined that for the first five years the proposed new section will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT/COST NOTE. Ms. Lazaretti also has determined that for each year of the first five years the proposed new

sections are in effect, the public benefits anticipated as a result of the proposed new sections will be a fair, consistent, efficient and transparent system of physician ranking that is based on nationally recognized quality measures and that emphasizes quality of health care. Because physicians will be actively involved in the development of the standards, the process should be more fair and understandable to physicians. Additionally, the rankings will provide important clear information to consumers to assist them in comparing the performance of physicians who are available to them under their health plan. Neither Chapter 1460 of the Insurance Code nor the proposed new section require a health benefit plan issuer to rank, classify, or tier physicians based on performance. However, if a health benefit plan issuer utilizes a physician ranking system, it must utilize the nationally recognized measures, standards and guidelines in the sequence adopted by the Commissioner under this proposal. The measures, standards and guidelines endorsed by the NQF and the AQA Alliance are available for no charge on their respective websites and on the websites of the organizations that own the measures. If it becomes necessary for a health benefit plan issuer that utilizes a physician ranking system to follow the measures, standards, and guidelines approved by the NCQA, for the first year that this proposal is in effect, the NCQA's Healthcare Effectiveness Data and Information Set (HEDIS) 2010 publication entitled *Technical Specifications for Physician Measurement 2010*, is available in print for \$300 and electronically for one to four users at a cost of \$265. The HEDIS 2010 package of publications is also an available option at a cost of \$1,020. This particular package includes the printed edition of Volume 1: Narrative; Volume 2: Technical Specifications; Volume 3: Specifications for Survey Measures; Volume 5: HEDIS Compliance Audit (Trademark)-Standards, Policies and Procedures; and Volume 6: Specifications for the Medicare Health Outcomes Survey. In addition, the 2008 *Physician and Hospital Quality (PHQ) Standards and Guidelines* is an alternative electronic NCQA publication that is available at a cost of \$215 for 1-4 users during the first year that this rule proposal is in effect. The Department obtained this cost information from the NCQA 2009-2010 Publication and Products website publication. During the subsequent four years that this rule proposal is in effect, the Department anticipates minimal increases in cost for any updates to the NCQA publications. There is no anticipated difference in cost of compliance between small and large businesses.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. The Government Code §2006.002(c) requires that if a proposed rule may have an economic impact on small businesses or micro businesses, state agencies must prepare as part of the rule-making process an economic impact statement that assesses the potential impact of the proposed rule on these businesses and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. The Government Code §2006.001(a)(2) defines "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated, and has fewer than 100 employees or less than \$6 million in annual gross receipts. The Government Code §2006.001(a)(1) defines "micro business" similarly to "small business" but specifies that such a business may not have more than 20 employees. The Government Code §2006.001(a)(1) does not specify a maximum level of gross receipts for a "micro business." The Department has determined that the proposal may have an adverse economic impact on 75 to 150 small or micro businesses if they elect to perform physician ranking and

thus are required to comply with the proposed new section. In accordance with the Government Code §2006.002(c-1), the Department has determined that even though the proposed new section may have an adverse economic effect on small or micro businesses that elect to perform physician ranking and that are, therefore, required to comply with these proposed requirements, the Department has determined that it is not required to prepare a regulatory flexibility analysis as required in §2006.002(c)(2) of the Government Code for the following two reasons. First, small or micro businesses are not required by statute or by this proposed rule to perform physician ranking. Therefore, those small and micro businesses that perform physician ranking do so at their own choice, and as a result, agree to bear the additional costs required for compliance with this proposal. The costs outlined in the Public Benefit/Cost Note part of this proposal provide sufficient cost information for small or micro business to make an informed business decision on whether to perform physician ranking. Secondly, §2006.002(c)(2) of the Government Code requires a state agency, before adopting a rule that may have an adverse economic effect on small businesses, to prepare a regulatory flexibility analysis that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule. Section 2006.002(c-1) of the Government Code requires that the regulatory analysis "consider, if consistent with the health, safety, and environmental and economic welfare of the state, using regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses." Therefore, an agency is not required to consider alternatives that, while possibly minimizing adverse impacts on small and micro businesses, would not be protective of the health, safety, and environmental and economic welfare of the state.

The purpose of the Insurance Code Chapter 1460 and the proposed new section is to provide a fair, consistent, efficient and transparent system of physician ranking that emphasizes quality of health care. As previously stated, because currently practicing physicians will be actively involved in the development of the standards, the process should be more fair and understandable to physicians. In addition, the information available to consumers as a result of the physician ranking will provide important, clear information to assist them in comparing the performance of physicians who are available to them under their health plan. With this information, consumers will be able to make informed choices when selecting a physician for their medical treatment and health maintenance. Therefore, such information is important to and protective of the health of Texas consumers. Hence, the Department has determined that for those small or micro businesses that utilize a physician ranking system, it is important that they do so in accordance with the authorizing statute and this proposal which implements the authorizing statute. The purpose of the proposed new section and the authorizing statute is to protect the health, safety, and economic welfare of Texas consumers and the state of Texas, and as a result, there are no additional regulatory alternatives to the proposed requirements that will sufficiently protect the health, safety, and economic interests of Texas consumers and the welfare of the state.

TAKINGS IMPACT ASSESSMENT. The Department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on December 28, 2009 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. An additional copy of the comment must be simultaneously submitted to Margaret Lazaretti, Senior Policy Advisor for Life, Health and Licensing, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

STATUTORY AUTHORITY. The new section is proposed under the Insurance Code §§1460.003, 1460.005, 1460.006 and 36.001. Section 1460.003 requires health benefit plan issuers to utilize standards adopted by the Commissioner for physician ranking and prescribes the notice and process requirements to be followed by health benefit plan issuers in performing their physician ranking procedures. Section 1460.005 authorizes the Commissioner to adopt rules to ensure that a health benefit plan issuer that uses a physician ranking system utilizes nationally recognized standards, guidelines and measures that measure quality of health care for performing its physician ranking. The Commissioner, in adopting these rules, is required to consider guidelines, standards and measures, including those prescribed by the National Quality Forum (NQF), AQA Alliance, and the National Committee on Quality Assurance (NCQA) and other similar national organizations. If the NQF, AQA Alliance, NCQA, or other national organizations do not have established standards or guidelines regarding an issue, the Commissioner is required to consider standards, guidelines, and measures based on other bona fide nationally recognized guidelines, expert-based physician consensus quality standards, or leading objective clinical evidence and scholarship. Section 1460.006 requires health benefit plan issuers to ensure that quality guidelines are developed with the input of currently practicing physicians and are transparent and valid. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statute is affected by this proposal: Insurance Code Chapter 1460.

§21.3202. Physician Ranking Requirements.

(a) Purpose. In accordance with the Insurance Code §1460.005, this section specifies the standards and guidelines that are necessary to ensure that a health benefit plan issuer, including a subsidiary or affiliate, that utilizes rankings, tiers, ratings or other comparisons of a physician's performance against standards, measures, or other physicians, uses a nationally recognized physician ranking system that emphasizes quality of health care.

(b) Applicability.

(1) This section applies to a health benefit plan issuer as defined in the Insurance Code §1460.001.

(2) This section does not apply to:

(A) a plan specified in the Insurance Code §1460.002;

or

(B) a Medicare plan offered pursuant to Title XVIII, Part C and D of the Social Security Act.

(c) National Quality Forum (NQF) or AQA Alliance. A health benefit plan issuer that uses a physician ranking system is required to follow the endorsed measures, guidelines, and standards of the NQF or the endorsed measures, guidelines, and standards of the AQA Alliance.

(d) National Committee on Quality Assurance (NCQA). If neither the NQF nor the AQA Alliance has an endorsed measure, guideline, and standard regarding an issue, the health benefit plan issuer is required to follow the endorsed measures, guidelines, and standards of the NCQA.

(e) Other Guidelines, Quality Standards, and Clinical Evidence. If the NQF, AQA Alliance, or NCQA do not have endorsed measures, guidelines, and standards regarding an issue, the health benefit plan issuer is required to follow measures, guidelines, and standards based on other bona fide nationally recognized guidelines, expert-based physician consensus quality standards, or leading objective clinical evidence and scholarship.

(f) Duties of Health Benefit Plan Issuer. In accordance with the Insurance Code §1460.006, a health benefit plan issuer shall ensure that:

(1) physicians currently in clinical practices are actively involved in the development of the standards used in subsections (c) - (e) of this section and

(2) the measures and methodology used in the comparison programs required in subsections (c) - (e) of this section are transparent and valid.

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

Filed with the Office of the Secretary of State on November 16, 2009.

TRD-200905275

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: December 27, 2009

For further information, please call: (512) 463-6327



SUBCHAPTER II. RECOGNITION OF NATIONAL CERTIFYING ORGANIZATIONS FOR NONINVASIVE SCREENING OF CARDIOVASCULAR DISEASE

28 TAC §21.4301

The Texas Department of Insurance proposes new Subchapter II, §21.4301, concerning the recognition of provider credentials for noninvasive screening of cardiovascular disease. This proposed new section is necessary to implement that part of House Bill (HB) 1290, enacted by the 81st Legislature, Regular Session, that adds the Insurance Code Chapter 1376. Chapter 1376 establishes minimum coverage requirements for the screening of early detection of cardiovascular disease and requires that the screening be performed by a laboratory that is certified by a national organization recognized by the Commissioner by rule.

The intent of HB 1290 is to "[expand] access to medical screenings to increase the early detection of cardio-vascular disease."

(TEXAS STATE SENATE STATE AFFAIRS COMMITTEE, BILL ANALYSIS (ENGROSSED), HB 1290, 81st Leg., R.S. (May 18, 2009)). Insured individuals who qualify for screening services in accordance with the Insurance Code §1376.003 will be provided a minimum coverage of up to \$200 for computed tomography scanning measuring coronary artery calcification (CT screening) or ultrasonography measuring carotid intima-media thickness and plaque (IMT screening). Under §1376.003 of the Insurance Code, a health benefit plan that provides coverage for screening medical procedures must provide this minimum coverage to males between the ages of 45 and 76 years of age and females between the ages of 55 and 76 years of age who are diabetic or have a risk of developing coronary heart disease. According to the bill analysis, "[by] requiring health plans to provide some coverage for these screenings, more individuals will benefit from early detection, possibly saving lives and reducing related long-term medical care expenses."

The Insurance Code §1376.003(b) provides that in order to qualify for the minimum coverage provided by HB 1290, the screening tests must be performed by a laboratory that is certified by a national organization recognized by the Commissioner by rule. Proposed new §21.4301 recognizes such organizations as required for implementation of Insurance Code §1376.003(b).

Proposed new §21.4301 recognizes the following organizations for the purpose of providing certification for laboratories that perform screening tests for atherosclerosis and abnormal artery structure and function in accordance with Insurance Code Chapter 1376: (i) the American College of Radiology, (ii) the Intersocietal Accreditation Commission, or (iii) an organization recognized by the Centers for Medicare and Medicaid Services.

FISCAL NOTE. Doug Danzeiser, Deputy Commissioner for the Life, Health and Licensing Division, has determined that for each year of the first five years the proposal will be in effect, there will be no measurable fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT/COST NOTE. Mr. Danzeiser also has determined that the following public benefits will result for each year of the first five years the proposed new section is in effect: (i) laboratories that are certified pursuant to proposed §21.4301 that provide screening tests for atherosclerosis and abnormal artery structure and function in accordance with the Insurance Code Chapter 1376 will be able to obtain payment from insurers for services that may not have been covered benefits prior to the enactment of HB 1290; (ii) insurers providing such payments will be more confident that the screening tests are being performed by professional and reputable laboratories; and (iii) insured consumers utilizing the coverage in accordance with the Insurance Code Chapter 1376 will be more confident that the screening tests being provided are accurate and informative and thereby will increase the possibility of early detection of cardio-vascular disease.

The Department anticipates that there will be no costs to comply with the proposed new section because no laboratory is required to provide screening tests for atherosclerosis and abnormal artery structure and function nor is any laboratory required to pursue certification with any of the recognized national organizations if they are not already certified by them. HB 1290 and the proposed rule merely provide a new and conditional method and source of reimbursement for screening tests that would not otherwise be available to laboratories. In addition, while many

insurers do provide coverage for screening medical procedures and would, therefore, be required to comply with the minimum coverage required by HB 1290, no insurer is required by statute or by this proposal to provide coverage for screening medical procedures. Furthermore, any costs incurred as a result of providing the minimum coverage under HB 1290 are a result of the enactment of HB 1290 and not a result of the adoption, enforcement, or administration of the proposed new section. By limiting §21.4301 to merely recognizing national organizations for laboratory certification, as required by the Insurance Code §1376.003(b), the proposed rule does not impose any additional requirements or costs that are in addition to those that are imposed as a result of the enactment of HB 1290. In accordance with the Insurance Code §1376.003(b), the proposal merely recognizes national organizations that provide certification for laboratories who perform noninvasive screening tests for atherosclerosis and abnormal artery structure and function every five years, as provided in the Insurance Code Chapter 1376, and does not impose any requirements upon laboratories to obtain certification nor upon insurers to provide any coverage in addition to that required by the Insurance Code Chapter 1376.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES.

As required by the Government Code §2006.002(c), the Department has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses that opt to provide coverage for screening medical procedures. No small or micro business is required to provide coverage for screening medical procedures or to comply with the proposal. The Department's analysis that there will be no costs to comply with the proposed new section that is detailed in the Public Benefit/Cost Note section of this proposal is also applicable for small and micro businesses that opt to provide coverage for screening medical procedures. In accordance with the Insurance Code §1376.003(b), the proposal merely recognizes national organizations that provide certification for laboratories who perform noninvasive screening tests for atherosclerosis and abnormal artery structure and function every five years, as provided in the Insurance Code Chapter 1376, and does not impose any requirements upon any laboratories, regardless of size, to obtain certification nor upon any insurers, regardless of size, to provide any coverage in addition to that required by the Insurance Code Chapter 1376. The proposed rule does not impose any additional requirements or costs that are in addition to those that are imposed as a result of the enactment of HB 1290. In accordance with the Government Code §2006.002(c), the Department has therefore determined that a regulatory flexibility analysis is not required because the proposal will not have an adverse impact on small or micro businesses.

TAKINGS IMPACT ASSESSMENT. The Department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on December 28, 2009, 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. An additional copy of the comments must be simultaneously submitted to Doug Danzeiser, Deputy Commissioner for the Life, Health

and Licensing Division, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

STATUTORY AUTHORITY. The new section is proposed under the Insurance Code §1376.003(b) and §36.001. The Insurance Code §1376.003(b) provides that in order to qualify for the minimum coverage specified in §1376.003(b), the screening tests for atherosclerosis and abnormal artery structure and function must be performed by a laboratory that is certified by a national organization recognized by the Commissioner by rule. The Insurance Code §36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Insurance Code §§1376.001 - 1376.003.

§21.4301. Recognition.

The Commissioner recognizes the following organizations pursuant to Insurance Code §1376.003(b), which requires the Commissioner to recognize national organizations that certify laboratories to perform the screening tests for atherosclerosis and abnormal artery structure and function that are set forth in the Insurance Code §1376.003(b)(1) and (2):

- (1) the American College of Radiology;
- (2) the Intersocietal Accreditation Commission; or
- (3) an organization recognized by the Centers for Medicare and Medicaid Services.

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

Filed with the Office of the Secretary of State on November 16, 2009.

TRD-200905268

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: December 27, 2009

For further information, please call: (512) 463-6327



PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 137. DISABILITY MANAGEMENT SUBCHAPTER A. GENERAL PROVISIONS

28 TAC §137.5

The Texas Department of Insurance, Division of Workers' Compensation (Division) proposes new §137.5 regarding Certified Case Managers. This new section is necessary to implement statutory amendments to Labor Code §401.011(5-a)

and §413.021 under House Bill (HB) 7, enacted by the 79th Legislature, Regular Session, effective September 1, 2005 and Senate Bill (SB) 1814, enacted by the 81st Legislature, Regular Session, effective June 19, 2009. One of the objectives of HB 7 was to amend the Labor Code to require insurance carriers to evaluate compensable injuries that could potentially result in lost time from employment to determine if skilled case management is necessary to facilitate an injured employee's return to work. In addition, HB 7 created a definition for case management in Labor Code §401.011(5-a). HB 7 also clarified that case managers must be appropriately licensed in this state to perform services and that insurance adjusters cannot serve as case managers. SB 1814 modified §413.021 from requiring that case managers be appropriately licensed in Texas to requiring that case managers be appropriately certified.

New §137.5 establishes the certification requirements for case managers who perform services for non-network claims using the same standards that currently apply to case managers who perform services for network claims under 28 Texas Administrative Code (TAC) §10.81. New §137.5 also clarifies that certified case managers should be reimbursed according to their contractual agreement with the insurance carrier. The Division proposes that new §137.5 shall become effective September 1, 2010.

Matthew Zurek, Executive Deputy Commissioner for Healthcare Management and System Monitoring, has determined that for each year of the first five years the proposed section will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the rule. There will be no measurable effect on local employment or the local economy as a result of the proposal because the same requirements have existed for networks since 2006 under Insurance Code §1305.103(f) and §1305.303 and 28 TAC §§10.80 - 10.83 and the statutory requirement for a case manager for non-networks has existed since September 1, 2005 under Labor Code §413.021.

Matthew Zurek, Executive Deputy Commissioner for Healthcare Management and System Monitoring, has also determined for each year of the first five years the section is in effect, the public benefits anticipated as a result of proposed new §137.5 will be more effective management of an injured employee's rehabilitation, recovery, or return to work. In addition, the new rule is expected to facilitate greater continuity of care for the injured employee. There should be minimal regulatory costs for insurance carriers to comply with the new rule because the Division proposes the rule become applicable September 1, 2010. The market will likely not experience any significant economic impact since the requirements that insurance carriers use certified case management was established in the statutory language of Labor Code §413.021 in 2005. Although the statute currently requires insurance carriers to use case managers "who are appropriately certified" for non-network claims, new §137.5 spells out what certifications case managers must obtain to be in compliance with the statute. Further, insurance carriers that currently operate or utilize certified workers' compensation health care networks in Texas are required to adhere to similar certification requirements contained in proposed new §137.5 for network claims under Chapter 1305 of the Insurance Code and 28 TAC §§10.80 - 10.83.

There is no anticipated adverse economic effect on small or micro-businesses or to persons who are required to comply with the rule as proposed. While the requirements to become certified as a case manager may have some costs affiliated with them,

these requirements and their consequential costs are mandated by statute not rule. The rule proposed to implement these legislative goals involves minimal additional cost. The Division believes that this cost would not be significant and would not adversely impact small or micro-businesses. Since the Division has determined that the rule will have no adverse economic effect on small or micro-businesses preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

The Division has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under Texas Government Code §2007.043.

To be considered, written comments on the proposal must be received no later than 5:00 p.m. CST on January 11, 2010. Comments may be submitted via the Internet through the Division's Internet website at <http://www.tdi.state.tx.us/wc/rules/proposedrules/toc.html> or by mailing your comments to Maria Jimenez, Legal Services, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744. Any request for a public hearing must be submitted separately to Christopher Bean, Workers' Compensation Counsel, MS-4D, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744 by 5:00 p.m. on January 11, 2010. If a hearing is held, written and oral comments presented at the hearing will be considered.

The Commissioner of Workers' Compensation has statutory authority to adopt proposed new §137.5. Pursuant to Labor Code §402.00111 and §402.061, the Commissioner of Workers' Compensation has the general authority to adopt any rule necessary to implement the powers and duties of the Division of Workers' Compensation created in the Labor Code or by other laws of this State. Pursuant to Labor Code §413.021(a), an insurance carrier shall evaluate a compensable injury in which the injured employee sustains an injury that could potentially result in lost time from employment as early as practicable to determine if skilled case management is necessary for the injured employee's case. As necessary, case managers who are appropriately certified shall be used to perform these evaluations. Additionally, a claims adjuster may not be used as a case manager.

The following sections are affected by this proposal: Labor Code, §401.011(5-a) and §413.021.

§137.5. Certified Case Managers.

(a) This section is applicable only to case management services provided to injured employees not subject to a health care network certified under Insurance Code Chapter 1305 on or after September 1, 2010. This section is also not applicable to case management services provided to injured employees subject to Labor Code Section 504.053(b)(2).

(b) Insurance carriers shall utilize certified case managers (CCMs) whose certifying organization must be accredited by an established accrediting organization including the National Commission for Certifying Agencies, the American Board of Nursing Specialties, or other national accrediting agencies with similar standards for case management certification. CCMs must be certified in one or more of the following areas:

- (1) case management;
- (2) case management administration;

- (3) continuity of care;
- (4) disability management;
- (5) occupational health; or
- (6) rehabilitation case management.

(c) Insurance carriers may develop and implement requirements for CCMs, such as the following:

- (1) certification and application approval of the CCM;
- (2) contract terms and agreements;
- (3) criteria for initiating CCM services and other procedures;
- (4) case management activity files for injured employee receiving CCM assistance; and
- (5) reporting requirements.

(d) When a CCM initiates contact with a health care provider, the CCM shall be reimbursed according to the CCM's contractual agreement with the insurance carrier.

(e) In accordance with Labor Code Section 413.021(a) a claims adjuster may not serve as a CCM.

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

Filed with the Office of the Secretary of State on November 16, 2009.

TRD-200905271

Dirk Johnson

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Earliest possible date of adoption: December 27, 2009

For further information, please call: (512) 804-4703

◆ ◆ ◆
TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 53. CERTIFICATION BY COMPANIES OFFERING QUALIFIED INVESTMENT PRODUCTS

34 TAC §§53.3, 53.5, 53.6, 53.15, 53.16

The Teacher Retirement System of Texas (TRS) proposes amended rules for the certification of companies offering qualified investment products through what are commonly referred to as "403(b) plans," which educational institutions make available to their employees, and the registration of those products. TRS's rules on 403(b) plans are in Title 34, Part 3, Chapter 53 of the Texas Administrative Code. TRS is reviewing its rules in Chapter 53 under §2001.039 of the Government Code, which provides for affected entities to assess every four years whether the reasons for initially adopting a rule continue to exist. The proposed amendments arise from that review.

TRS proposes amendments to the following sections of Chapter 53: §53.3, relating to maximum fees, costs, and penalties; §53.5, relating to qualifications for certification by companies offering qualified investment products other than annuity contracts; §53.6, relating to procedure for certification; §53.15, relating to product registration requirement; and §53.16, relating to procedure for product registration. In October 2009, TRS adopted other amendments to §§53.5, 53.6, and 53.16 that related to the implementation of recently enacted legislation, House Bill (H.B.) 3480 (81st Legislature, Regular Session, 2009). Notice of the adoption the rule amendments relating to H.B. 3480 was published in the October 23, 2009, issue of the *Texas Register* (34 TexReg 7340), and the adopted rules became effective October 29, 2009.

The proposed amendments to §§53.3, 53.5, 53.6, 53.15, and 53.16 arising out of the review of Chapter 53 of TRS's rules are explained below:

The proposed amendment to §53.3 updates an obsolete statutory reference.

The proposed amendment to §53.5 clarifies that the amount of assets a company issuing non-annuity products must have under management in all accounts must total at least \$2 billion (as opposed to requiring a minimum balance of \$2 billion for each account managed).

The proposed amendments to §53.6 delete an obsolete subsection regarding companies that certified with TRS before September 1, 2002, and re-letter subsequent subsections accordingly.

The proposed amendments to §53.15 clarify that no application form exists for company certification because companies merely self-certify that they meet the certification requirements. The proposed amendments clarify that an application form exists, however, for product registration.

A proposed amendment to §53.16 clarifies that certified companies must provide fee information to TRS in registering products, after TRS has approved their application to register products. Other proposed amendments to the section would permit TRS to suspend or to revoke a product registration, in addition to denying product registration.

Ken Welch, TRS Chief Financial Officer, estimates that, for each year of the first five years that proposed amendments to §§53.3, 53.5, 53.6, 53.15, and 53.16 will be in effect, there will be no foreseeable implications relating to cost or revenues of the state or local governments as a result of enforcing or administering the proposed rules.

For each year of the first five years that the proposed rules will be in effect, Mr. Welch and Ronnie Jung, TRS Executive Director, have determined that the public benefit will be to update and to clarify TRS's rules for administering the retirement system's 403(b) company certification and product registration program. Mr. Welch and Mr. Jung have determined that there is no probable economic cost to entities or persons required to comply with the proposed rules. Mr. Welch and Mr. Jung also have determined that there will be no effect on a local economy because of the proposed rules, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Moreover, there will be no direct adverse economic effect on small businesses or micro-businesses within TRS's regulatory authority as a result of the proposed rules, and, therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice.

Statutory Authority: TRS proposes the amended rules under the authority of the following statutes: Section 6 of Article 6228a-5, Vernon's Texas Civil Statutes, which authorizes TRS, after consultation with the Texas Department of Insurance, the Texas Department of Banking, and the State Securities Board, to adopt rules to administer §§5, 6, 7, 8, 8A, 9A, 9B, 11, 12, and 13 of Article 6228a-5 relating to 403(b) company certification and product registration; and §825.102, Government Code, which authorizes TRS to adopt rules for the administration of the funds of the retirement system.

Cross-Reference to Statute: The proposed amended rules do not affect any other statutes.

§53.3. *Maximum Fees, Costs, and Penalties.*

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

(g) A certified company may charge a loan initiation fee of no more than \$50.00. This subsection does not prohibit a company from charging interest on a loan in addition to a loan initiation fee. If the investment product is an annuity contract, loan terms must comply with applicable requirements of insurance laws, including Chapter 1110 [Article 3.44e], Insurance Code.

(h) (No change.)

§53.5. *Qualifications for Certification by Companies Offering Qualified Investment Products Other than Annuity Contracts.*

(a) A company, other than a platform company, that offers qualified investment products other than annuity contracts may certify to TRS if it meets the following requirements:

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

(5) The company manages assets totaling [øf] at least \$2 billion.

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

(b) (No change.)

§53.6. *Procedure for Certification.*

(a) - (d) (No change.)

~~{(e) For a company that filed its certification with TRS before September 1, 2002, certification remains in effect through August 31, 2007.}~~

(e) ~~{(f)}~~ A certifying company shall pay the certification fee established by this chapter to TRS at the time it certifies to TRS.

(f) ~~{(g)}~~ A certified company has an on-going duty to correct any erroneous or misleading information provided to TRS in the certification process. A company shall notify TRS within 30 calendar days of a change in the information provided in its certification if such a change affects the accuracy of the company's certification or its eligibility for certification.

(g) ~~{(h)}~~ TRS may deny a company's certification if the company does not provide all required information, if the information provided indicates the company does not meet the requirements for certification, or if TRS receives notification of a violation regarding the company or the company's product from the Texas Department of Insurance, the Texas Department of Banking, the State Securities Board, the Texas Attorney General, or the company.

(h) ~~(i)~~ Denial of certification is final but a company may re-certify if it subsequently submits information or corrections that show it meets the requirements for certification. Additional or corrective information filed within 30 business days following a denial of certification shall not require payment of an additional certification fee.

(i) ~~(j)~~ Certification remains in effect in accordance with the provisions of this section unless revoked or suspended by TRS or withdrawn by the company through written notice to TRS.

§53.15. *Product Registration Requirement.*

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

(d) The retirement system shall permit a company to ~~apply to~~ register products from November 1 through December 15 and from May 1 through June 15 each calendar year.

(e) (No change.)

(f) A company is required to certify to the retirement system as required by this chapter in order to apply to register products. A company may submit ~~applications for~~ certification and application for product registration simultaneously.

§53.16. *Procedure for Product Registration.*

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

(c) In registering ~~applying to register~~ products, a company shall provide information concerning all the fees charged to an employee in connection with the participation in, or purchase of, each registered qualified investment product and the sale and administration of the product, including any specific options available in connection with the registered product if additional or different fees are charged in connection with the options. The information concerning fees shall be provided in the format and manner required by the retirement system.

(d) - (i) (No change.)

(j) The retirement system may deny, suspend, or revoke registration of ~~to offer~~ products if the company does not provide all required information, if ~~the information provided indicates~~ the product does not meet the requirements for registration, or if the retirement system receives notification of a violation regarding the product from the Texas Department of Insurance, the Texas Department of Banking, the Texas State Securities Board, or the company. The retirement system shall deny, suspend, or revoke registration of a product if the company has failed to certify to TRS; if TRS has denied, suspended, or revoked the certification of the company; or if the company has not certified to offer the product type sought to be registered or previously registered.

(k) - (o) (No change.)

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

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

TRD-200905233

Brian Guthrie

Deputy Director

Teacher Retirement System of Texas

Earliest possible date of adoption: December 27, 2009

For further information, please call: (512) 542-6438



PART 9. TEXAS BOND REVIEW BOARD

CHAPTER 181. BOND REVIEW BOARD SUBCHAPTER A. BOND REVIEW RULES

34 TAC §181.5, §181.10

The Texas Bond Review Board (BRB) proposes amendments to Subchapter A, §181.5 and §181.10, concerning Bond Review Rules. The proposed amendments are to facilitate information reporting related to state securities approved by the BRB.

Robert Kline, Executive Director, 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 of this section.

Mr. Kline also determined that for each year of the first five years the public will benefit from clearer debt issuance and reporting procedures. There will be no effect on small businesses. There is no additional anticipated economic cost to persons to comply with the amendment of 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 Texas 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 Texas Government Code Chapter 1231. The proposed amendments have been reviewed by legal counsel and found to be within BRB's authority to adopt.

§181.5. *Submission of Final Report.*

(a) Within 60 days after the delivery of the state securities and receipt of the state security proceeds, the issuer shall submit one original of a final report in the form required by the bond finance office.

(1) For state securities issued in the form of lease purchases, the reporting requirements of subsection (b) of this section shall be applicable.

(2) For state securities issued in the form of commercial paper notes, the reporting requirements of subsection (c) of this section shall be applicable.

(3) A final report for state securities, other than lease-purchases and commercial paper, must include:

(A) all actual costs of issuance as well as the underwriting spread for competitive financings, the private placement fee for private placements, all closing costs, and any other costs incurred during the issuance process;

(B) a complete bond transcript, including the preliminary official statement and the final official statement, private placement memorandum, if applicable, or any other offering documents as well as all other executed documents pertaining to the issuance of the state security.

(4) Issuers of state securities that have entered into interest rate management (swap) agreements shall provide to the bond finance office in electronic form, as applicable, a copy of the ISDA Master

Agreement including all schedules to the Master Agreement and/or the Credit Support Annex.

(b) Within 90 days after the signing of a lease purchase the purchaser shall submit an original lease purchase final report to the bond finance office. A final report for lease purchases must include a detailed explanation of the terms of the lease-purchase agreement, including but not limited to, amount of purchase, trade-in allowance, interest charges, service contracts, remaining draw amount if applicable, and a final or estimated amortization as applicable.

(c) In lieu of the reporting requirements of subsection (a) of this section, an issuer of state securities issued in the form of commercial paper notes shall submit a report to the bond finance office pursuant to §181.10(c) of this title (relating to State Debt Issuer Reports) so long as the issuer has authority to issue commercial paper under the program proceedings approved by the Board or exempt from approval pursuant to §181.9 of this title (relating to State Exemptions).

§181.10. State Debt Issuer Reports.

(a) All issuers whose state securities are subject to review by the Board must file state debt issuer reports with the bond finance office on a semi-annual basis. Reports shall be submitted no later than March 15 for the six month period ending the last day of February and no later than September 15 for the six month period ending August 31.

(b) The semi-annual reports shall include:

(1) an explanation of any change during the fiscal year previous to the deadline for this report, in the debt-retirement schedule for any outstanding state security issue (e.g. exercise of redemption provision, conversion from short-term to long-term securities, etc.);

(2) a description of any state security issues expected during the fiscal year, including type of issue, estimated amount, and expected month of sale;

(3) a list of all state security issues outstanding and corresponding debt service schedules for all securities outstanding in a digital and hard copy format; and

(4) a list of all interest rate management agreements, including the associated issue name, effective and termination dates, original and current notional amounts, terms of the agreement (fixed rate paid/variable rate received, variable rate paid/variable rate received), true interest cost, counterparty and counterparty ratings.

(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) the aggregate principal amount of commercial paper that the issuer is authorized to issue and have outstanding at any one time;

(2) the aggregate principal amount of commercial paper outstanding as of the end of such semi-annual period;

(3) the aggregate principal amount of commercial paper issued to fund project costs during such semi-annual period; and

(4) a list of the projects for which commercial paper was issued during such semi-annual period.

(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 by an issuer 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 by an issuer 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.

(e) Issuers of state securities that have entered into interest rate management (swap) agreements shall provide a quarterly report in electronic form to the Board that includes, but is not limited to:

(1) original and currently outstanding notional amounts, effective and termination dates, interest rates paid and received, counterparty (and guarantor, if applicable) credit ratings and the mark-to-market value (termination value) of the applicable agreement as measured by the economic cost or benefit of terminating outstanding contracts;

(2) the amount of liability the issuer has to each specific counterparty as measured by an aggregate mark-to-market value netted for offsetting transactions;

(3) the status of liquidity facilities including the remaining term;

(4) the amount of negative disparity between the two offsetting rates in the agreement (basis loss) experienced since the last reporting period, including draws on reserves and contingency plans for such future losses;

(5) contingency plans to fund termination payments;

(6) a description of any material changes to an agreement since the last reporting period.

(f) Issuers of state securities that have entered into interest rate management (swap) agreements shall notify the bond finance office within 10 business days of:

(1) a changes in the credit rating of each counterparty;

(2) a collateral posting by an issuer or counterparty;

(3) a breach of a swap agreement including a description of the breach.

(g) Issuers of state securities that have variable-rate debt outstanding shall provide a quarterly report in electronic form to the Board that includes, but is not limited to losses due to higher liquidity costs experienced since the last reporting period, including draws on reserves and contingency plans for such future losses.

(h) Issuers of state securities that have variable-rate debt outstanding shall notify the bond finance office within 10 business days of:

(1) a change in the credit rating of a liquidity provider or an increase in the cost for liquidity;

(2) a change in the credit rating of a firm providing credit enhancement;

(3) a reset rate in excess of one hundred basis points from the original rate.

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

Filed with the Office of the Secretary of State on November 16, 2009.

TRD-200905278
Thomas Griess
Assistant Attorney General
Texas Bond Review Board
Earliest possible date of adoption: December 27, 2009
For further information, please call: (512) 475-4805



34 TAC §181.9

The Texas Bond Review Board (BRB) proposes amendments to Subchapter A, §181.9, concerning Bond Review Rules. The proposed amendments 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 of this section.

Mr. Kline also determined that for each year of the first five years of the public will benefit from clearer debt issuance and reporting procedures. There will be no effect on small businesses. There is no additional anticipated economic cost to persons to comply with the amendment of 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 Texas 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 Texas Government Code Chapter 1231. The proposed amendments have been reviewed by legal counsel and found to be within BRB's authority to adopt.

§181.9. State Exemptions.

(a) The Board may exempt certain state securities from formal approval by the Board. Exemptions include the following:

(1) Texas Department of Housing and Community Affairs multifamily conduit housing transactions are exempt unless seeking an ad valorem tax reduction or exemption.

(2) Texas State Affordable Housing Corporation multifamily conduit housing transactions are exempt unless seeking an ad valorem tax reduction or exemption.

(3) [~~Effective January 1, 2008,~~] Texas Public Finance Authority Charter School Finance Corporation conduit transactions are exempt.

(4) State securities secured by the general revenues of the state issued by the Veterans Land Board, the Texas Water Development Board or the Higher Education Coordinating Board determined by the Executive Director to be self-supporting and state securities issued by the Texas Water Development Board pursuant to the clean water state revolving fund program under Subchapter J, Chapter 15, Water Code and Subchapter I, Chapter 17, Water Code.

(5) Self-supporting revenue state securities issued by:

(A) an institution of higher education, having an unenhanced long-term debt rating of at least AA- or its equivalent, and that

are not secured by the general revenue of the state; provided, however, that an issue of state securities to be issued to finance the cost of a tuition revenue project shall not be exempt unless each tuition revenue bond project has been approved for financing by the Board. Any state securities issued to finance a tuition revenue bond project or projects approved by the Board must be issued by the end of the fiscal year in which such project or projects were approved by the Board. State securities may not be issued for any project not financed in the fiscal year in which the Board approved such project until the Board re-approves such project.[-]

(B) the Texas Public Finance Authority, at the request of and on behalf of, the Texas Windstorm Insurance Association.

(b) An issuer of state securities exempted pursuant to this section must still comply with §181.2 and §181.5 of this title (relating to Notice of Intention to Issue and Submission of Final Report).

(c) Exempt issuers are required to submit a notice of intent pursuant to §181.2(e) of this title. Upon receipt of all required information, the notice shall be forwarded to the Board for review.

(d) At the written request of one or more members of the Board given to an issuer within six business days of the notice forwarded pursuant to subsection (c) of this section, an issuer is required to follow the formal approval process regardless of this section; provided, however, if an issuer is required to follow the formal approval process pursuant to this section, the notice of intent will be treated as a completed application for purposes of §181.3 of this title (relating to Application for Board Approval of State Securities Issuance).

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

Filed with the Office of the Secretary of State on November 16, 2009.

TRD-200905276
Thomas Griess
Assistant Attorney General
Texas Bond Review Board
Earliest possible date of adoption: December 27, 2009
For further information, please call: (512) 475-4800



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 35. PRIVATE SECURITY SUBCHAPTER C. STANDARDS

37 TAC §35.42

The Texas Department of Public Safety (the Department) proposes to amend §35.42, concerning Standards, in order to provide greater discretion to the Private Security Bureau Manager in applying the rule's guidelines (relating to disqualifying Class B misdemeanors). The rule is also to be amended in order to modify those guidelines. This amendment will provide greater guidance to the Bureau staff, the regulated industry, and prospective applicants regarding the Class B misdemeanor offenses considered by the Board to be disqualifying for purposes of licensure

under the Private Security Act (Chapter 1702, Texas Occupations Code).

Cheryl MacBride, Assistant Director, Finance, has determined that for the first five years the proposed amendment is in effect, there will be no fiscal implications for state or local governments.

Ms. MacBride also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. MacBride has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of the amendment will be greater efficiency in the Bureau's operations and enhanced public safety through more appropriate license eligibility criteria. There should be no economic costs resulting from the amendment of this rule.

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 Government Code does not apply to this rule. Accordingly, the Department is not required to complete a takings impact assessment regarding this rule.

Written comments on the proposed amendment are requested and may be sent to Steve Moninger, Legal Staff, Regulatory Licensing Service - Private Security Bureau, P.O. Box 4143, MSC-0242, Austin, Texas 78765-0242, (512) 424-5842.

This amendment is proposed under 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 Occupations Code, §1702.061(b), which authorizes the Department to adopt rules to administer this chapter.

The proposed rule affects Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061 and §1702.113.

§35.42. Disqualifying Class B Misdemeanor Offenses.

(a) Pursuant to the requirement of §1702.113(b) of the Texas Occupations Code (the Act), the following Class B misdemeanor offenses (as reflected in the Texas Penal Code) shall be disqualifying for five years from the date of conviction:

- (1) 22.01 Assault (by threat or offensive contact with sports participant).
- ~~[(2) 22.07 Terroristic threat.]~~
- (2) ~~[(3)]~~ 25.04 Enticing a child from lawful custody.
- (3) ~~[(4)]~~ 31.03 Theft (\$50 to \$500).
- (4) ~~[(5)]~~ 32.41 Issuance of bad check (for child support).
- (5) ~~[(6)]~~ 32.45 Misapplication of fiduciary property.

- tion. ~~[(7)]~~ 32.46 Securing execution of a document by deception.
- (7) ~~[(8)]~~ 37.08 False report to police officer.
- (8) ~~[(9)]~~ 37.12 False identification as peace officer.
- (9) ~~[(10)]~~ 39.02 Abuse of official capacity.
- (10) ~~[(11)]~~ 39.05 Failure to report death of prisoner.
- (11) ~~[(12)]~~ 42.01 Disorderly conduct (firearm in public place).
- (12) ~~[(13)]~~ 42.02 Riot.
- (13) ~~[(14)]~~ 42.061 Silent or Abuse Calls to 911 Service.

(b) Pursuant to the requirement of §1702.113(b) of the Act, the following Class B misdemeanors (as reflected in the Texas Penal Code) are disqualifying for five years from the date of conviction, subject to the discretionary authority of the bureau manager [~~Manager~~] (as delegated by the board [~~Board~~] to consider mitigating circumstances:

- (1) 21.08 Indecent exposure.
- (2) 22.07 Terroristic threat.
- (3) Criminal Mischief (\$50 - \$500).
- (4) ~~[(2)]~~ 30.05 Criminal Trespass (not habitation).
- (5) ~~[(3)]~~ 31.12 Theft of or tampering with multichannel video or information services (and conviction).
- (6) ~~[(4)]~~ 32.52 Fraudulent, Substandard or Fictitious Degree.
- (7) ~~[(5)]~~ 33.02 Breach of computer security.
- (8) ~~[(6)]~~ 33.A.02 Unauthorized use of telecommunications service (less than \$500).
- (9) ~~[(7)]~~ 33.A.04 Theft of telecommunications service (less than \$500).
- (10) ~~[(8)]~~ 38.02 Failure to identify (if a fugitive).
- (11) ~~[(9)]~~ 38.04 Evading arrest or detention.
- (12) ~~[(10)]~~ 42.07 Harassment.

(c) Class B misdemeanors not listed in subsections (a) or (b) of this section are not disqualifying under §1702.113 of the Act, except that:[-]

- (1) Any unlisted offense that is substantially similar in elements to a listed offense is disqualifying in the same manner as the corresponding listed offense;
- (2) Any unlisted Class B misdemeanor offense that was an "attempted" Class A offense is disqualifying, subject to the discretionary review by the bureau manager;
- (3) Any unlisted offense that is classified as a Class B misdemeanor as a result of a reduction from a Class A misdemeanor is disqualifying, subject to the discretionary review by the bureau manager;
- (4) Subject to review by the board at the next, regularly scheduled, public meeting, any unlisted offense in which either the elements of the offense or the circumstances surrounding the commission of the offense are such that the bureau manager reasonably and in good faith believes that the board would conclude that the offense should be disqualifying.

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

Filed with the Office of the Secretary of State on November 16, 2009.

TRD-200905256

Brad Rable

Deputy Director

Texas Department of Public Safety

Earliest possible date of adoption: December 27, 2009

For further information, please call: (512) 424-5848



37 TAC §35.43

The Texas Department of Public Safety (the Department) proposes to amend §35.43 concerning Standards, in order to conform the guidelines to those provided in proposed new §35.46 of this title (relating to Guidelines for Disqualifying Convictions), and to provide greater discretion to the Private Security Bureau Manager in applying the rule's guidelines. This amendment will provide guidance to the Bureau staff, the regulated industry, and prospective applicants regarding the nature of the discharges considered by the Board to be disqualifying for purposes of licensure under the Private Security Act (Chapter 1702, Texas Occupations Code).

Cheryl MacBride, Assistant Director, Finance, has determined that for the first five years the proposed amendment is in effect, there will be no fiscal implications for state or local governments.

Ms. MacBride also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. MacBride has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of the amendment will be greater efficiency in the Bureau's operations and enhanced public safety through more appropriate license eligibility criteria. There should be no economic costs resulting from the amendment of this rule.

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 this rule.

Written comments on the proposed amendment are requested and may be sent to Steve Moninger, Legal Staff, Regulatory Li-

censing Service - Private Security Bureau, P.O. Box 4143, MSC-0242, Austin, Texas 78765-0242, (512) 424-5842.

This amendment is proposed under 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 Occupations Code, §1702.061(b), which authorizes the Department to adopt rules to administer this chapter.

The proposed rule affects Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061 and §1702.113.

§35.43. *Military [Other than Honorable] Discharges.*

Pursuant to the requirement of §1702.113(a) of the Occupations Code, individuals who are discharged from the United States Armed Services under other than honorable conditions or who receive "bad conduct discharges" are disqualified from receiving a license, commission, or registration for the following time periods:

(1) for five years after the date of discharge if the discharge was based on a criminal offense equivalent to a Class B misdemeanor that would have been disqualifying under §35.42 of this title (relating to Disqualifying Class B Misdemeanor Offenses);

(2) for five [~~ten~~] years after the date of discharge if the discharge was based on a criminal offense equivalent to a Class A misdemeanor that would have been disqualifying under §35.46 of this title (relating to Guidelines for Disqualifying Convictions);

(3) for ten [~~twenty~~] years after the date of discharge if the discharge was based on a criminal offense equivalent to a felony that would have been disqualifying under §35.46 of this title; and

(4) for five [~~ten~~] years after the date of discharge if the discharge was for any other reason relating to the occupation for which a license is sought, subject to the discretion of the bureau manager.

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

Filed with the Office of the Secretary of State on November 16, 2009.

TRD-200905257

Brad Rable

Deputy Director

Texas Department of Public Safety

Earliest possible date of adoption: December 27, 2009

For further information, please call: (512) 424-5848



37 TAC §35.46

The Texas Department of Public Safety (the Department) proposes new §35.46, concerning Standards, in order to comply with the 81st Legislature's mandate to adopt rules necessary to comply with Chapter 53 of the Texas Occupations Code, affected by House Bill 2730, §4.02 (amending §1702.004(b) of the Texas Occupations Code). This rule will provide guidance to the Bureau staff, the regulated industry, and prospective applicants regarding the criminal offenses considered by the Board to be related to the various regulated security fields, for purposes of licensure under the Private Security Act (Chapter 1702, Texas Occupations Code).

Cheryl MacBride, Assistant Director, Finance, has determined that for the first five years the new rule is in effect, there will be no fiscal implications for state or local governments.

Ms. MacBride also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. MacBride has determined that for each year of the first five years the new rule is in effect, the public benefit will be lower costs to consumers of private security services resulting from the larger pool of potential licensees, and enhanced public safety through more appropriate license eligibility criteria. There should be no economic costs resulting from this new rule.

The Department has determined that this new rule 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 new rule 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 this rule.

Written comments on the proposed amendment are requested and may be sent to Steve Moninger, Legal Staff, Regulatory Licensing Service - Private Security Bureau, P.O. Box 4143, MSC-0242, Austin, Texas 78765-0242, (512) 424-5842.

This new section is proposed under 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 Occupations Code, §1702.061(b), which authorizes the Department to adopt rules to administer this chapter.

The new rule affects Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061 and §1702.004.

§35.46. Guidelines for Disqualifying Convictions.

(a) The private security industry is in a position of trust; it provides services to members of the public that involve access to confidential information, to private property, and to the more vulnerable and defenseless persons within our society. By virtue of their licenses, security professionals are provided with greater opportunities to engage in fraud, theft, or related property crimes. In addition, licensure provides those with predispositions to commit assaultive or sexual crimes with greater opportunities to engage in such conduct and to escape detection or prosecution.

(b) Therefore, the Private Security Board has determined that offenses of the following types directly relate to the duties and responsibilities of those who are licensed under the Private Security Act. Such offenses include those crimes under the laws of another state or the United States, if the offense contains elements that are substantially similar to the elements of an offense under the laws of this state. Such offenses also include those "aggravated" or otherwise enhanced versions of the listed offenses.

(c) The following list is intended to provide guidance only, and is not exhaustive of either the offenses that may relate to a particular regulated occupation or of those that are independently disqualifying under Occupations Code, §53.021(a)(2) - (4). In addition, after due consideration of the circumstances of the criminal act and its relationship to the position of trust involved in the particular licensed occupation, the board may find that a conviction not described below also renders a person unfit to hold a license.

(1) Abandonment of a minor child (if willful and resulting in the destitution of the child).

(2) Arson.

(3) Assault with intent to kill, commit rape, commit robbery or commit serious bodily harm.

(4) Assault with a dangerous or deadly weapon.

(5) Blackmail.

(6) Bribery.

(7) Burglary.

(8) Counterfeiting.

(9) Embezzlement.

(10) Extortion.

(11) False pretenses.

(12) Forgery.

(13) Fraud against revenue or other government functions.

(14) Fraud, including intent to defraud.

(15) Harboring a fugitive from justice (with guilty knowledge).

(16) Indecency with a child.

(17) Kidnapping.

(18) Larceny (grand or petty).

(19) Mail fraud.

(20) Malicious destruction of property.

(21) Manslaughter- Voluntary.

(22) Murder.

(23) Perjury.

(24) Rape, or Sexual Assault.

(25) Receiving stolen goods (with guilty knowledge).

(26) Robbery.

(27) Tax evasion (willful).

(28) Theft (when it involves the intention of permanent taking).

(29) Transporting stolen property (with guilty knowledge).

(30) In addition:

(A) An attempt to commit a crime listed in subsection (c) of this section;

(B) Aiding and abetting in the commission of a crime listed in subsection (c) of this section; and

(C) Being an accessory (before or after the fact) to a crime listed in subsection (c) of this section.

(d) A felony conviction for one of the offenses listed in subsection (c) of this section is disqualifying for ten years from the date of the completion of the sentence, unless a full pardon has been granted for reasons relating to a wrongful conviction.

(e) A Class A misdemeanor offense for one of the offenses listed in subsection (c) of this section is disqualifying for five years from the date of completion of the sentence, unless a full pardon has been granted for reasons relating to a wrongful conviction.

(f) Conviction for a felony or Class A offense that does not relate to the occupation for which license is sought is disqualifying for five years from the date of commission, pursuant to Occupations Code, §53.021(a)(2).

(g) Conviction for an offense listed in §3g, Article 42.12, Code of Criminal Procedure, or a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure, is disqualifying for five years from the date of completion of the sentence, if a Class A misdemeanor, and ten years from the date of completion of the sentence, if a felony, pursuant to Occupations Code, §53.021(a)(3) and (4).

(h) In determining the fitness to perform the duties and discharge the responsibilities of the licensed occupation of a person who has been convicted of a crime, the bureau will consider the following:

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person when the crime was committed;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person before and after the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and

(6) any other evidence of the person's fitness provided by the person, including letters of recommendation from:

(A) prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;

(B) the sheriff or chief of police in the community where the person resides; and

(C) any other person in contact with the convicted person.

(i) In addition to the documentation listed in subsection (h) of this section, the applicant shall furnish proof in the form required by the bureau that the applicant has:

(1) maintained a record of steady employment;

(2) supported the applicant's dependents;

(3) maintained a record of good conduct; and

(4) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.

(j) The failure to provide the information listed in subsections (h) and (i) of this section, in a timely manner may result in the proposed action being taken against the application or license.

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

Filed with the Office of the Secretary of State on November 16, 2009.

TRD-200905258

Brad Rable

Deputy Director

Texas Department of Public Safety

Earliest possible date of adoption: December 27, 2009

For further information, please call: (512) 424-5848

◆ ◆ ◆
SUBCHAPTER E. GENERAL ADMINISTRATION AND EXAMINATIONS

37 TAC §35.70

The Texas Department of Public Safety (Department) proposes to amend §35.70, concerning Fees, in order to comply with the 81st Legislature's mandate to adopt rules relating to the fees necessary for the administration of the Private Security Act, as reflected in House Bill 2730, §4.19, amending §1702.062 of the Texas Occupations Code.

Cheryl MacBride, Assistant Director, Finance, has determined that for each year of the first five years the proposed amendment is in effect, there will be no fiscal implications for state or local governments.

Ms. MacBride also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. The anticipated economic cost to individuals who are required to comply with the rule as proposed is a \$25.00 registration fee if processed online and \$37.00 registration fee if processed otherwise. There is no anticipated negative impact on local employment.

In addition, Ms. MacBride has determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of the amendment will be greater flexibility on the part of the Private Security Board in the fees charged to the regulated industry, resulting in greater efficiency in administration of the statute. There should be no economic costs resulting from the amendment of this rule.

The Department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule 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 Government Code does not apply to this rule. Accordingly, the Department is not required to complete a takings impact assessment regarding this rule.

Written comments on the proposed amendment are requested and may be sent to Steve Moninger, Legal Staff, Regulatory Licensing Service - Private Security Bureau, P.O. Box 4143, MSC-0242, Austin, Texas 78765-0242, (512) 424-5842.

This amendment is proposed under 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 Occupations Code, §1702.061(b), which authorizes the Department to adopt rules to administer this chapter.

The proposed rule would affect Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061 and §1702.062.

§35.70. Fees.

(a) Pursuant to §1702.0062 of the Texas Occupations Code (as amended by H.B. 2730, 81st Legislature, 2009), the board adopts the following fee schedule. Registration fees are \$25 if processed online, and \$37 if processed otherwise.

- (1) Class A license \$350 (original and renewal).
- (2) Class B license \$400 (original and renewal).
- (3) Class C license \$540 (original and renewal).
- (4) Class D license \$400 (original and renewal).
- (5) Reinstate suspended license \$150.
- (6) Assignment of license \$150.
- (7) Change name of license \$75.
- (8) Delinquency fee.
- (9) Branch office certificate and renewal \$300.
- (10) Registration fee for private investigator, manager, branch office manager, locksmith, electronic access control device installer, and alarm systems installer \$25/37 (original and renewal).
- (11) Registration fee for noncommissioned security officer \$25/37 (original and renewal).
- (12) Registration fee for security salesperson \$25/37.
- (13) Registration fee for alarm systems monitor \$25/37.
- (14) Registration fee for dog trainer \$25/37.
- (15) Registration fee for owner, officer, partner, or shareholder of a license holder \$50.
- (16) Registration fee for security consultant \$300.
- (17) Registration fee for employee of license holder \$25/37.
- (18) Security officer commission fee \$50 (original and renewal).
- (19) School instructor fee \$100 (original and renewal).
- (20) School approval fee \$350 (original and renewal).
- (21) Letter of authority fee for private business and political subdivision \$400.
- (22) Letter of authority renewal fee for private business and political subdivision \$225.
- (23) Letter of authority fee for commissioned officer, non-commissioned officer, or personal protection officer for political subdivision \$10.
- (24) FBI fingerprint check \$25.
- (25) Duplicate pocket card \$10.
- (26) Employee information update fee \$15.

(27) Burglar alarm sellers renewal fee \$30.

(28) Personal protection officer authorization \$50.

(b) ~~[(a)]~~ The fees submitted to the board shall be the same as provided in subsection (a) of this section ~~[in §1702.062 of the Texas Occupations Code]~~ unless otherwise specified in Article V of the General Appropriations Act in accordance with §316.043 of the Texas Government Code, whether for an original application, renewal, reciprocal or provisional license, registration or security officer commission.

(c) ~~[(b)]~~ Fees collected by the board are not refundable or transferable.

(d) ~~[(e)]~~ Payment of fees shall be made by licensed company check, cashier's check, or money order or by an attorney on behalf of his client paid on the attorney's trust fund account. Should the company check be returned for insufficient funds, the applicant must promptly make payment by cashier's check or money order. If prompt payment is not made in this manner, the application will be abandoned as "incomplete." If the license was issued prior to notification of the insufficiency of funds, and proper payment is not promptly made, revocation proceedings will be initiated under §1702.361 of the Texas Occupations Code.

(e) ~~[(d)]~~ Original fees shall not be prorated. The full license fee shall accompany all applications for original license.

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

Filed with the Office of the Secretary of State on November 16, 2009.

TRD-200905259

Brad Rable

Deputy Director

Texas Department of Public Safety

Earliest possible date of adoption: December 27, 2009

For further information, please call: (512) 424-5848



37 TAC §35.71

The Texas Department of Public Safety (Department) proposes to amend §35.71, concerning Operation without Manager, in order to clarify the statutory language of §1702.121 of the Texas Occupations Code recently amended by House Bill 2730. This amendment will provide guidance to the Bureau staff and the regulated industry, by clarifying the point at which the limited period of temporary operation begins, and that the statute's reference to "termination" of the manager is meant to refer only to the termination of managerial duties, not to employment per se.

Cheryl MacBride, Assistant Director, Finance, has determined that for each year of the first five years the proposed amendment is in effect, there will be no fiscal implications for state or local governments.

Ms. MacBride also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. MacBride has determined that for each year of the first five years the proposed amendments are in effect, the

public benefit anticipated as a result of the amendment will be a better understanding of the statute on the part of the public and the industry. There should be no economic costs resulting from the amendment of this rule.

The Department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule 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 Government Code does not apply to this rule. Accordingly, the Department is not required to complete a takings impact assessment regarding this rule.

Written comments on the proposed amendment are requested and may be sent to Steve Moninger, Legal Staff, Regulatory Licensing Service - Private Security Bureau, P.O. Box 4143, MSC-0242, Austin, Texas 78765-0242, (512) 424-5842.

This amendment is proposed under 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 Occupations Code, §1702.061(b), which authorizes the Department to adopt rules to administer this chapter.

The proposed rule affects Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061 and §1702.121.

§35.71. Operation without Manager.

(a) When a qualified manager ~~[or supervisor]~~ of a licensee ~~[licensee]~~ has terminated ~~or has been terminated from~~ his position as manager, and the board has been timely notified of the termination in writing within 14 days of the termination, the business shall be operated by an owner, officer, partner or shareholder. No license shall be operated without a manager for a period exceeding 60 days after the date of the previous manager's termination.

(b) In the event that summary action has been taken against the manager, the period of temporary operation (if applicable) shall run from the effective date of that action. Section 1702.121(b) of the Texas Occupations Code should be interpreted in this manner, and to require only the termination of the manager in the capacity as manager.

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

Filed with the Office of the Secretary of State on November 16, 2009.

TRD-200905260

Brad Rable

Deputy Director

Texas Department of Public Safety

Earliest possible date of adoption: December 27, 2009

For further information, please call: (512) 424-5848



37 TAC §35.72

The Texas Department of Public Safety (Department) proposes to amend §35.72, concerning Fingerprint Submission, in order to eliminate the requirement that fingerprints be submitted on Department-provided fingerprint cards and to authorize the submission of electronic fingerprints.

Cheryl MacBride, Assistant Director, Finance, has determined that for each year of the first five years the proposed amendment is in effect, there will be no fiscal implications for state or local governments.

Ms. MacBride also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. MacBride has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of the amendment will be lower costs to the Department and reduced delays to the regulated community. There should be no economic costs resulting from the amendment of this rule.

The Department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule 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 Government Code does not apply to this rule. Accordingly, the Department is not required to complete a takings impact assessment regarding this rule.

Written comments on the proposed amendment are requested and may be sent to Steve Moninger, Legal Staff, Regulatory Licensing Service - Private Security Bureau, P.O. Box 4143, MSC-0242, Austin, Texas 78765-0242, (512) 424-5842.

This amendment is proposed under 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 Occupations Code, §1702.061(b), which authorizes the Department to adopt rules to administer this chapter.

The proposed rule affects Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061.

§35.72. Fingerprints [Fingerprint Submission].

All applicants for any license, registration, security officer commission, permit or approval issued by the board shall submit two sets of classifiable fingerprints on fingerprint cards approved by [obtained from] the board or electronically through a contractor approved by DPS, [along] with any required fees to the board for the purpose of a criminal history check.

~~[(1) One set of classifiable fingerprints shall be submitted to the Texas Department of Public Safety Crime Records Service.]~~

~~[(2) One set of classifiable fingerprints shall be submitted to the Federal Bureau of Investigation.]~~

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

Filed with the Office of the Secretary of State on November 16, 2009.

TRD-200905261

Brad Rable

Deputy Director

Texas Department of Public Safety

Earliest possible date of adoption: December 27, 2009

For further information, please call: (512) 424-5848



SUBCHAPTER L. GENERAL REGISTRATION REQUIREMENTS

37 TAC §35.182

(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 (Department) proposes to repeal §35.182, concerning Fingerprints, in order to eliminate provisions rendered redundant by other rule amendments.

Cheryl MacBride, Assistant Director, Finance, has determined that for each year of the first five years the proposed repeal is in effect, there will be no fiscal implications for state or local governments.

Ms. MacBride 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 is no anticipated economic cost to individuals who are required to comply with the repeal as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. MacBride has determined that for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repeal will be reduced confusion regarding the interpretation of the Private Security Act and the Private Security Board's administrative rules. There should be no economic costs resulting from the repeal of this rule.

The Department has determined that this repeal is not a "major environmental rule" as defined by 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 repeal 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 Government Code does not apply to this repeal. Accordingly, the Department is not required to complete a takings impact assessment regarding this repeal.

Written comments on the proposed repeal are requested and may be sent to Steve Moninger, Legal Staff, Regulatory Licensing Service - Private Security Bureau, P.O. Box 4143, MSC-0242, Austin, Texas 78765-0242, (512) 424-5842.

This repeal is proposed under 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 Occupations Code, §1702.061(b), which authorizes the Department to adopt rules to administer this chapter.

The proposed repeal affects Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061.

§35.182. *Fingerprints.*

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

Filed with the Office of the Secretary of State on November 16, 2009.

TRD-200905262

Brad Rable

Deputy Director

Texas Department of Public Safety

Earliest possible date of adoption: December 27, 2009

For further information, please call: (512) 424-5848



37 TAC §35.185

The Texas Department of Public Safety (Department) proposes to amend §35.185, concerning Registration Deadline, in order to clarify the statutory language of §1702.230 of the Texas Occupations Code, recently amended by House Bill 2730. This rule amendment will provide guidance to the Bureau staff and the regulated industry, by clarifying the required components of an application for registration and ensuring that the Department has sufficient information from prospective registrants prior to their being employed in a regulated capacity.

Cheryl MacBride, Assistant Director, Finance, has determined that for each year of the first five years the proposed amendment is in effect, there will be no fiscal implications for state or local governments.

Ms. MacBride also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. MacBride has determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of the amendment will be greater assurance that those working in the security industry are statutorily eligible. There should be no economic costs resulting from the amendment of this rule.

The Department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule 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 Government Code does not apply to this rule. Accordingly, the Department is not required to complete a takings impact assessment regarding this rule.

Written comments on the proposed amendment are requested and may be sent to Steve Moninger, Legal Staff, Regulatory Licensing Service - Private Security Bureau, P.O. Box 4143, MSC-0242, Austin, Texas 78765-0242, (512) 424-5842.

This amendment is proposed under 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 Occupations Code, §1702.061(b), which authorizes the Department to adopt rules to administer this chapter.

The proposed rule affects Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061 and §1702.230.

§35.185. *Registration Deadline.*

The employer of any individual [Any person] required to be registered with the board must submit, within five working days following the employment of the individual in a regulated capacity, a registration application for that individual that complies with the requirements of §35.186 of this title (relating to Registration Applications) [have their application on file with the board within 14 days after commencing employment]. Failure to comply may, at the discretion of the manager, result in denial of the application and/or disciplinary action against the employer. An application for registration of an employee of a licensed company may be signed by the manager or his appointed designee. Appointment of a company manager's designee must be made in writing to the bureau's manager.

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

Filed with the Office of the Secretary of State on November 16, 2009.

TRD-200905263

Brad Rable

Deputy Director

Texas Department of Public Safety

Earliest possible date of adoption: December 27, 2009

For further information, please call: (512) 424-5848



SUBCHAPTER M. COMPANY RECORDS

37 TAC §35.202

The Texas Department of Public Safety (Department) proposes to amend §35.202, concerning Location of Records, in order to clarify the statutory language of §1702.110 and §1702.127 of the Texas Occupations Code, as amended by House Bill 2730. The proposed changes are intended to provide alternatives for out-of-state licensees, pursuant to HB 2730's creation of new §1702.110(b) and §1702.127(d). This rule amendment will provide guidance to the Department staff and the regulated indus-

try, by clarifying the requirements imposed by these statutory amendments.

Cheryl MacBride, Assistant Director, Finance, has determined that for each year of the first five years the proposed amendment is in effect, there will be no fiscal implications for state or local governments.

Ms. MacBride also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. MacBride has determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of the amendment will be improved enforcement of the statute's regulatory scheme in relation to out-of-state entities. There should be no economic costs resulting from the amendment of this rule.

The Department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule 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 Government Code does not apply to this rule. Accordingly, the Department is not required to complete a takings impact assessment regarding this rule.

Written comments on the proposed amendment are requested and may be sent to Steve Moninger, Legal Staff, Regulatory Licensing Service - Private Security Bureau, P.O. Box 4143, MSC-0242, Austin, Texas 78765-0242, (512) 424-5842.

This amendment is proposed under 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 Occupations Code, §1702.061(b), which authorizes the Department to adopt rules to administer this chapter.

The proposed rule affects Texas Government Code, §411.004(3) and Texas Occupations Code, §§1702.061, 1702.110, and 1702.127.

§35.202. *Location of Records.*

(a) All required bureau records [Records] of licensed companies and registered employees shall be maintained at the following locations:

(1) if a company has no branch offices, the records shall be maintained at the principal place of business within the State of Texas; or

(2) if a company has one or more branch offices, the records shall be maintained at the branch office within the State of Texas where the registrant or commissioned security officer is employed; or[-]

(3) if the company has no physical place of business within the State of Texas, the records shall be maintained:

(A) at the office of the registered agent within the State of Texas; or

(B) at any physical location within the State of Texas of an agent or employee of the company.

(b) A company shall notify the board of the location of required records, and of any centralization of records when a branch is closed or if records from area branch offices are centralized.

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

Filed with the Office of the Secretary of State on November 16, 2009.

TRD-200905264

Brad Rable

Deputy Director

Texas Department of Public Safety

Earliest possible date of adoption: December 27, 2009

For further information, please call: (512) 424-5848



SUBCHAPTER Q. TRAINING

37 TAC §§35.251 - 35.253, 35.256, 35.257, 35.260 - 35.265, 35.267

(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 (Department) proposes to repeal §§35.251 - 35.253, 35.256, 35.257, 35.260 - 35.265, and 35.267, concerning Training. Repeal of the sections is necessary in order to address public safety issues and to accommodate industry concerns relating to the training requirements imposed on the private security industry. This repeal is filed simultaneously with a proposal for a new Subchapter Q, §§35.251 - 35.253, 35.256, 35.257, 35.260 - 35.265, and 35.267 which promulgates revised provisions for training.

Cheryl MacBride, Assistant Director, Finance, has determined that for each year of the first five years the proposed repeals are in effect, there will be no fiscal implications for state or local governments.

Ms. MacBride 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 is no anticipated economic cost to individuals who are required to comply with the repeals as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. MacBride has determined that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of the repeals will be enhanced public safety through improved training of licensees. There should be no economic costs resulting from the repeal of these rules.

The Department has determined that this proposal is not a "major environmental rule" as defined by Government Code,

§2001.0225. "Major environmental rule" is defined to mean a rule 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 Government Code does not apply to these rules. Accordingly, the Department is not required to complete a takings impact assessment regarding these rules.

Written comments on the proposed repeals are requested and may be sent to Steve Moninger, Legal Staff, Regulatory Licensing Service - Private Security Bureau, P.O. Box 4143, MSC-0242, Austin, Texas 78765-0242, (512) 424-5842.

These repeals are proposed under 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 Occupations Code, §1702.061(b), which authorizes the Department to adopt rules to administer this chapter.

The repeals affect Texas Government Code, §411.004(3) and Texas Occupations Code, §§1702.061, 1702.1675, 1702.229, 1702.236, and 1702.239.

§35.251. *Application for a Training School Approval.*

§35.252. *Attendance, Progress, and Completion Records Required.*

§35.253. *Board Refusal of Certificate of Completion.*

§35.256. *Application for a Training Instructor Letter of Approval.*

§35.257. *Training Courses.*

§35.260. *Shotgun Training Requirements.*

§35.261. *Training School and Instructor Approval.*

§35.262. *Security Officer Training Manual and Examination.*

§35.263. *Alarm Installer and Alarm Systems Salesperson Training and Texting/Application for Alarm Training Program Approval.*

§35.264. *Attendance, Progress and Completion Records Required.*

§35.265. *Alarm Systems Installer or Alarm Systems Salesperson.*

§35.267. *Statutory or Rules Violations.*

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

Filed with the Office of the Secretary of State on November 16, 2009.

TRD-200905266

Brad Rable

Deputy Director

Texas Department of Public Safety

Earliest possible date of adoption: December 27, 2009

For further information, please call: (512) 424-5848



37 TAC §§35.251 - 35.253, 35.256, 35.257, 35.260 - 35.265, 35.267

The Texas Department of Public Safety (Department) proposes new §§35.251 - 35.253, 35.256, 35.257, 35.260 - 35.265, and 35.267, concerning Training in order to address public safety

issues and to accommodate industry concerns relating to the training requirements imposed on the private security industry.

Cheryl MacBride, Assistant Director, Finance, has determined that for each year of the first five years the rules are in effect, there will be no fiscal implications for state or local governments.

Ms. MacBride also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. MacBride has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of the new rules will be enhanced public safety through improved training of licensees. There should be no economic costs resulting from these new rules.

The Department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule 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 Government Code does not apply to these rules. Accordingly, the Department is not required to complete a takings impact assessment regarding these rules.

Written comments on the proposed new rules are requested and may be sent to Steve Moninger, Legal Staff, Regulatory Licensing Service - Private Security Bureau, P.O. Box 4143, MSC-0242, Austin, Texas 78765-0242, (512) 424-5842.

These new rules are proposed under 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 Occupations Code, §1702.061(b), which authorizes the Department to adopt rules to administer this chapter.

The new rules affect Texas Government Code, §411.004(3) and Texas Occupations Code, §§1702.061, 1702.1675, 1702.229, 1702.236, and 1702.239.

§35.251. Training Requirements.

(a) Security and Personal Protection Officer Training Courses.

(1) In accordance with Chapter 1702 of the Texas Occupations Code (the Act), the following training shall be required of all security and personal protection officers, as indicated:

(A) Level II Training - shall be completed by all applicants for a security officer commission or for registration as a non-commissioned security. A certificate indicating completion of Level II training shall be submitted to the board within 14 days after the commencement of employment.

(B) Level III Training - shall be completed by applicants for a security officer commission and a personal protection officer authorization. A certificate indicating completion of Level III Training shall be submitted to the board along with the application to register the

individual. Applicants for either a security officer commission or a personal protection officer authorization who are full-time peace officers, certified by the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE), may be exempted from the Level III training requirements upon submission to the bureau of a sworn affidavit attesting to the applicant's review of, and familiarity with the Act and the related administrative rules. Applicants for either a security officer commission or a personal protection officer authorization who have honorably retired as Texas peace officers within the preceding two years may be exempted from the Level III training requirements upon submission to the bureau of proof of their honorably retired status (in the form of documentation from the employing agency or the TCLEOSE), and of a sworn affidavit attesting to the applicant's review of, and familiarity with the Act and the related administrative rules. For purposes of the above exemption, "honorably retired" means that the applicant:

(i) Did not retire in lieu of a disciplinary action;

(ii) Was eligible to retire from the law enforcement agency or was ineligible to retire only as a result of an injury received in the course of the applicant's employment with the agency; and

(iii) Is entitled to receive a pension or annuity for service as a law enforcement officer or is not entitled to receive a pension or annuity only because the law enforcement agency that employed the applicant does not offer a pension or annuity to its employees.

(2) Level II may be taught by the manager, the manager's designee or a board approved school and board approved instructor using the most current version of the respective Board Level II Training Course manuals.

(3) Level III and IV shall be taught by a board approved school and board approved instructor using the most current version of the respective Board Level III and IV manuals.

(4) Training manuals for Levels II, III, and IV will be prepared by bureau staff and other qualified individuals selected by the manager.

(5) The passing grade for all examinations shall be a minimum of 75% correct answers.

(b) Alarm Training Courses.

(1) In accordance with the Act, the following training shall be required of an alarm systems installer and a security alarm salesperson:

(A) Alarm Level I - All individuals employed as an alarm systems installer or a security alarm salesperson must hold a certification by a board approved training program to renew an initial registration. An original certificate indicating successful completion of an Alarm Level I training program shall be submitted to the board along with the proper application to renew an initial registration.

(B) The passing grade for all Alarm Level I examinations shall be a minimum of 70% correct answers.

(C) An Alarm Level I program shall be taught by a board approved alarm instructor.

(2) A board approved alarm instructor may teach board approved continuing education courses.

(c) Previous training courses held for inactive or expired registrants. An inactive or expired registrant who has not worked in the investigation or security services industry for three years or more must

submit current training certificate(s) to the board or subject to the approval of the manager.

§35.252. Training School and Instructor Approval.

Approval as a security officer training school and/or instructor shall be considered a license with respect to suspension, revocation or denial.

§35.253. Application for a Training School Approval.

(a) An application for training school approval shall be on a form prescribed by the board to show proof that the applicant is:

(1) using the board's most current version training manual as its curriculum;

(2) adequate space, qualified instructors, and proper instructional material; and

(3) appointed a qualified manager who will be responsible for training.

(b) The letter of approval or license certificate shall be valid for one year and may be renewed by submitting an application for renewal 30 days prior to the expiration date.

(c) An entity having a private business letter of authority or a governmental letter of authority may seek approval for a training school approval by meeting requirements of §§35.171, 35.172, or 35.251 of this chapter (relating to Requirements for Issuance of a Private Business letter of Authority, Requirements for Issuance of a Governmental Letter of Authority, or Training Requirements) where applicable. A training school approval granted under this section shall be limited to training employees of the letter of authority only.

(d) Each board approved classroom or firearm training school shall:

(1) Have a qualified manager, and they shall comply with the requirements of §1702.113 of the Texas Occupations Code (the Act).

(2) Register any owners, officers, partners, shareholders, and qualify a manager, and they shall meet the requirements under §1702.113 of the Act.

(e) Each owner, officer, partner or shareholder and qualified manager of a board approved classroom or firearm training program shall, submit an application to the board, the appropriate fees, and two sets of board approved fingerprint cards.

(f) A board approved classroom or firearm training school shall submit a renewal application(s) prior to the expiration date on each board approved owners, officers, partners, shareholders and qualified manager.

§35.256. Application for a Training Instructor Approval.

(a) An application for approval as an instructor shall contain evidence of qualification as required by the board. Instructors may be approved for classroom and/or firearm training. An individual may apply for approval for one or both of these categories. To qualify for a classroom or firearm instructor approval the applicant for approval must submit acceptable certificates of training for each category. The classroom instructor and firearm certificates shall each have consisted of a minimum of 40 hours of board approved instruction.

(b) Proof of qualification as a classroom instructor shall include, but not be limited to:

(1) an instructor's certificate issued by Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE);

(2) an instructor's certificate issued by federal, state, or political subdivision law enforcement academy;

(3) an instructor's certificate issued by the Texas Education Agency; and

(4) an instructor's certificate relating to law enforcement, private security, or industrial security issued by a junior college, college, or university.

(c) In addition to the proof of qualification, a classroom instructor shall complete the Level III Instructor's 24 hour training course and submit completion certificate to the bureau.

(d) Proof of qualification as a firearm training instructor shall include, but not be limited to:

(1) an instructor's certificate issued by the Law Enforcement Activities Division of the National Rifle Association (NRA);

(2) an instructor's certificate issued by TCLEOSE; and

(3) a firearm instructor's certificate issued by a federal, state or political subdivision law enforcement agency approved by the manager.

(e) A letter of approval from the board shall be issued to each approved instructor and shall be valid for a period of one year. The instructor's approval may be renewed during the month preceding the month in which the approval expires for a period of one year after expiration, upon application to the board and payment of the renewal fee.

(f) The board may revoke or suspend an instructor's approval or deny the application or renewal thereof upon evidence that:

(1) The instructor or applicant has violated any provisions of the Act or this chapter;

(2) The qualifying instructor's certificate has been revoked or suspended by the issuing agency;

(3) A material false statement was made in the application;

or
(4) The instructor does not meet the qualifications set forth in the provisions of the Act and this chapter as amended.

§35.257. Security Officer Training Manual and Examination.

(a) The board's most current version training manual shall be used by all board approved Level III training schools.

(b) All students of a Level III training school shall be tested with the most current version examination prepared by and obtained from the board.

(c) The passing grade of all examinations shall be a minimum of 75% correct answers.

§35.260. Shotgun Training Requirements.

(a) Any commissioned security officer licensed by the board who, in the performance of his/her duties, has a shotgun available to assist in the protection of life or property must demonstrate competency by successfully completing the course of fire for shotgun training. The course of fire shall consist of nine rounds of nine (9) pellets "00" buckshot fired as follows:

(1) from a standing position at a distance of fifteen (15) yards, three (3) rounds of "00" buckshot in twelve (12) seconds;

(2) from a standing position at a distance of ten (10) yards, three (3) rounds of "00" buckshot in ten (10) seconds;

(3) from a standing position at a distance of five (5) yards, three (3) rounds of "00" buckshot in ten (10) seconds; or

(4) an alternate course of fire may be approved by the director upon receipt of written application.

(b) A biennial familiarization of six (6) rounds of "00" buck-shot shall be required for renewal of a commissioned security officer.

(1) The course of fire shall be as outlined in subsection (a) of this section reducing the number of rounds from three (3) to two (2) with a commensurate halving of time in each category.

(2) The manager may approve an alternate course of fire upon receipt of written application.

§35.261. Attendance, Progress, and Completion Records Required.

(a) A board approved training school shall have a qualified manager who shall comply with the requirements of Chapter 1702 of the Texas Occupations Code and this chapter. The manager shall:

(1) issue an original certificate of completion to each qualifying student, within seven days after the student qualifies;

(2) maintain adequate records to show attendance, progress, and grades of students and maintain on file a copy of each certificate issued to students at the board approved training school;

(3) make all required records available to investigators employed by the board for inspection during reasonable business hours; and

(4) retain all training records for 36 months from the date of completion of training.

(b) The certificate of completion shall reflect the particular course or courses completed by a student during the training period.

(1) Certificates of completion for Level II shall contain the:

(A) name and approval number of the school;

(B) date of completion;

(C) name, signature and approval number of training instructor;

(D) name and signature of the qualified manager;

(E) full name and social security number of student;

(F) the date of final completion of the entire course.

(2) Certificates of completion for Level III shall contain the:

(A) name and approval number of the school;

(B) date of course completion;

(C) name, signature and approval number of classroom and/or firearm training instructor;

(D) name and signature of the qualified manager;

(E) full name and social security number of student;

(F) the date of final completion of the entire course;

(G) the specific date of firearm qualification along with the name and approval number of the firearms instructor on those certificates designating completion of Level III.

(3) Certificate of completion for firearms qualification (firearm proficiency) shall contain the:

(A) name and approval number of the school;

(B) name, signature and approval number of firearms training instructor;

(C) name and signature of the qualified manager;

(D) full name and social security number of student; firearms completion date;

(E) note the category of firearm as defined in §35.260(a) and (b) of this chapter (relating to Shotgun Training Requirements) and §35.258(c) and (d) of this chapter (relating to Firearm Courses);

(F) note the caliber of firearm; and be on a certificate form designed or approved by the board.

§35.262. Alarm Installer and Alarm Systems Salesperson Training and Testing/Application for Alarm Training Program Approval.

(a) An application for alarm installer or alarm systems salesperson training school approval shall be on a form prescribed by the board to show proof that the applicant is:

(1) using the board's most current version training manual as its curriculum;

(2) adequate space, qualified instructors, and proper instructional material; and

(3) appointed a qualified manager who will be responsible for training.

(b) A letter of approval or license certificate shall be valid for one year and may be renewed by submitting an application for renewal 30 days prior to the expiration date.

(c) In addition to meeting the requirement of §1702.113 of the Texas Occupations Code (the Act), a qualified manager for an alarm training school and a qualified alarm training instructor must have successfully completed a board approved program in alarm installation. Approval by the board of alarm training school directors and qualified alarm training instructors shall be valid for one year.

(1) Each board approved alarm training school shall:

(A) have a qualified manager, and they shall comply with the requirements of §1702.113 of the Act.

(B) register any owners, officers, partners, shareholders, and qualify a manager, and they shall meet the requirements under §1702.113 of the Act.

(2) Each owner, officer, partner or shareholder and qualified manager of a board approved alarm training school shall, submit an application to the board, the appropriate fees, and two sets of board approved fingerprint cards.

(3) A board approved alarm training school shall submit a renewal application(s) prior to the expiration date on each board approved owners, officers, partners, shareholders and qualified manager.

§35.263. Attendance, Progress and Completion Records Required.

(a) A board approved alarm training school shall have a qualified manager who shall comply with the requirements of Chapter 1702 of the Texas Occupations Code and this chapter. The manager shall:

(1) issue an original certificate of completion to each qualifying student, within seven days after the student qualifies;

(2) maintain adequate records to show attendance, progress, and grades of students and maintain on file a copy of each certificate issued to students at the board approved training school;

(3) make all required records available to investigators employed by the board for inspection during reasonable business hours; and

(4) retain training record for 36 months from the date of completion of training.

(b) Qualified alarm training school instructors shall maintain records on file for inspection by bureau staff during business hours as proof of attendance and progress of grades of students.

§35.264. Alarm Systems Installer or Alarm Systems Salesperson.

(a) The certificate of completion shall contain:

- (1) name and approval number of the school;
- (2) approval number(s) of qualified class room instructor(s);
- (3) date of completion;
- (4) name and signature of the manager of the school; and
- (5) full name and social security number of the student.

(b) The certificate of completion shall indicate that the student has passed the required test and shall contain the words "has successfully completed the alarm installers or alarm systems salespersons alarm training school approved by the Texas Private Security Board." The certificate of completion may be on a certificate form designed or approved by the board.

§35.265. Statutory or Rules Violations.

(a) The board may refuse to accept a certificate of completion from an alarm training school upon receipt of proof of violation of Chapter 1702 of the Texas Occupations Code (the Act) or this chapter involving an owner, officer, partner, shareholder, manager, or alarm training school instructor.

(b) The board may withdraw, suspend or revoke an approval of an alarm training school or approval of an alarm training instructor upon receipt of evidence that the school or instructor has violated the Act or this chapter.

§35.267. Board Refusal of Certificate of Completion.

The board may refuse to accept a certificate of completion from a training school upon receipt of evidence of violation of Chapter 1702 of the Texas Occupations Code or this chapter involving an owner, officer, partner, shareholder, qualified manager or instructor.

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

Filed with the Office of the Secretary of State on November 16, 2009.

TRD-200905267

Brad Rable

Deputy Director

Texas Department of Public Safety

Earliest possible date of adoption: December 27, 2009

For further information, please call: (512) 424-5848



SUBCHAPTER U. LOCKSMITH

37 TAC §35.311

The Texas Department of Public Safety (Department) proposes to amend §35.311, concerning Exemptions in order to clarify the scope of the statutory language of Texas Occupations Code, §1702.1056 and §1702.2227, relating to the definition of locksmith services. The amendment is intended to clarify that installation of a pre-keyed lockset does not constitute locksmith services for purposes of the Private Security Act.

Cheryl MacBride, Assistant Director, Finance, has determined that for each year of the first five years the proposed amendment is in effect, there will be no fiscal implications for state or local governments.

Ms. MacBride also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. MacBride has determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of the amendment will be improved efficiency in administration of the statute through fewer complaints and investigations related to unlicensed locksmith activities. There should be no economic costs resulting from the amendment of this rule.

The Department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule 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 Government Code does not apply to this rule. Accordingly, the Department is not required to complete a takings impact assessment regarding this rule.

Written comments on the proposed amendment are requested and may be sent to Steve Moninger, Legal Staff, Regulatory Licensing Service - Private Security Bureau, P.O. Box 4143, MSC-0242, Austin, Texas 78765-0242, (512) 424-5842.

This amendment is proposed under 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 Occupations Code, §1702.061(b), which authorizes the Department to adopt rules to administer this chapter.

The proposed rule affects Texas Government Code, §411.004(3) and Texas Occupations Code, §§1702.061, 1702.1056, and 1702.2227.

§35.311. Exemptions.

(a) An owner or employee of a retail establishment open to the general public may perform work on a mechanical security device [of the general public] within the confines of the establishment, providing that the [person does not use the term "locksmith" or any similar term that would lead a reasonable consumer to believe that the person is a registered locksmith. The] work is [on the mechanical security device must be] limited to servicing products sold by the establishment or duplicating keys.

(b) The installation of a pre-keyed lockset may be performed by an unlicensed person so long as the installer is hired directly by the recipient of the service, and is not employed by or on contract with the retail establishment from which the lockset was purchased, and the installation involves no re-keying or other internal manipulation of the locking mechanism or of any existing mechanical security devices.

(c) The exemptions listed in subsections (a) and (b) of this section apply only if the person does not use the term "locksmith" or any similar term, or otherwise create the impression in a reasonable consumer that the person is a licensed locksmith.

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

Filed with the Office of the Secretary of State on November 16, 2009.

TRD-200905265

Brad Rable

Deputy Director

Texas Department of Public Safety

Earliest possible date of adoption: December 27, 2009

For further information, please call: (512) 424-5848



WITHDRAWN RULES

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

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 34. REGULATION OF LOBBYISTS

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §§34.22 - 34.25

Proposed new §§34.22 - 34.25, published in the May 8, 2009, issue of the *Texas Register* (34 TexReg 2730), are withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

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

TRD-200905228



TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 15. NATIONAL RESEARCH UNIVERSITIES

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §15.2

The Texas Higher Education Coordinating Board withdraws the proposed new §15.2 which appeared in the August 7, 2009, issue of the *Texas Register* (34 TexReg 5317).

Filed with the Office of the Secretary of State on November 10, 2009.

TRD-200905227

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: November 10, 2009

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



TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 174. TELEMEDICINE

22 TAC §§174.1, 174.2, 174.6 - 174.8

The Texas Medical Board withdraws the proposed amendments to §§174.1, 174.2, and 174.6 and new §174.7 and §174.8, which appeared in the October 2, 2009, issue of the *Texas Register* (34 TexReg 6773).

Filed with the Office of the Secretary of State on November 9, 2009.

TRD-200905151

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: November 9, 2009

For further information, please call: (512) 305-7016



22 TAC §174.4

The Texas Medical Board withdraws the proposed repeal of §174.4, which appeared in the October 2, 2009, issue of the *Texas Register* (34 TexReg 6775).

Filed with the Office of the Secretary of State on November 9, 2009.

TRD-200905172

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: November 9, 2009

For further information, please call: (512) 305-7016



CHAPTER 180. REHABILITATION ORDERS

22 TAC §180.1

The Texas Medical Board withdraws the emergency repeal of §180.1, which appeared in the September 18, 2009, issue of the *Texas Register* (34 TexReg 6389). The withdrawal is effective upon permanent adoption of the repeal of §180.1, published elsewhere in this issue of the *Texas Register*.

Filed with the Office of the Secretary of State on November 9, 2009.

TRD-200905152

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: November 29, 2009

For further information, please call: (512) 305-7016

◆ ◆ ◆
CHAPTER 180. TEXAS PHYSICIAN HEALTH PROGRAM AND REHABILITATION ORDERS

22 TAC §§180.1 - 180.3, 180.7

The Texas Medical Board withdraws the emergency adoption of new §§180.1 - 180.3 and 180.7, which appeared in the September 18, 2009, issue of the *Texas Register* (34 TexReg 6389). The withdrawal is effective upon permanent adoption of new §§180.1 - 180.3 and 180.7, published elsewhere in this issue of the *Texas Register*.

Filed with the Office of the Secretary of State on November 9, 2009.

TRD-200905153

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: November 29, 2009

For further information, please call: (512) 305-7016

◆ ◆ ◆
TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 91. PROGRAM SERVICES

SUBCHAPTER D. HEALTH CARE SERVICES

37 TAC §§91.87 - 91.90

The Texas Youth Commission withdraws the emergency repeal of §§91.87 - 91.90 which appeared in the September 11, 2009, issue of the *Texas Register* (34 TexReg 6208).

Filed with the Office of the Secretary of State on November 9, 2009.

TRD-200905177

Cheryl K. Townsend

Executive Commissioner

Texas Youth Commission

Effective date: December 1, 2009

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

◆ ◆ ◆
37 TAC §§91.87 - 91.90

The Texas Youth Commission withdraws the emergency new §§91.87 - 91.90 which appeared in the September 11, 2009, issue of the *Texas Register* (34 TexReg 6208).

Filed with the Office of the Secretary of State on November 9, 2009.

TRD-200905178

Cheryl K. Townsend

Executive Commissioner

Texas Youth Commission

Effective date: December 1, 2009

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

◆ ◆ ◆
CHAPTER 97. SECURITY AND CONTROL
SUBCHAPTER A. SECURITY AND CONTROL

37 TAC §97.45

The Texas Youth Commission withdraws the emergency repeal of §97.45 which appeared in the September 11, 2009, issue of the *Texas Register* (34 TexReg 6216).

Filed with the Office of the Secretary of State on November 9, 2009.

TRD-200905179

Cheryl K. Townsend

Executive Commissioner

Texas Youth Commission

Effective date: December 1, 2009

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

◆ ◆ ◆
37 TAC §97.45

The Texas Youth Commission withdraws the emergency new §97.45 which appeared in the September 11, 2009, issue of the *Texas Register* (34 TexReg 6216).

Filed with the Office of the Secretary of State on November 9, 2009.

TRD-200905180

Cheryl K. Townsend

Executive Commissioner

Texas Youth Commission

Effective date: December 1, 2009

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

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 10. COMMUNITY DEVELOPMENT PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 60. COMPLIANCE ADMINISTRATION

SUBCHAPTER A. COMPLIANCE MONITORING

10 TAC §§60.101, 60.109 - 60.112, 60.116 - 60.118, 60.120 - 60.123, 60.126, 60.127

The Texas Department of Housing and Community Affairs (the Department) adopts amendments to 10 TAC Chapter 60, Subchapter A, §§60.101, 60.109 - 60.112, 60.116 - 60.118, 60.120 - 60.123, 60.126, and 60.127, concerning Compliance Monitoring. Sections 60.101, 60.109 - 60.112, 60.116 - 60.118, 60.120 - 60.123, 60.126, and 60.127 are adopted with changes to the proposed text as published in the September 25, 2009, issue of the *Texas Register* (34 TexReg 6577).

The adopted amendments make changes to the Material Non-compliance methodology and the evaluation of Uniform Physical Condition Standards (UPCS) reports, and provides the ability for an applicant to request reinstatement of an application that has been terminated due to a previous participation review.

Public hearings on the amended sections were held in Dallas, Houston, El Paso, Harlingen, Lubbock, and Austin. Additionally, written comments on the proposed new sections were accepted by mail, e-mail, and facsimile through October 26, 2009.

SUMMARY OF COMMENTS, STAFF RESPONSE AND BOARD ACTION.

Public comments and the Department's responses were presented in the order in which the sections appeared in the proposed sections, starting with comments concerning §60.101 and ending with §60.127. Following the section number is the title of the section as it appears in the rule. Each number corresponds to a person who commented on the particular rule section. The key relating each number to a particular commenter is listed below. Following the identification of the related commenter is a summary of the comment and staff's response, including the reasons why the agency agreed or disagreed with the comment and a statement of the factual basis for the new sections.

Public comments on the proposed new sections were received by: (1) Tamea A. Dula/Coats Rose; (2) Barry Palmer/Coats Rose; (3) Alan Ditmore; (4) Kelly Blaskowsky/NRP Group; (5) Jim Brown/Texas Affiliation of Affordable Housing Providers; (6) Stella Rodriguez/Texas Association of Community Action

Agencies; (7) Jean Latsha/National Farmworkers; (8) Cynthia Bast/Locke Lord Bissell and Lidell; and (9) Barry Kahn/Hettig Kahn.

General Comment (8).

COMMENT: "Clean-up language" was suggested to make some of the issues more clear.

STAFF RESPONSE: Staff agreed with the recommendation and incorporated the suggestions in §60.122(j) to clear up any confusion about how the department handles previous participation reviews for ownership transfers as well as other grammatical corrections in §§60.109, 60.111, 60.120 - 60.122 and 60.127.

§60.116. Property Condition Standards.

COMMENTS (1, 2): Comment's suggested that a property should only be classified as having "Major Violations of the Uniform Physical Condition Standards" if there are multiple occurrences of life safety violations.

STAFF RESPONSE: Staff disagreed and did not recommend any changes to the rule based on these comments. While staff concurred that life safety issues are critical, staff did not agree that the evaluation of the UPCS report should be narrowed to look at only life safety issues, many of which are tenant caused and not a reflection of general upkeep and maintenance.

§60.116. Property Condition Standards.

COMMENTS (1, 2): Comment's suggested that a property should not be classified as having "Major Violations of the Uniform Physical Condition Standards" unless the property scores below a 60 because the score may be attributed to an accumulation of minor violations. The commenters pointed out that below 60 is the HUD standard for a failing property.

STAFF RESPONSE: Staff did not recommend any changes to the rule and concurred that a low score may be caused by an accumulation of minor violations which indicates that the property is not being maintained. On a scale of 1 to 100, staff considers a score below 70 to indicate there is a major problem. Staff acknowledged that the HUD failing score is below 60. The Department strives for a higher standard than HUD. In addition, HUD's portfolio may consist of an older and more challenged housing stock. A review of UPCS reports for properties that score below 70 indicated that in order to preserve the quality housing developed through Department programs, this threshold should not be lowered.

§60.116. Property Condition Standards.

COMMENTS (1, 2): The comment's also urged the Department to consider the circumstances of older apartment complexes and suggested a score between 60 and 70 for the finding "Minor Violations of the Uniform Physical Condition Standards".

STAFF RESPONSE: Staff did not recommend any changes based on these comments. All properties regardless of age of construction must be functional, safe and in good repair. In order to preserve the quality housing developed through Department programs, this threshold should not be lowered.

§60.116. Property Condition Standards.

COMMENTS (1, 4, 5): Comment's suggested that repairs in progress (or completed) at the time of inspection should not be taken into consideration.

STAFF RESPONSE: Staff did not recommend any changes to the rules based on these comments. This would enable owners to put off needed maintenance and repairs. In general, once every three (3) years, a property's resident files are reviewed. Typically, the physical inspection is conducted separately anywhere from one to four months after the file review. Owners receive a two to four week notice of an upcoming physical inspection. The Treasury Regulations require the state to inspect the same file and unit. Owners have ample time and notice to prepare for inspection. If a property is not ready for the physical inspection, the property is not in compliance. The inspection indicates the level of compliance on a certain date. Just because an owner fixes an item during the inspection does not mean that the property has been in compliance. For example, missing outlet cover plates are a danger, especially for small children. A unit may have been without electrical cover plates for months or years. The violation needs to be corrected, ideally, while the inspector is present. Curing the violation does not mean that the property has been continually in compliance. To preserve the quality housing the Department has invested in, and ensure the health and safety of the residents in our program, staff did not recommend relaxing the compliance rules as suggested.

§60.116. Property Condition Standards.

COMMENT (3): Comment suggested that when devising minimum housing standards, it is important to remain aware that the alternative to substandard housing is often no housing whatsoever, or perhaps a cardboard box or tent. Anything safer than a cardboard box should be permitted and/or subsidized.

STAFF RESPONSE: Staff did not recommend any changes based on this comment as it is not consistent with the Department's housing policies.

§60.116. Property Condition Standards.

COMMENT (5): Comment suggested that there should be an appeals process for Physical Inspections.

STAFF RESPONSE: Staff did not recommend any changes based on this comment. The Department's inspections are based on established laws and regulations. If owners identify an error in their physical assessment (i.e. a deficiency is identified as a level 3 and should be classified as a level 1 or an accessibility issue, etc.) they should bring the error to the Department's attention in their written response to the notice of noncompliance and provide the regulatory reference to support their position.

§60.116. Property Condition Standards.

COMMENT (5): Comment suggested that the Department should use the International Building Code instead of the Uniform Physical Condition Standards.

STAFF RESPONSE: The International Building Code is not a recognized inspection standard in the Treasury Regulations. Staff did not recommend any change based on this comment.

§60.118. Special Rules Regarding Rents and Rent Limit Violations.

COMMENT (5): Comment suggested that overhead costs should be includable in the application fee.

STAFF RESPONSE: Since this is a federal rule, staff contacted the Internal Revenue Service (IRS) about this comment. The IRS confirmed that if an application fee exceeds the actual out of pocket cost for checking an applicant's income, credit history and landlord references, the issue should be reported on form 8823 under the category "Gross rents exceed the limit". Staff can not accommodate this request during the compliance period because it is inconsistent with IRS requirements. However, note that after the compliance period, the Department will not monitor a property's application fees. No change was recommended.

§60.121. Material Noncompliance Methodology.

COMMENTS (1, 2, 4, 5): Comment's suggested that owners should be given the opportunity to pay a fine of \$1,000 per point to have the points removed from the project's score.

STAFF RESPONSE: Staff does not have the statutory authority to make this change and did not recommend any changes to the rule based on these comments.

§60.121. Material Noncompliance Methodology.

COMMENTS (1, 2, 4, 5): Comment's suggested that once a violation has been resolved, all noncompliance points should be removed from the project's record if the correction occurred during the corrective action period.

STAFF RESPONSE: Staff did not recommend any changes to the rule based on these comments and did not agree that points should drop to zero immediately upon correction, even if corrected during the corrective action period. Section 2306.057 of the Texas Government Code requires a review of the applicant's compliance status prior to award and refers to a "compliance history." The Material Noncompliance Methodology provides this "history" by assigning points to noncompliance events that are corrected. Further, staff was concerned that if the rule were changed in the manner suggested, owners could disregard required corrective action until they wanted additional assistance from the Department.

§60.121(f). Material Noncompliance Methodology.

COMMENT (2): Comment suggested that §60.121(f) should be amended to establish a cut-off date for scoring developments.

STAFF RESPONSE: Staff did not believe the change was necessary and felt the commenter's concern is addressed in §60.122(f).

§60.121(g), (h). Material Noncompliance Methodology.

COMMENTS (1, 4, 5, 7): Comment's suggested that the phrase "pattern of timely response" is too subjective.

STAFF RESPONSE: Staff agreed and recommended the following language:

§60.121(g). A Development's score will be reduced by the number of points needed to be one point under the Material Noncompliance threshold provided that:

(1) The Development has no previously reported noncompliance events that are uncorrected;

(2) All newly identified noncompliance events are corrected during the corrective action period;

(3) All corrective action documentation for the newly identified noncompliance is provided to the Department during the corrective action period; and

(4) The Development was not already in Material Noncompliance at the time of its most recent review.

§60.121(h). If an owner is unable to correct all issues during the corrective action period, the owner may supply a corrective action plan for review by the Department that establishes dates that each uncorrected issue will be corrected by, and evidence of correction will be supplied. Provided that the Department approves the plan and the owner follows the plan, upon correction of all issues, a Development's score will be reduced by the number of points needed to be one point under the Material Noncompliance threshold provided that:

(1) The Development has no previously reported noncompliance events that are uncorrected; and

(2) The Development was not already in Material Noncompliance at the time of its most recent review.

§60.121(j). Material Noncompliance Methodology.

COMMENTS (1, 2, 4, 5): Comment's suggested that if the violation was cured after the corrective action period, the corrected values should remain on the project's record for no more than one (1) year.

STAFF RESPONSE: Staff agreed and suggested the following language:

§60.121(j). Uncorrected noncompliance events, if applicable to the Development, will carry the maximum number of points until the Department has reported the corrected noncompliance event. Once the Department has reported the corrected noncompliance event, the score will be reduced to the "corrected value". Corrected noncompliance will no longer be included in the Development score one (1) year after the date the Department reported the noncompliance corrected.

§60.121. Material Noncompliance Methodology.

COMMENTS (1, 2): Comment's suggested that the corrected date should be reflected as the date the corrective action documentation is submitted to the Department, rather than the date staff submits the corrected 8823 to the IRS.

STAFF RESPONSE: Staff did not recommend any changes to the rule based on this comment and offered this clarification: Events of noncompliance are recorded as corrected on the date the issue is actually corrected, not the date corrective action is submitted by the owner, nor the date the staff issues Form 8823 to the IRS. For example, suppose a unit was found to be out of compliance in 2004. In March of 2006, the owner reoccupied the unit with an eligible household but failed to submit the evidence of correction to the Department. In January of 2009, the corrective action is sent to the Department. Staff does not review the material until May of 2009. Form 8823 is sent to the IRS in June of 2009. The event is corrected as of March 2006 and the score will immediately drop from 5 points to zero points because the issue has been corrected for more than 3 years.

§60.122. Previous Participation Reviews.

COMMENT (6): Comment suggested that the previous participation of the members of an Executive Committee of a nonprofit should not be taken into consideration.

STAFF RESPONSE: Staff did not agree and did not recommend any changes. Because of the important role an Executive Committee plays in directing the activities of a nonprofit, staff needs to examine their previous participation in Department programs.

§60.122. Previous Participation Reviews.

COMMENT (9): Comment suggested that in the case of a substitute general partner, HUB requirements should be handled differently.

STAFF RESPONSE: Staff did not recommend any changes to the Rule based on this comment. Owners should follow normal Department procedures and request an application amendment if they cannot meet the HUB requirement. In addition, this change can not be made to the chapter at this time because it would be a material change and it has not gone out for public comment. Further, it has been a Board policy to promote the use of HUBs. This change would be inconsistent with Board policy.

§60.122. Previous Participation Reviews.

COMMENT (9): Comment suggested that previous participation reviews should not take into consideration foreclosure if the foreclosure occurs under the control of a substitute general partner who took control of a development that was not expected to have a debt coverage ratio above 1.0.

STAFF RESPONSE: Staff did not recommend any changes to the rule based on this comment. The Compliance Monitoring Rules cannot cover every possible scenario that may occur. In the event that the situation described by the commenter occurred, the rule provides a process for reinstatement of a request for assistance terminated due to a previous participation review. In addition, this change can not be made at this time because it would be a material change and it has not gone out for public comment.

§60.123. Alternative Dispute Resolution (ADR).

COMMENT (2): Comment suggested that the Department should always provide a 90 day corrective action period.

STAFF RESPONSE: Staff did not recommend any changes to the Rule based on this comment. In general, the Department does provide a 90 day corrective action period and this is reflected in the Rule. However, there are certain events of noncompliance that must be corrected immediately (health and safety issues) and others that must be corrected by December 31st. To avoid the possibility of recapture under the Tax Credit Exchange Program and the Tax Credit Assistance Program, owners may not always be afforded a full 90 day corrective action period.

§60.123. Alternative Dispute Resolution (ADR).

COMMENT (2): Comment suggested that requested language be inserted stating that if the Department staff found that a request for ADR was not an appropriate format for resolution of an issue, the owner would be notified in writing and would have the ability to appeal to the Executive Director and the Department's Board.

STAFF RESPONSE: Staff did not recommend incorporating any additional language in the Compliance Monitoring Rules on this issue. The Department's Rules and procedures for Alternative

Dispute Resolution are covered in detail in 10 TAC Chapter 1, §1.17.

§60.126. Temporary Suspension of Previous Participation Reviews.

COMMENT (2): Comment suggested that the phrase "for consideration" be removed from the first sentence of subsection (a).

STAFF RESPONSE: Staff agreed and recommended the following language to replace the first sentence in §60.126(a):

An entity whose request for assistance is terminated under §60.122 of this chapter may request reinstatement of the Application for consideration for approval.

§60.126. Temporary Suspension of Previous Participation Reviews.

COMMENT (6): Comment suggested that applicants should have five business days to request reinstatement of the application for consideration if terminated due to a previous participation review.

STAFF RESPONSE: Staff agreed and recommended the following language to replace the second sentence:

§60.126(a). The request must be in writing and must be submitted to the Department within five (5) business days of the date of the Department's letter notifying the requesting entity of the termination/denial.

§60.126. Temporary Suspension of Previous Participation Reviews.

COMMENT (7): Comment suggested that owners in Material Noncompliance should be permitted to request that the Board consider their facts and circumstances prior to applying for funding.

STAFF RESPONSE: Based on the Rule, staff did not believe it would be possible for the Board to effectively make this decision ahead of the funding cycle because one of the criteria is "it is in the best interest of the Department and State to proceed with the award". When granting a temporary suspension of Material Noncompliance, the Board would be taking into consideration other applications for the same funding source. Therefore, staff did not believe it would be possible for the Board to make a decision to temporarily suspend Material Noncompliance in advance of the application cycle and did not recommend any changes to the Rule based on this comment.

§60.126. Temporary Suspension of Previous Participation Reviews.

COMMENTS (8, 9): Comment's suggested the criteria for reinstatement. Rather than requiring that the reinstatement be in the best interests of the State, the commenter suggested that the criteria should be "reinstatement is appropriate to fulfill the purposes or policies of Chapter 2306, Texas Government Code".

STAFF RESPONSE: Staff did not recommend any changes based on this comment. All actions the Board takes are appropriate to fulfill the purposes or policies of Chapter 2306, Texas Government Code.

§60.126(a). Temporary Suspension of Previous Participation Reviews.

COMMENTS (8, 9): Comment's suggested the criteria for reinstatement found in §60.126(a)(4) be amended as follows: the

applicant has taken commercially reasonable measures to remedy the cause for termination.

STAFF RESPONSE: Staff did not recommend any changes based on this comment. Owners must take all reasonable measures within their power to remedy noncompliance. For example, it may not make "commercial" sense to reduce rents, but owners overcharging rent must comply.

The amended sections are adopted 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.

§60.101. *Purpose and Overview.*

(a) This chapter satisfies the requirement of §42(m)(1)(B)(iii) Internal Revenue Code (Code) to provide a procedure that will be followed for monitoring for noncompliance with the provisions of the Code and to notify the IRS of such noncompliance. The Department monitors rental Developments receiving assistance under:

- (1) the Housing Tax Credit program (HTC);
- (2) the HOME Investment Partnerships program (HOME);
- (3) the Tax Exempt Bond program (BOND);
- (4) the Housing Trust Fund program (HTF);
- (5) the Community Development Block Grant Disaster Recovery program (CDBG);
- (6) the Tax Credit Assistance Program (TCAP); and
- (7) the Tax Credit Exchange Program (TCEP).

(b) All properties monitored by the Department are subject to the Department's enforcement rules, found in Subchapter C of this chapter.

(c) Compliance monitoring begins with the commencement of construction and continues to the end of the long term Affordability Period. The Compliance and Asset Oversight Division (CAO) monitors to ensure Owners comply with the program rules and regulations, Chapter 2306, Texas Government Code, the Land Use Restriction Agreement (LURA) requirements and conditions, and representations imposed by the Application or award of funds by the Department. These rules do not address forms and other records that may be required of Development Owners by the IRS or other governmental entities, whether for purposes of filing annual returns or supporting Development Owner tax positions during an IRS or other governmental audit.

§60.109. *Utility Allowances.*

(a) The Department will monitor to determine if HTC, HOME, BOND, HTF, CDBG, TCAP and TCEP properties comply with published rent limits which include an allowance for tenant paid utilities. For HTC buildings, if the residents pay utilities directly to the owner of the building or to a third party billing company, and the amount of the bill is based on an allocation method or "ratio utility billing system" (RUBS), this monthly amount will be considered a mandatory fee. For HTC buildings, if the residents pay utilities directly to the owner of the building or to a third party billing company, and the amount of the bill is based on the tenant's actual consumption, owners may account for the utility in an allowance. The rent, plus all mandatory fees, plus an allowance for those utilities paid by the resident directly to a utility provider, must be less than the allowable limit. For Non-HTC buildings, owners may account for utilities paid directly to the owner or to a third party billing company in their utility allowance. Where residents

are responsible for some, or all, of the utilities--other than telephone, cable, and internet--Development Owners must use a utility allowance that complies with both this section and the applicable program regulations. An Owner may not change utility allowance methods without written approval from the Department. Any such request must include the Utility Allowance Questionnaire found on the Department's web-site.

(b) Rural Housing Service (RHS) buildings or buildings with RHS assisted tenants. The applicable utility allowance for the Development will be determined under the method prescribed by the Rural Housing Service (or successor agency). No other utility method described in this section can be used by RHS buildings or buildings with RHS assisted tenants.

(c) HUD-Regulated buildings layered with any Department program. If neither the building nor any tenant in the building receives RHS rental assistance payment, and the rents and the utility allowances of the building are reviewed by HUD on an annual basis (HUD-regulated building), the applicable utility allowance for all rent restricted Units in the building is the applicable HUD utility allowance. No other utility method described in this section can be used by HUD-regulated buildings.

(d) Other Buildings. For all other rent-restricted Units, Development Owners must use one of the following methods:

(1) The utility allowance established by the applicable Public Housing Authority (PHA) for the Section 8 Existing Housing Program. The Department will utilize Texas Local Government Code Chapter 392 to determine which PHA is the most applicable to the Development. If the property is located in an area that does not have a municipal, county or regional housing authority that publishes a utility allowance schedule for the Section 8 Existing Housing Program, owners must select an alternative methodology. If the applicable PHA allowance lists flat fees for any utility, those flat fees must be included in the calculation of the utility allowance if the resident is responsible for that utility. If an Owner chooses to implement a methodology as described in paragraphs (2), (3), (4), or (5) of this subsection, for Units occupied by Section 8 voucher holders, the utility allowance remains the applicable PHA utility allowance established by the PHA from which the household's voucher is received.

(2) A written estimate from a local utility provider. If there are multiple utility companies that service the Development, the local provider must be a residential utility company that offers service to the residents of the Development requesting the methodology. The Department will use the Texas Electric Choice website: http://www.powertochoose.org/_content/_compare/compare.aspx to verify the availability of service. If the utility company is not listed as a provider in the Development's ZIP code, the request will be denied. Additionally, the estimate must specifically include all "component deregulated charges" for providing the utility service. Receipt of the information from the utility provider begins the ninety (90) day period after which the new utility allowance must be used to compute gross rent.

(3) The HUD Utility Model Schedule. A utility estimate can be calculated by using the "HUD Utility Model Schedule" that can be found at <http://www.huduser.org/datasets/lihtc/html> (or successor URL). The rates used must be no older than the rates in effect sixty (60) days prior to the beginning of the ninety (90) day period in which the Owner intends to implement the allowance. For Owners calculating a utility allowance under this methodology, the model, along with all back-up documentation used in the model, must be submitted to the Department, on a CD, within the timeline described in subsection (f) of this section. The date entered as the "Form Date" on the "Location" tab of the spreadsheet will be the date used to begin the ninety (90) day

period after which the new utility allowance must be used to compute gross rent.

(4) An energy consumption model. The utility consumption estimate must be calculated by a properly licensed mechanical engineer or an individual holding a valid Residential Energy Service Network (RESNET) or Certified Energy Manager (CEM) certification. The individual must not be related to the Owner within the meaning of §267(b) or §707(b) of the Code. The utility consumption estimate must, at minimum, take into consideration specific factors that include, but are not limited to, Unit size, building orientation, design and materials, mechanical systems, appliances, and characteristics of building location. The ninety (90) day period after which the new utility allowance must be used to compute gross rent will begin sixty (60) days after the end on the last month of the twelve (12) month period for which data was used to compute the estimate.

(5) An allowance based upon an average of the actual use of similarly constructed and sized Units in the building using actual utility usage data and rates, provided that the Development Owner has the written permission of the Department. This methodology is referred to as the "Actual Use Method".

(e) For a Development Owner to use the Actual Use Method they must:

(1) provide a minimum sample size of usage data for at least five (5) Continuously Occupied Units of each Unit Type or 20 percent of each Unit Type whichever is greater. *Example 109(1):* A Development has twenty (20) three bedroom/one bath Units, and eighty (80) three bedroom/two bath Units. Each bedroom/bathroom equivalent Unit is within 120 square feet of the same floor area. Data must be supplied for at least five (5) of the three bedroom/one bath Units, and sixteen (16) of the three bedroom/two bath Units. If there are less than five (5) Units of any Unit Type, data for 100 percent of the Unit Type must be provided.

(2) the following information must be scanned onto a CD and submitted to the Department no later than the beginning of the ninety (90) day period in which the Owner intends to implement the allowance, reflecting data no older than sixty (60) days prior to the ninety (90) day implementation period. *Example 109(2):* The utility provider releases the information regarding electric usage at Westover Townhomes on February 5, 2009. The data provided is from February 1, 2008 through January 31, 2009. The Owner must submit the information to the Department no later than March 31, 2009 for the information to be valid.

(A) An Excel spreadsheet listing each Unit for which data was obtained to meet the minimum sample size requirement of a Unit Type, the number of bedrooms, bathrooms and square footage for each Unit, the household's move-in date, the actual kilowatt usage, for each Unit for which data was obtained, and the rates in place at the time of the submission.

(B) A copy of the request to the utility provider (or billing entity for the utility provider) to provide usage data.

(C) All documentation obtained from the utility provider (or billing entity for the utility provider) and/or copies of actual utility bills gathered from the residents, including all usage data not needed to meet the minimum sample size requirement and any written correspondence from the utility provider.

(D) The rent roll showing occupancy as of the end of the month for the month in which the data was requested from the utility provider.

(E) Documentation of the current utility allowance used by the Development.

(3) Upon receipt of the required information, the Department will determine if the Development Owner has provided the minimum information necessary to calculate an allowance using the Actual Use Method. If so, the Department shall calculate the utility allowance for each bedroom size using the following guidelines:

(A) If data is obtained for more than 20 percent or five (5) of each Unit Type, all data will be used to calculate the allowance.

(B) If more than twelve (12) months of data is provided for any Unit, only the data for the most current twelve (12) months will be averaged.

(C) The allowance will be calculated by multiplying the average units of measure for the applicable utility (i.e. kilowatts over the last twelve (12) months by the current rate) for all Unit Types within that bedroom size. For example, if sufficient data is supplied for eighteen (18) two bedroom/one bath Units, and twelve (12) two bedroom/two bath Units, the data for all 30 Units will be averaged to calculate the allowance for all two bedroom Units.

(D) The allowance will be rounded up to the next whole dollar amount.

(E) If the data submitted indicates zero (0) usage for any month, the data for that Unit will not be used to calculate the Utility Allowance.

(4) The Department will complete its evaluation and calculation within forty five (45) days of receipt of all the information requested in paragraph (2) of this subsection.

(5) Receipt of approval from the Department will begin the ninety (90) day period after which the new utility allowance must be used to compute gross rent.

(6) For newly constructed Developments or Developments that have Units which have not been continuously occupied, the Department, on a case by case basis, may use consumption data for Units of similar size and construction in the geographic area to calculate the utility allowance.

(f) Effective dates. If the Owner uses the methodologies as described in subsections (b), (c), or (d)(1) of this section, any changes to the allowance can be implemented immediately, but must be implemented for rent due ninety (90) days after the change. For methodologies as described in subsection (d)(2) - (5) of this section, the allowance cannot be implemented until the estimate is submitted to the Department and is made available to the residents by posting in a common area of the leasing office at the Development. This action must be taken by the beginning of the ninety (90) day period in which the Owner intends to implement the utility allowance. With the exception of the methodology described in subsection (d)(5) of this section, if a response is not received by the Department within the ninety (90) day period, the Owner may temporarily use the submission as a safe harbor until the Department provides written authorization (the Owner cannot assume that the allowance is approved by the Department but can operate in good faith prior to notification). Failure to submit the proposed utility allowance to the Department and make it available to the residents will result in a finding of noncompliance.

(g) Requirements for Annual Review. Owners utilizing the methods described in subsection (d)(2) - (5) of this section must submit to the Department, once a calendar year, copies of the utility estimate and simultaneously make the estimate available to the residents by posting the estimate in a common area of the leasing office at the Development. Changes in utility allowances cannot be implemented until

the estimate has been submitted to the Department and made available to the residents by posting in the leasing office for a ninety (90) day period. The back-up documentation required by the methodology the Owner has chosen must be submitted to the Department for approval no later than October 1st; however, the Department encourages Owners to submit documentation prior to the October 1st deadline in order to ensure that the Department has adequate time to review and respond to the Owner's estimate.

(h) Combining Methodologies. With the exception of HUD regulated buildings and RHS buildings, Owners may combine any methodology described in this section for each utility service type paid directly by the resident and not by or through the Owner of the building (electric, gas, etc.). For example, if residents are responsible for electricity and gas, an Owner may use the appropriate PHA allowance to determine the gas portion of the allowance and use the Actual Use Method to determine the electric portion of the allowance.

(i) Increases in Utility Allowances for Developments with HOME funds. Because the HOME final rule does not provide a grace period for implementing increased utility allowances, changes in utility allowances must be implemented on the published effective date.

(j) The owner shall maintain and make available for inspection by the tenant the data upon which the utility allowance schedule is calculated. Records shall be made available at the resident manager's office during reasonable business hours or, if there is no resident manager, at the dwelling Unit of the tenant at the convenience of both the apartment owner and tenant.

§60.110. Lease Requirements (HTC and HOME Properties).

(a) For HTC properties, Revenue Ruling 2004-82 prohibits the eviction or termination of tenancy of low income households for other than good cause throughout the entire Affordability Period, and for three (3) years after termination of an extended low-income housing commitment. Owners executing or renewing leases after November 1, 2007 shall specifically state in the lease or in an addendum attached to the lease that evictions or terminations of tenancy for other than good cause are prohibited.

(b) For HOME properties, the HOME Final Rule prohibits Owners from evicting low income residents or refusing to renew a lease except for serious or repeated violations of the terms and conditions of the lease, for violations of applicable federal, state or local law, for completion of the tenancy period for transitional housing, or for other good cause. To terminate tenancy, the Owner must serve written notice to the tenant specifying the grounds for the action at least thirty (30) days before the termination of tenancy. Owners executing or renewing leases after November 1, 2007 shall specifically state in the lease or in an addendum attached to the lease that evictions or non-renewal of leases for other than good cause are prohibited (24 CFR §92.253).

(c) The Department does not determine if an Owner has good cause or if a resident has violated the lease terms. If there is a challenge to a good cause eviction, that determination will be made by a court of competent jurisdiction or an agreement of the parties in arbitration. The Department will rely on the court decision or the agreement of the parties.

(d) HTC and BOND properties must use a lease or lease addendum that requires households to report changes in student status.

(e) Owners of Housing Tax Credit Developments are prohibited from locking out or threatening to lock out any Development resident, or seizing or threatening to seize the personal property of a resident, except by judicial process, for the purposes of performing nec-

essary repairs or construction work, or in cases of emergency. These prohibitions must be included in the lease or lease addendum.

§60.111. Income at Recertification (Housing Tax Credit Properties).

(a) Under the Code, HTC Development Owners elect a minimum set-aside requirement of 20/50 or 40/60 (20 percent of the Units restricted to the 50 percent income and rent limits, or 40 percent of the Units restricted to the 60 percent income and rent limits). The minimum set-aside elected by the Development Owner sets the maximum income and rent limits at the property. The Housing Tax Credit program requires mixed income properties to comply with the Available Unit Rule. Regardless of this section, if a household's income exceeds 140 percent of the income limit elected by the minimum set-aside, owners must comply with the Available Unit Rule. Many HTC Development Owners agreed to lease Units to households with an annual income and rent lower than the maximum limits (for example, at the 30 percent, 40 percent or 50 percent income and rent limits) established by the minimum set-aside election of the Owner. This requirement is referred to as "additional occupancy restrictions" and is reflected in the Development's Land Use Restriction Agreement (LURA). When monitoring, the Department will examine the actual rent and income levels of all tenants to determine if additional rent and income requirements in the LURA are being met. Household income at recertification for the additional occupancy restrictions will be monitored as follows:

(1) Households initially designated at the 30 percent income and rent limits. If upon recertification, the household's income exceeds the 30 percent limit, the Unit will continue to meet the 30 percent set-aside requirement provided that the Owner does not charge rent in excess of the 30 percent rent limits. The household will not be required to vacate the Unit for other than good cause. The Owner will not be found in noncompliance provided that when the household moves out, the next available Unit on the property is leased to a household with an income and rent less than the 30 percent limits. If the household is replaced, the rent for the previously qualified Unit may be increased to the limit established by the minimum set-aside, subject to applicable HTC requirements, lease provisions and local tenant-landlord laws.

(2) Households initially designated at the 40 percent income and rent limits. If upon recertification, the household's income exceeds the 40 percent limit, the Unit will continue to meet the 40 percent set-aside requirement provided that the Owner does not charge rent in excess of the 40 percent rent limits. The household will not be required to vacate the Unit for other than good cause. The Owner will not be found in noncompliance, provided that when the household moves out, the next available Unit on the property is leased to a household with an income and rent less than the 40 percent limits. If the household is replaced, the rent for the previously qualified Unit may be increased to the limit established by the minimum set-aside, subject to applicable HTC requirements, lease provisions and local tenant-landlord laws.

(3) Households initially designated at the 50 percent income and rent limits (for HTC properties with the 40/60 minimum set-aside). If upon recertification, the household's income exceeds the 50 percent income limit, the Unit will continue to meet the 50 percent set-aside provided that the Owner does not charge rent in excess of the 50 percent rent limits. The household will not be required to vacate the Unit for other than good cause. The Owner will not be found in noncompliance provided that when the household moves out, the next available Unit on the property is leased to a household with an income and rent less than the 50 percent limits. Once the household has been replaced, the rent for the previously qualified Unit may be increased to the limit established by the minimum set-aside, subject to applicable HTC requirements, lease provisions and local tenant-landlord laws.

(b) This section does not apply to households designated at the maximum income and rent limits required by the Code. Nor does this

section in any way require a Development to lease more Units under the additional occupancy restrictions than established in the LURA.

(c) For those properties that are not required to perform recertifications, households will maintain the designation they had at move in. Owners must ensure that lower rent restrictions are adhered to throughout the household's occupancy.

(d) Preservation, HTF, and BOND Developments, with any market Units in one or more buildings (as evidenced in their LURA) must continue to perform annual recertifications of all households residing in program units. Owners of 100 percent low income Developments are not required to perform annual income recertifications. HTC Owners must perform annual income recertifications if the project has any market rate Units. For HTC Developments, the election made on Part II of the 8609 will determine if a building is part of a project. HTC Development Owners must submit Forms 8609 with Part II completed. The Department may also require HTC Owners to complete Form 8821 to permit the Department to confirm the elections with the IRS.

(e) For HTC Developments in which the LURA requires 100 percent of the Units to be leased to income eligible families, the following recertification requirements apply:

(1) To comply with HUD reporting requirements, once every calendar year, the Development must collect a self-certification form from each household that reports the number of household members, the age of each household member, disability status, monthly rental assistance amounts received (if any), and race and ethnicity. In addition, the self-certification will collect information about student status to establish ongoing compliance under the HTC and BOND programs. The Development must use the Department's Annual Eligibility Certification to collect this information and must maintain the certification in all household files.

(2) On 100 percent low income Housing Tax Credit Developments, households may transfer to any Unit within the same project (as determined on Part II of the 8609 for HTC Developments). On mixed income Housing Tax Credit Developments, households may transfer to any Unit within the Development if, as of their most recent (re)certification, their income was less than 140 percent of the maximum allowable limit. If the owner of a Housing Tax Credit Development elected to treat each building as a separate project, households must be certified and low income to transfer to another building.

(3) Owners must review the Annual Eligibility Certification for the following items which would require further action:

(A) Changes in household composition. If members are added to an existing household, Owners must determine eligibility and complete a certification. The new household must be screened for income, assets and student status, and the existing Income Certification form must be updated. Owners must obtain first hand or third party verification of income and assets.

(i) If the Development becomes aware of the additions to households during the year, this action must be taken at the time the new household member moves in; Owners may not wait until the Annual Eligibility Certification is completed to take action. The Unit Status Report must be updated to reflect current circumstances as the property becomes aware of changes in household size.

(ii) If all original tenants have vacated the Unit, the remaining tenants must be certified as a new income-qualified household unless the tenants were income qualified at the time of move in. HTC Units in noncompliance will be reported to the IRS on Form(s) 8823 and/or scored in the Department's Compliance Status System as applicable.

(B) Student status. Developments must use a lease addendum (or incorporate into their lease) a requirement for households to report changes in student status. If, at any time, the household reports a change in student status or discloses a change on the Annual Eligibility Certification form, the Owner must determine if the household is still eligible under the program. If the household meets one of the exceptions, documentation supporting eligibility must be gathered and retained in the lease file. Units in noncompliance will be reported to the IRS on Form(s) 8823 and/or scored in the Department's Compliance Status System as applicable.

(4) Failure to complete the Annual Eligibility Certification and maintain the form in household files will result in an issue of non-compliance that will be scored as shown in Figure: 10 TAC §60.121(m) under "Failure to maintain or provide Annual Eligibility Certification". No Form(s) 8823 will be filed with the IRS for the noncompliance.

(5) If a 100 percent low income Development continues to complete full recertifications, the Annual Eligibility Certification form must still be completed and the Unit Status Report must be updated at the completion of the recertification. The Department will not review the recertification paperwork during monitoring visits unless noncompliance is identified with the initial certification.

(f) For HOME Investment Partnership Developments, in accordance with 24 CFR §92.203 and §92.252 of the HOME Final Rule, the following recertification requirements apply:

(1) Once every calendar year, the Development must collect a self-certification form from each household that reports the household's income, number and ages of household members, student status, disability status, monthly rental assistance amounts received (if any), and race and ethnicity. The Development must use the Department's Income Certification form to collect this information and must maintain the certification in all household files. Failure to complete the Income Certification and maintain the form in household files will result in an issue of noncompliance that will be scored as shown in Figure: 10 TAC §60.121(m) under "Failure to maintain or provide Annual Eligibility Certification".

(2) HOME Developments must also complete full recertifications of each HOME Unit in every sixth year of the Development's Affordability Period. *Example 111.1:* A HOME property with an affordability period beginning in 2010 must perform full recertifications of all HOME households in 2015. All households must be re-certified, even households that moved in during 2014. Full recertifications at any other time are not required unless, the household self-reports an annual income in excess of the 80 percent Area Median Income or as stated in 24 CFR §92.252, there is evidence that the tenant's written statement failed to completely and accurately state information about the family's size or income or the property has otherwise been directed to institute full recertifications by the Department.

§60.112. Requirements Pertaining to Households with Rental Assistance.

(a) The Department will monitor to ensure Development Owners comply with §2306.269 and §2306.6728, Texas Government Code, regarding residents receiving rental assistance under Section 8, United States Housing Act of 1937 (42 U.S.C. §1437f).

(b) The policies, standards and sanctions established by this section apply only to:

(1) multifamily housing developments that receive the following assistance from the Department on or after January 1, 2002 (§2306.185 of the Texas Government Code);

(A) a loan or grant in an amount greater than 33 percent of the market value of the Development on the date the recipient took legal possession of the Development, or

(B) a loan guarantee for a loan in an amount greater than 33 percent of the market value of the Development on the date the recipient took legal title to the Development.

(2) multifamily rental housing Developments that applied for and were awarded housing tax credits after 1992;

(3) housing developments that benefit from the incentive program under §2306.805 of the Texas Government Code; and

(4) housing Developments that receive funding from the HOME program (24 CFR §92.252(d)).

(c) Owners of multifamily rental housing developments described in subsection (a) of this section are prohibited from:

(1) excluding an individual or family from admission to the Development because the individual or family participates in the HOME Tenant Based Rental Assistance Program or the housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. §1437f); and

(2) using a financial or minimum income standard for an individual or family participating in the voucher program that requires the individual or family to have a monthly income of more than 2.5 times the individual's or family's share of the total monthly rent payable to the Owner of the Development. A household participating in the voucher program or receiving any other type of rental assistance may not be required to have a minimum income exceeding \$2,500 per year.

(d) To demonstrate compliance with this section, Owners shall:

(1) State in their leasing criteria that the Development will comply with state and federal fair housing and antidiscrimination laws;

(2) Apply screening criteria uniformly, (rental, credit, and/or criminal history) including employment policies, and in a manner consistent with the Texas and Federal Fair Housing Acts, program guidelines, and the Department's rules;

(3) Approve and distribute an Affirmative Marketing Plan that will be used to attract prospective applicants of all minority and non-minority groups in the housing market area regardless of their race, color, religion, sex, national origin, disability, familial status, or religious affiliation. Racial groups to be marketed to may include White, African American, Native American, Alaskan Native, Asian, Native Hawaiians or Other Pacific Islanders. Other groups in the housing market area who may be subject to housing discrimination include, but are not limited to, Hispanic or Latino groups, persons with disabilities, families with children, or persons with different religious affiliations. The Affirmative Marketing plan must be provided to the property management and onsite staff. Owners are encouraged to use HUD Form 935.2A, or successors, as applicable. The Affirmative Marketing Plan must identify the following:

(A) Which group(s) the Owner believes are least likely to apply for housing at the Development without special outreach. All Developments must select persons with disabilities as one of the groups identified as least likely to apply. When identifying racial/ethnic minority groups the property will market to, factors such as the characteristics of the housing's market area should be considered. *Example 112.1:* An Owner obtains census data showing that 6.5 percent of the city's total population are identified as Asian Americans. However, the Owner's demographic data for the Development shows that zero (0) Asian American households are represented. The Owner chooses

to identify Asian American groups as one of the groups least likely to apply at the Development without special outreach.

(B) Procedures that will be used by the Owner to inform and solicit applications from persons who are least likely to apply. Specific media and community contacts that reach those groups designated as least likely to apply must be identified (community outreach contacts may include neighborhood, minority, or women's organizations, grass roots faith-based or community-based organizations, labor unions, employers, public and private agencies, disability advocates, or other groups or individuals well known in the community that connect with the identified group(s)). *Example 112.2:* An Owner has identified the disabled as least likely to apply and has decided to send letters on a quarterly basis to the Case Manager at a non-profit organization coordinating housing for developmentally disabled adults. Additionally, the Owner will advertise upcoming vacancies in a monthly newsletter circulated by an organization serving the hearing impaired.

(C) How the Owner will assess the success of Affirmative Marketing efforts. Affirmative Marketing Plans should be reviewed on an annual basis to determine if changes should be made and plans must be updated every five years to fully capture demographic changes in the housing's market area.

(D) Records of marketing efforts must be maintained for review by the Department during onsite monitoring visits. *Example 112.3:* The Owner keeps copies of all quarterly correspondence mailed to the contacts or community groups identified in the Affirmative Marketing Plan. The letters are dated and addressed and show that the Owner is actively marketing vacancies, or a waiting list to the groups identified in the Owner's plan. Failure to maintain a reasonable Affirmative Marketing Plan and documentation of marketing efforts will result in a finding of noncompliance.

§60.116. Property Condition Standards.

(a) All Developments funded by the Department must be decent, safe, sanitary, in good repair, and suitable for occupancy throughout the Affordability Period. The Department will use HUD's Uniform Physical Condition Standards (UPCS) to determine compliance with property condition standards. In addition, Developments must comply with all local health, safety, and building codes. The Department may contract with a third party to complete UPCS inspections.

(b) Housing Tax Credit Development Owners are required by Treasury Regulation 1.42-5 to report (through the Annual Owner's Compliance Report) any local health, safety, or building code violations. HTC Developments that fail to comply with local codes shall be reported to the IRS.

(c) The Department will evaluate UPCS reports in the following manner:

(1) A finding of Major Violations will be cited if:

(A) Life threatening health, safety, or fire safety hazards are reported on the Notification of Exigent and Fire Safety Hazards Observed form and are not corrected within twenty-four (24) hours of the inspection with notification submitted to the Department within seventy-two (72) hours of the inspection. Failure to notify the Department within seventy-two (72) hours of the correction of any exigent health and safety or fire safety hazards listed on the Notification will result in a finding of Major Violations of the Uniform Physical Condition Standards for the Development; or

(B) An overall UPCS score of less than 70 percent (69 percent or below) is reported.

(2) A finding of Pattern of Minor Violations will be assessed if an overall score between 70 percent and 89 percent is reported; or

(3) Findings of both Major and Minor Violations will be assessed if deficiencies reported meet the criteria for both.

(d) The Department is required to report any HTC Development that fails to comply with any requirements of the UPCS or local codes at any time (including smoke detectors and blocked egresses) to the IRS on Form 8823. Accordingly, the Department will submit Form(s) 8823 for any UPCS violation. However, if the violation(s) does not meet the conditions described in subsection (c)(1) or (2) of this section, the issue will be noted in the Department's compliance status system as Administrative Reporting and no points will be assigned in the Department's compliance status evaluation of the Development. Non-HTC properties that do not meet thresholds for Major and Pattern of Minor Violations as described in subsection (c)(1) or (2) in this section and correct all life threatening health, safety, and fire safety hazards noted at the time of inspection as directed in subsection (c)(1)(A) of this section will not receive findings for UPCS inspections. Items noted that do not exceed thresholds for Major and Pattern of Minor Violations must be corrected by submission of an Owner's Certification of Repair within the ninety (90) day corrective action period.

(e) Acceptable evidence of correction of deficiencies is a certification from an appropriate licensed professional that the item now complies with the inspection standard or other documentation that will allow the Department to reasonably determine when the repair was made and whether the repair sufficiently corrected the violation(s) of UPCS standards (examples of such documentation include work orders, photographs, and/or invoices to third party repair specialists).

(f) The Department will provide a ninety (90) day corrective action period to respond to a notice of noncompliance for violations of the UPCS. The Department will grant up to an additional ninety (90) day extension if there is good cause and the Owner clearly requests an extension during the corrective action period.

(g) 24 CFR §92.251 of the HOME Final Rule requires rental property assisted with HOME funds to be maintained in compliance with all local codes and Housing Quality Standards (HQS) (24 CFR §982.401). To meet this requirement, all HOME rental Development Owners must annually complete an HQS inspection of all HOME assisted Units. The Department will review HQS inspection sheets for all Units for compliance with this requirement during onsite monitoring visits.

(h) Selection of Units for inspection:

(1) Vacant Units will not be inspected (alternate Units will be selected) if a Unit has been vacant for fewer than thirty (30) days.

(2) Units vacant for more than thirty (30) days are assumed to be ready for occupancy and will be inspected. No deficiencies will be cited for inspectable items if utilities are turned off and the inspectable item is present and appears to be in working order.

(i) Property damage that is the direct result of utility damage or malfunction or repair activity relating to such damage that is beyond the property owner's control, including, but not limited to, eruption of gas, sewer or storm sewer mains, water mains, and electrical fires, will not be taken into consideration in determining a compliance score, provided that the property owner did not negligently or intentionally serve as a proximate cause for the damage.

§60.117. Notice to Owners.

The Department will provide written notice to the Development Owner if the Department does not receive the Annual Owner Compliance Re-

port (AOCR) or discovers through audit, inspection, review or any other manner that the Development is not in compliance with the provisions of the deed restrictions, conditions imposed by the Department, or program rules and regulations, including §42 of the Code. Owners may request that results of monitoring reviews be emailed if all email addresses in the Contract Monitoring Tracking System are up to date. If Owners request such notices be sent by email, a paper copy will not be mailed by the Department. The notice will specify a correction period of ninety (90) days from the date of notice to the Development Owner, during which the Development Owner may respond to the Department's findings, bring the Development into compliance, or supply any missing documentation or certifications. The Department may extend the correction period for up to six (6) months from the date of the notice to the Development Owner if there is good cause for granting an extension and the owner requests an extension during the original ninety (90) day corrective action period. If any communication to the Development Owner under this section is returned to the Department as refused, unclaimed or undeliverable, the Development may be considered not in compliance without further notice to the Development Owner. The Development Owner is responsible for providing the Department with current contact information, including address(es) and phone number(s). The Development Owner must also provide current contact information to the Department as required by §1.22 of this title (relating to Providing Current Contact Information to the Department).

§60.118. Special Rules Regarding Rents and Rent Limit Violations.

(a) Rent or Utility Allowance Violations of the maximum allowable limit (HTC). Under the HTC program, the amount of rent paid by the household plus an allowance for utilities, plus any mandatory fees, cannot exceed the maximum applicable limit (as determined by the minimum set-aside elected by the Owner) published by the Department. If it is determined that a HTC Development, during the Compliance Period, collected rent in excess of the rent limit established by the minimum set-aside, the Department will report the violation as corrected on the date that the rent plus the utility allowance, plus fees, is less than the applicable limit. The refunding of overcharged rent does not avoid the disallowance of the credit by the IRS.

(b) Rent or Utility Allowance Violations of additional rent restrictions (HTC). If the Owner agreed to lease Units at rents less than the maximum allowed under the Code (additional occupancy restrictions), the Department will require the Owner to refund to the affected residents the amount of rent that was overcharged. This applies during the entire Affordability Period. The noncompliance event will be considered corrected on the date which is the later of the date the overcharged rent was refunded/credited to the resident or the date that the rent plus the utility allowance is equal to or less than the applicable limit. *Example 118(1):* For Code §42 purposes, the maximum allowable limit is 60 percent. However, the Owner agreed to lease some Units to households at the 30 percent income and rent limits. It was discovered that the 30 percent households were overcharged rent. The Owner will be required to reduce the current amount of rent charged and refund the excess rents to the households.

(c) Rent Violations of the maximum allowable limit due to application fees (HTC). Under the HTC program, Owners may not charge tenants any overhead costs as part of the application fee. Owners must only charge the actual cost for application fees as supported by invoices from the screening company the Owner uses. The amount of time Development staff spends on checking an applicant's income, credit history, and landlord references may be included in the Development's application fee. Development Owners may add \$5.50 per Unit to their other out of pocket costs for processing an application without providing documentation. Should an Owner desire to include a higher amount to cover staff time, wage information and a time study must be supplied to the Department upon request. Documentation of Develop-

ment costs for application processing or screening fees must be made available during onsite visits or upon request. The Department will review application fee documentation during onsite monitoring visits. If the Department determines from a review of the documentation that the Owner has overcharged residents an application fee, the noncompliance will be reported to the IRS on Form(s) 8823 under the category Gross rent(s) exceeds tax credit limits. The noncompliance will be corrected on the later of January 1st of the next year or as of the date the application fee is reduced and evidence of a reduced application fee is supplied to the Department. Owners are not required to refund the overcharged fee amount. If the Development refunds the overcharged fee in full or in part, the units will remain out of compliance until January 1st of the next year or until the application fee is reduced.

(d) Rent or Utility Allowance Violations on Non-HTC properties. If it is determined that the property collected rent in excess of the allowable limit, the Department will require the Owner to refund to the affected residents the amount of rent that was overcharged.

(e) Trust Account to be established. If the Owner is required to refund rent under subsection (b) or (d) of this section and cannot locate the resident, the excess rent collected must be deposited into a trust account for the tenant. The account must remain open for the shorter of a four (4) year period, or until all funds are claimed. If funds are not claimed after the four year period, the unclaimed funds must be remitted to the Texas Comptroller of Public Accounts Unclaimed Property Holder Reporting Section to be dispersed as required by Texas unclaimed property statutes.

(f) Rent Adjustments for HOME properties. 24 CFR §92.252 of the HOME Final Rule requires Owners to charge households with an income in excess of 80 percent at recertification, a rent equal to the lesser of 30 percent of the household's adjusted income or the market rent for comparable unassisted Units in the neighborhood. If at recertification the household self-certifies an income in excess of the 80 percent limit, documentation of all income, assets and allowable deductions must be obtained by the owner. The Department will find a HOME property in noncompliance with this section if the Owner fails to determine the over income household's adjusted income and maintain documentation of market rents for comparable unassisted Units in the neighborhood.

(g) Special conditions for CDBG properties. To determine if a Unit is rent restricted, the amount of rent paid by the household, plus an allowance for utilities, plus any rental assistance payment must be less than the applicable limit.

§60.120. Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period.

(a) HTC properties allocated credit in 1990 and after are required under the Code (§42(h)(6)) to record a LURA restricting the property for at least thirty (30) years. Various sections of the Code specify monitoring rules State Housing Finance Agencies must implement during the Compliance Period.

(b) After the Compliance Period, the Department will continue to monitor Housing Tax Credit Developments using the rules detailed in paragraphs (1) - (12) of this subsection.

(1) On site monitoring visits will continue to be conducted approximately every three years, unless the Department determines that a more frequent schedule is necessary.

(2) In general, the Department will review 10 percent of the low income files. No less than five (5) files and no more than twenty (20) files will be reviewed.

(3) The exterior of the property, all building systems and 10 percent of Low Income Units. No less than five (5) but no more than

thirty-five (35) of the Development's Low Income Units will be physically inspected to determine compliance with HUD's Uniform Physical Condition Standards.

(4) Each Development shall submit an annual report in the format prescribed by the Department.

(5) Reports to the Department must be submitted electronically as required in §60.105 of this chapter.

(6) Compliance monitoring fees will continue to be submitted to the Department annually in the amount stated in the LURA.

(7) All households must be income qualified upon initial occupancy of any Low Income Unit. Proper verifications of income are required, and the Department's Income Certification form must be completed unless the Development participates in the Rural Rental Housing Program or a project based HUD program.

(8) Rents will remain restricted for all Low Income Units. After the Compliance Period, utilities paid to the owner can be accounted for in the utility allowance. The tenant paid portion of the rent plus the applicable utility allowance must not exceed the applicable limit.

(9) All additional income and rent restrictions defined in the LURA remain in effect.

(10) Other requirements defined in the LURA, such as the provision of social services or serving special needs households, will remain in effect.

(11) The Owner shall not terminate the lease or evict low income residents for other than good cause.

(12) The total number of required Low Income Units must be maintained Development wide.

(c) After the first fifteen (15) years of the Extended Use Period, certain requirements will not be monitored as detailed in paragraphs (1) - (4) of this subsection.

(1) The student restrictions found in §42(i)(3)(D) of the Code. An income qualified household consisting entirely of full time students may occupy a Low Income Unit.

(2) The building's applicable fraction found in the Development's Cost Certification and/or the LURA. Low income occupancy requirements will be monitored Development wide, not building by building.

(3) Household transfers between buildings restricted by §42(g)(1) of the Code. All households, regardless of HTC income level designation, will be allowed to transfer between buildings with the Development.

(4) The Department will not monitor the Development's application fee after the Compliance Period is over.

(d) Unless specifically noted in this section, all requirements of this chapter and §42 of the Code remain in effect for the Extended Use Period. These Post-Year fifteen (15) Monitoring Rules apply only to the HTC Developments administered by the Department. Participation in other programs administered by the Department may require additional monitoring to ensure compliance with the requirements of those programs.

§60.121. Material Noncompliance Methodology.

(a) The Department maintains a compliance history of each monitored Development in the Department's Compliance Status System. Developments with more than one program administered by the Department are scored by program. The Development will be consid-

ered in Material Noncompliance if the score for any single program exceeds the Material Noncompliance threshold for that program.

(b) A Development will not be assigned the scores noted in this section until after the Owner has been provided a written notice of the noncompliance and provided a corrective action deadline to show that either the Development was never in noncompliance or that the noncompliance event has been corrected.

(c) This section identifies all possible noncompliance events for all programs monitored by the Physical Inspection and Compliance Monitoring Sections of the CAO Division. However, not all issues listed in this section pertain to all Developments. In addition, only certain noncompliance events are reportable on Form 8823. Those events that are reportable under the HTC program on Form 8823 are so indicated in subsections (k) and (j) of this section.

(d) For HTC Developments, all Forms 8823 issued by the Department will be entered into the Department's Compliance Status System. However, Forms 8823 issued prior to January 1, 1998 will not be considered in determining Material Noncompliance.

(e) For all programs, a Development will be in Material Noncompliance if the noncompliance event is stated in this section to be Material Noncompliance. The Department may take into consideration the representations of the Owner regarding monitoring notices and Owner responses; however, unless an Owner can prove otherwise, the compliance records of the Department shall be presumed to be correct.

(f) All Developments, regardless of status, that are or have been administered, funded, or monitored by the Department, are scored even if the Development no longer actively participates in the program, with the exception of properties in the Federal Deposit Insurance Corporation's (FDIC) Affordable Housing Disposition Program.

(g) A Development's score will be reduced by the number of points needed to be one point under the Material Noncompliance threshold provided that:

(1) The Development has no previously reported noncompliance events that are uncorrected;

(2) All newly identified noncompliance events are corrected during the corrective action period;

(3) All corrective action documentation for the newly identified noncompliance is provided to the Department during the corrective action period; and

(4) The Development was not already in Material Noncompliance at the time of its most recent monitoring review.

(h) If an owner is unable to correct all issues during the corrective action period, the owner may supply a corrective action plan for review by the Department that establishes dates that each uncorrected issue will be corrected and evidence of correction will be supplied. Provided that the Department approves the plan and the owner follows the plan, upon correction of all issues, a Development's score will be reduced by the number of points needed to be one point under the Material Noncompliance threshold provided that:

(1) The Development has no previously reported noncompliance events that are uncorrected; and

(2) The Development was not already in Material Noncompliance at the time of its most recent review.

(i) Noncompliance events are categorized as either "Development events" or "Unit/building events". Development events of noncompliance affect some or all the buildings in the Development; however, the Development will receive only one score for the noncompli-

ance event rather than a score for each Unit or building. Other noncompliance events are identified individually by Unit and will receive the appropriate score for each Unit cited with an event. The Unit scores and the Development scores accumulate towards the total score of the Development. Violations under the HTC program are identified by Unit; however, the building is scored rather than the Unit and the building will receive the noncompliance score if one or more of the Units in that building are in noncompliance.

(j) Uncorrected noncompliance events, if applicable to the Development, will carry the maximum number of points until the noncompliance event has been reported corrected by the Department. Once reported corrected by the Department, the score will be reduced to the "corrected value". Corrected noncompliance will no longer be included in the Development score one year after the date the noncompliance was reported corrected by the Department.

(k) Each noncompliance event is assigned a point value. The possible events of noncompliance and associated "corrected" and "uncorrected" points are listed in subsection (l) of this section.

(l) Figure: 10 TAC §60.121(l) lists events of noncompliance that affect the entire Development rather than an individual Unit. The first column of the chart identifies the noncompliance event. The second column identifies the number of points assigned this event while the issue is uncorrected. The Material Noncompliance threshold for a HTC Development is thirty (30) points. The Material Noncompliance threshold for a non-HTC property with one (1) to fifty (50) Low Income Units is thirty (30) points. The Material Noncompliance threshold for a non-HTC property with Fifty-one (51) to two hundred (200) Low Income Units is fifteen (50) points. The Material Noncompliance threshold for non-HTC properties with two hundred and one (201) or more Low Income Units is eighty (80) points. The third column lists the number of points assigned to the event from the date the issue is corrected until one (1) year after correction. The fourth column indicates what programs the noncompliance event applies to. The last column indicates if the issue is reportable on Form 8823 for HTC Developments.

Figure: 10 TAC §60.121(l)

(m) Figure: 10 TAC §60.121(m) lists ten (10) events of noncompliance associated with individual Units. The first column of the chart identifies the noncompliance event. The second column identifies the number of points assigned this event while the issue is uncorrected. The Material Noncompliance threshold for a HTC property is thirty (30) points. The Material Noncompliance threshold for a non-HTC property with one (1) to fifty (50) Low Income Units is thirty (30) points. The Material Noncompliance threshold for a non-HTC property with fifty-one (51) to two hundred (200) Low Income Units is fifty (50) points. The Material Noncompliance threshold for non-HTC properties with two hundred one (201) or more Low Income Units is eighty (80) points. The third column lists the number of points assigned to the event from the date the issue is corrected until one year after the event is corrected. The fourth column indicates what programs the noncompliance event applies to. The last column indicates if the issue is reportable on Form 8823 for HTC Developments.

Figure: 10 TAC §60.121(m)

§60.122. Previous Participation Reviews.

(a) Prior to providing any Department assistance, executing a Carryover Allocation Agreement, or processing a request for a Qualified Contract, the CAO Division will conduct a previous participation review to determine if the requesting entity controls a Development that is in Material Noncompliance, owes the Department any fees, is sixty (60) days delinquent on a loan payment, has a past due single audit or single audit certification form, or has any unresolved audit or monitoring findings identified by the Contract Monitoring Section of the CAO

Division. Previous participation reviews will also be conducted if more than one hundred twenty (120) days elapse between Board approval of an Application and a financing. Assistance includes but is not limited to allocating any Department funds or tax credits, with the exception of CDBG funds, engaging in loan or contract modifications that result in increased funding, approving a modification to a LURA (other than a technical error) and providing incentive awards.

(b) HTC Developments with any uncorrected issues of noncompliance or with pending notices of noncompliance, will not be issued Form 8609s, Low Income Housing Credit Allocation Certifications, until all events of noncompliance are corrected.

(c) If during the previous participation review an uncorrected issue of noncompliance required by the HOME Final Rule is identified on a HOME Development monitored by the Department, the entity requesting assistance will be notified of the issue and provided five (5) business days to submit all necessary corrective action to cure the violation(s). The notification will be in writing and may be delivered by email. If the requesting entity does not cure the violation(s), the request for assistance will be terminated. If the request for assistance is terminated, the Board has the ability to reinstate the request for assistance for consideration as provided in §60.126(a) of this chapter.

(d) If during the previous participation review, the Department determines that the requesting entity owes the Department any fees, is sixty (60) days delinquent on a loan payment, has a past due single audit or single audit certification form, has unresolved audit or monitoring findings identified by the Contract Monitoring section of the CAO Division, or has control of an existing Development monitored by the Department that is in Material Noncompliance, the entity requesting assistance will be notified of the issue and provided five (5) business days to submit all necessary corrective action, pay the fees, bring the loan current, or otherwise cure the violation(s). If the requesting entity does not cure the issue(s), the request for assistance will be terminated. If the request for assistance is terminated due to Material Noncompliance, the Board has the ability to reinstate the request for assistance for consideration as provided in §60.126(b) of this chapter.

(e) If during the previous participation review, the Department determines that the requesting entity or any person controlling the requesting entity is on the Department's or the Department of Housing Urban Development's debarred list, the request for assistance will be terminated. A request for assistance properly terminated for this reason cannot be reinstated for consideration. The request for assistance can be re-submitted, however, if the person or entity that is on the debarred list is no longer part of the requesting entity.

(f) For the purposes of previous participation reviews:

(1) The Department will not take into consideration the score of a Development that the requesting entity has not controlled for at least three (3) years;

(2) The Department will not take into consideration the score of a Development for which the Affordability Period ended over three (3) years ago;

(3) The Department will not take into consideration the score attributed to a Development for noncompliance with FDIC's Affordable Housing Disposition Program;

(4) If a requesting entity no longer controls a Development but has controlled the Development at any time in the last three (3) years, the Department will determine the score for the noncompliance events with a date of noncompliance identified during the time the requesting entity controlled the Development. If the points associated with the noncompliance events identified during the requesting entity's

control of the Development exceed the threshold for Material Noncompliance, the request for assistance will be terminated but may be subject to reinstatement by the Board as provided in §60.126 of this chapter.

(g) Date for determining Material Noncompliance. Previous participation reviews will be conducted prior to the Board meeting when funds will be awarded, or if the request is not subject to Board action, prior to the Department providing the requested assistance. The score in effect at the completion of the previous participation review process (which includes the five (5) business day cure period referenced in subparagraphs (c) and (d) of this section) will be used to determine if the request for assistance will be terminated. Previous participation reviews are not required to be performed if less than one hundred-twenty (120) days have elapsed since the last review, provided there is no change in the organizational structure.

(h) Treatment of units of government during a previous participation review. If a city, county or local government applies for assistance from the Department, a previous participation review will be conducted. If the city, county or unit of government controls a development that is in Material Noncompliance, owes the Department any fees, is sixty (60) days delinquent on a loan payment, has a past due single audit or single audit certification form or has unresolved audit or monitoring findings identified by the Contract Monitoring Section of the CAO Division, the process described in subsection (d) of this section will be followed. However, the previous participation of individual elected officials will not be considered provided that they are not the contract executor for the requesting entity.

(i) Treatment of nonprofits during a previous participation review. If a nonprofit applies, or is associated with, an application for assistance from the Department, a previous participation review will be conducted. If the nonprofit controls a Development that is in Material Noncompliance, owes the Department any fees, is sixty (60) days delinquent on a loan payment, has a past due single audit or single audit certification form or has unresolved audit or monitoring findings identified by the Contract Monitoring Section of the CAO Division, the process described in subsection (d) of this section will be followed. If it is determined that the Executive Director, Chair of the Audit Committee, Board Chair or any member of the Executive Committee of the nonprofit controls a Development that is in Material Noncompliance, owes the Department any fees, is sixty (60) days delinquent on a loan payment, has a past due single audit or single audit certification form or has unresolved audit or monitoring findings identified by the Contract Monitoring Section of the CAO Division, the process described in subsection (d) of this section will be followed. If within the five (5) business day period, the party with noncompliance resigns from the applicable position of the nonprofit organization requesting assistance, the noncompliance will not be taken into consideration. If it is determined that any member of the Board of the Nonprofit is on the Department's or the Department of Housing Urban Development's debarred list, the request for assistance will be terminated. A request for assistance properly terminated for this reason cannot be reinstated for consideration. The request for assistance can be re-submitted, however, if the person on the debarred list resigns from the applicable nonprofit organization requesting assistance.

(j) Previous participation review for ownership transfers. Consistent with this section, the Department will perform a previous participation review prior to approving any transfer of ownership of a Development or any change in the Owner of a Development. The previous participation review shall be conducted with respect to the Developments controlled by the person coming into ownership, not with respect to the Development or Owner being transferred.

§60.123. *Alternative Dispute Resolution (ADR).*

(a) It is the Department's policy to encourage the use of appropriate Alternative Dispute Resolution (ADR) procedures to assist in resolving disputes under the Department's jurisdiction. If at any time an applicant or other person would like to engage the Department in an ADR process, 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 §1.17 of this title.

(b) In all phases of monitoring, (construction and throughout the entire Affordability Period) if a potential issue of noncompliance has been identified, Owners will be provided a written notice of noncompliance. In general, the Department will provide up to a ninety (90) day corrective action period which can and will be extended for an additional ninety (90) days if there is good cause and the Owner requests an extension during the corrective action period.

(c) Owners must respond to the Department's notice of noncompliance. If an Owner does not respond, this ADR process which is explained in this section cannot be initiated.

(d) If an Owner does not agree with the Department's assessment of compliance, they should clearly explain their position and provide as much supporting documentation as possible. If the position is reasonable and well supported, the issue of noncompliance will be cleared with no further action taken, i.e. for HTC properties, Form(s) 8823 will not be filed with the IRS and the issue will not be scored in the Department's compliance status system.

(e) If an Owner's response indicates disagreement with the Department's assessment of noncompliance, but does not appear to be a valid concern to the Department, staff will notify the Owner in writing of their right to engage in ADR. The Owner must respond in five (5) days and request ADR. In addition, the owner must request an extension of the corrective action deadline, if one is still available. If the owner does not respond to the staff's invitation to engage in ADR, the Department's assessment of the violation is final.

(f) The Department must meet the Treasury Regulation requirement found in §1.42-5 and file Form 8823 within forty-five (45) days after the end of the corrective action period. Therefore, it is possible that the Owner and Department may still be engaged in ADR. In this circumstance, the Form 8823 will be filed. However, it will be sent to the IRS with an explanation that the owner disagrees with the Department's assessment and is pursuing ADR. All Owner supplied documentation supporting their position will be supplied to the IRS. Although the violation will be reported to the IRS within the required timeframes, it will not be scored in the Department's compliance status system pending outcome of ADR.

(g) ADR is not an appropriate format for matters regarding interpretations of laws, regulations and rules. ADR can only be used when parties could reach consensus.

§60.126. *Temporary Suspension of Previous Participation Reviews.*

(a) An entity whose request for assistance is terminated under §60.122 of this chapter may request reinstatement of the Application for consideration for approval. The request must be in writing and must be submitted to the Department within five (5) business days of the date of the Department's letter notifying the requesting entity of the termination/denial. A timely filed request for reinstatement shall be placed on the agenda for the next Board meeting for which it can be properly posted.

(b) If an Application for assistance was terminated under §60.122 of this chapter, the Board may consider reinstatement of the application only in the event that it determines, after consideration of the relevant, material facts and circumstances that:

(1) it is in the best interests of the Department and the State to proceed with the award;

(2) the award will not present undue increased program or financial risk to the Department or State;

(3) the applicant is not acting in bad faith; and

(4) the applicant has taken reasonable measures within its power to remedy the cause for the termination.

(c) Reinstatement of a terminated Application merely makes the Application eligible to be considered and does not, in and of itself, constitute approval.

§60.127. Temporary Suspension of other Sections of this Subchapter.

(a) Temporary suspensions of other sections of this subchapter may be granted if the Board finds one or more of the following factors applicable to a Development:

(1) A natural disaster or other act of God has made the application of this subchapter to a Development infeasible for a period of time and the Governor of Texas or President of the United States has previously made a disaster declaration for the area including the Development during the relevant time period;

(2) Due to documented shortages in items necessary to complete the requirements of the subchapter, the Owner was unable to meet the subchapter requirements, this would include but not be limited to a shortage of labor, building materials, or public utilities available;

(3) A federal rule has changed that significantly changed the ability of the Owner to deliver the services required at the time the Development was placed in service or began operation provided, however, that the Board cannot waive the rule itself and the Owner must comply, but the Board may suspend the compliance score related to the violation in this situation; and/or

(4) A Development has been subjected in part to a governmental action such as partial condemnation through no fault of the Owner, eminent domain, or zoning changes that do not allow corrections of compliance issues required by the Department.

(b) Under no circumstances can the Board suspend for any period of time compliance with the HOME Final Rule or regulations issued by HUD when required by federal law.

(c) Under no circumstances can the Board suspend for any period of time Treasury Regulations, IRS publications controlling the submission of Form 8823, or any sections of 26 U.S.C. §42.

(d) Examples of items the Board could temporarily suspend include: the requirement to report online, requirement to use Department approved forms, sampling size requirements for agency calculated utility allowance, or the requirement to repay overcharged rent on a HTF property.

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

Filed with the Office of the Secretary of State on November 10, 2009.

TRD-200905212

Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Effective date: November 30, 2009
Proposal publication date: September 25, 2009
For further information, please call: (512) 475-3916



TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

SUBCHAPTER B. CUSTOMER SERVICE AND PROTECTION

16 TAC §26.25

The Public Utility Commission of Texas (commission) adopts an amendment to §26.25, relating to Issuance and Format of Bills, with changes to the proposed text as published in the August 14, 2009, issue of the *Texas Register* (34 TexReg 5462). The amendment implements certain provisions of Texas House Bill 1822, 81st Leg. (2009) (HB 1822) pertaining to a list of defined terms common to the telecommunications industry. HB 1822 amended the Public Utilities Regulatory Act (PURA) §§17.003(c), 17.004(a), and 17.102. The rule will require certificated telecommunications utilities (CTUs) to use defined terms or acceptable abbreviations in billing their residential consumers to the extent that the terms apply to the customer's bill. The amendment is adopted under Project Number 37215.

The commission received written comments on the proposed amendment from Southwestern Bell Telephone Company d/b/a AT&T Texas (AT&T); GTE Southwest, Incorporated d/b/a Verizon Southwest, MCImetro Access Transmission Services, Inc. d/b/a Verizon Access Transmission Services, and Verizon Long Distance, LLC (Verizon); Office of Public Utility Counsel (OPC); John Staurulakis, Inc. (JSI); Sprint Communications Company, LP (Sprint); T-Mobile West Corporation d/b/a T-Mobile; TEX-ALTEL; Texas Cable Association (TCA); Texas Statewide Telephone Cooperative, Inc. (TSTCI); Texas Telephone Association (TTA); and tw telecom of Texas llc (TWTC). No public hearing on the proposed amendment was requested.

Comment Summary

Need for Rule Amendment

TCA argued that any consumer confusion regarding terms used on telephone bills has already been addressed by the commission in §26.25 of this title (relating to Issuance and Format of Bills), §26.31 (relating to Disclosures to Applicants and Customers), §26.32 (relating to Protection Against Unauthorized Billing Charges), and the Federal Communication Commission's (FCC's) April 1999 Truth in Billing Order. TCA noted that the billing terms currently used by CTUs are familiar to and accepted by consumers today and have not been challenged before either at the commission or the FCC. TCA further noted that customer service departments receive few, if any, inquiries from consumers today regarding the fees and

taxes on their bills. TCA added that Chairman Solomons' July 14, 2009 letter in this proceeding noted that his primary focus in authoring HB 1822 was due to complaints arising in the electric industry and that he included the telecommunications industry, even though he had not received the same volume of complaints from telecommunications consumers. JSI added that §26.25, adopted in Project Number 22130, already requires telecommunications providers to utilize brief, plain language describing services offered and charges applied to customer bills, consistent with the guidance provided in the FCC's April 1999 Truth in Billing Order. TTA agreed with TCA and JCI that any confusing telecom terms have been thoroughly addressed by the FCC and the commission and that primary billing terms are already clearly defined.

OPC agreed with the CTU parties that the 1999 FCC guidance relating to Truth in Billing addressed confusion related to customer billing statements and that the FCC rules require charges contained on telephone bills to be accompanied by a brief, non-misleading, plain language description of the services rendered. OPC also recognized that Project Number 22130, along with SB 560 (enacted in the 76th regular session) made great strides toward ensuring that phone bills were more consumer-friendly. OPC also acknowledged that Chairman Solomons indicated that the primary focus for common terms was complaints arising in the electric industry. OPC pointed out that Chairman Solomons had not received the same number of complaints from telecommunications consumers, because efforts by the commission with assistance from OPC had resulted in general consistency in telecommunications bills.

Commission Response

The commission agrees with the parties that the commission's adoption of the current §26.25 in Project Number 22130 has resulted in significantly fewer consumer complaints concerning telecommunications bills. While the primary focus of HB 1822 was electric complaints, it applies to telecommunications bills as well, and the commission believes that it has an obligation to address telecommunications bills. HB 1822 provides the commission with an opportunity to define and standardize common telecommunications terms to be used on CTU bills to further facilitate consumer understanding of relevant billing elements.

Extending Application of Rule Beyond Residential Customers

OPC proposed to expand the application of the rule to include business customers. AT&T, Sprint, TCA, TEXALTEL, TWTC, and Verizon strongly opposed this proposal and recommended that the commission continue to limit the application of §26.25 to residential customers only. They commented that the existing rule was revised in 2000 as a result of the enactment of PURA §55.012. Verizon noted that the preamble and the adopted rule made it clear that the commission consciously restricted the rule to residential customers, even though the statute did not specify such a restriction. Verizon opined that the commission's interpretation of the statute as applying only to residential customers, for the purposes of this rule, is entitled to great weight. In noting that the existing rule is limited to residential customers, TCA opined that this limitation presumably recognizes that business customers are more sophisticated in their understanding and ability to question telephone bills. TCA further noted that customer inquiries concerning terms on their bills are rare even from residential customers and that expanding of the application is not warranted. TCA argued that OPC failed to show that business customers need such protection. To counter OPC's proposal to expand application of the rule, AT&T argued that it

is just as plausible that Senator Fraser's floor amendment that struck the phrase "residential and small commercial customers" from HB 1822 was done so that the legislation would not apply to small commercial customers but be limited to residential as it is in the currently effective and proposed rule. AT&T commented that a change in the application of the rule to include business customers would increase costs and cause operational/billing system changes contrary to the intent of the legislation as expressed in Chairman Solomons' letters of clarification.

Verizon added that business customers are frequently billed by systems designed for multi-state business customers operating under one contract and imposing a Texas requirement would cause changes in billing business customers in every state. TEXALTEL noted that Chairman Solomons' July 14, 2009 letter pointed out that the issues surrounding passage of HB 1822 lie solely within the electric industry and offered that vagueness of the house bill gives the commission the authority to address issues and apply regulation where it is needed and does not place an obligation on the commission to apply the rules where they are not needed. Sprint, TCA, and TWTC pointed out that companies that serve business customers have not been provided notice of any changes in rules that could affect them and that expansion of the rule to include the changes suggested by OPC would require republication. These commenters argued that the requirements of §26.25 are properly limited to residential customer bills and the commission should not in this proceeding adopt amendments to §26.21, relating to General Provisions for Customer Service and Protection Rules.

Although OPC agreed with other parties that the current rule made great strides towards ensuring phone bills were more consumer-friendly, OPC stated its belief that the rule should be expanded to apply to all customers (residential and business). In support of its position, OPC noted that during the March 10, 2009 House State Affairs Committee Meeting, Chairman Solomons specified that HB 1822 applied to "line items" on customer bills and that Chairman Fraser echoed this comment during the May 21, 2009 Senate Business and Commerce Meeting. OPC further noted that when the bill went to the Senate Floor for a vote on May 26, 2009 that Chairman Fraser offered an amendment that was accepted to remove "residential and small commercial customer" from Sections 1 and 4, thus making common terms applicable to all customers' billing statements. OPC pointed out that Sections 2 and 3 of the bill already provided for use of common terms in all customers' bills and did not differentiate between residential or small commercial customers' bills. The rule, as published, amends only §26.25. OPC opined that the commission should consider amending the rules to do one or more of the following to follow HB 1822's guidance and requirements: (1) repeat the proposed common terms in §26.5, relating to Definitions, where general terms used throughout Chapter 26 are defined; (2) define the proposed common terms and require that they be used on all customers' bill by inserting these amendments into §26.21 relating to General Provisions of Customer Service and Protection Rules; or (3) amend §26.25 to apply its customer protections to all telecommunications customers.

Commission Response

A version of HB 1822 included language that would have applied the rule to each residential and small commercial bill instead of each retail bill, but Senator Fraser offered an amendment that was adopted to remove this language from the bill, and it ultimately passed without reference to small commercial bills. PURA §17.003(c) as amended by HB 1822 not only refers to re-

tail bills, but also indicates that the purpose of the required commission rule is to facilitate "consumer" understanding. Both "retail" and "consumer" are terms often used in referring to residential customers. As many of the commenters explained, applying the rule to all customers, including not only residential customers but also small and large business customers, would substantially increase compliance costs and could be to some extent counter-productive because it could reduce uniformity in billing terms for a multi-state business that receives uniform bills from a service provider for service in multiple states. Furthermore, limiting the applicability to residential customers is consistent with the current rule's limitation to residential customers.

Additional Defined Terms

AT&T opposed inclusion of the terms "charge," "fee," and "tax" in the rule and expressed the view that customers are not particularly confused by these terms and do not assign any particularly distinctive meaning to them. AT&T pointed out that *Webster's Dictionary* defines "fee" as a "distinct charge" and concluded that the terms "fee" and "charge" are synonymous. AT&T opined that attempting to create a distinction between the terms would create confusion where none currently exists. AT&T, TCA, TTA, and Verizon opposed OPC's recommendation to add nine additional terms to the rule. AT&T noted that OPC did not provide any contrary arguments or evidence to the conclusion in the preamble of the proposed rule that any additional benefits of a more expansive list of terms would be outweighed by the increased implementation costs. Verizon added that all of the terms that OPC suggested are unique tariffed services and CTUs have unique marketing names associated with packages and/or bundles that may include some of the nine services that OPC proposed. TCA pointed out that the terms to be defined in this rule are supposed to be terms "common" to the telecommunications industry and that the nine terms proposed by OPC are no longer, if ever, commonly used terms throughout the industry. TCA noted that it is unaware of any communication from Chairman Solomons that the commission's proposed list of terms is in any way deficient.

OPC suggested that the published preamble terms of "charge," "fee," and "tax" be included in both §26.25 and in the definitions in §26.5. Additionally, OPC suggested that the following terms and definitions, as presently defined on the commission's website, be added to the rule relating to the bill content: (1) basic local service charge, (2) extended area service fee, (3) optional service charge, (4) directory assistance charge, (5) local toll charge; (6) long distance charge, (7) pay-per-call service charges, (8) local number portability charge, and (9) expanded local calling service fee.

Commission Response

The commission agrees with AT&T that the rule need not attempt to distinguish the terms "charge," "fee" and "tax." Therefore, the commission removes these terms and does not adopt OPC's recommendation to add these terms to the rule as definitions.

The commission agrees with the CTU parties that the nine additional terms proposed by OPC are not terms that are common to CTUs but are generally services that may be marketed by CTUs under other names. Therefore, the commission does not make any changes to the rule to incorporate these nine additional terms.

Use of Alternative Terms and Abbreviations

AT&T, JSI, Sprint, TCA, TEXALTEL, and TTA requested that the rule allow for the use of a limited number of acceptable alter-

native terms in addition to the defined term to minimize customer confusion and minimize costs associated with changing bills when the terms are already used and mean same thing. AT&T opined that this would be consistent with HB 1822 that requires that "applicable" terms be labeled "uniformly" rather than requiring that the terms be labeled exactly the same and would be consistent with Chairman Solomons' indication that the overall intent of HB 1822 was that the terms be defined clearly and consistently. AT&T, JSI, TCA, TEXALTEL, TSTCI, and TTA offered that the rule should allow for the use of abbreviations of terms due to billing system restraints on field lengths, as well as different capitalization of defined terms. JSI, TEXALTEL, and TTA added that some terms exceed the 23 character field length capacity of some small company billing systems. According to these commenters, the rule should allow the use of acceptable term abbreviations to accommodate these field length capacities, to reduce the need for CTUs to modify billing systems and incur significant costs to accommodate more characters. TCA added that some of TCA's members provide service in multiple states utilizing standardized billing systems and that making changes solely for bills sent to Texas customers would be a significant undertaking and require extensive and careful planning, execution, testing, and training with significant implementation and ongoing costs. TCA noted that it would be impossible to quantify the costs with precision but that it expected that the costs could be thousands or perhaps tens of thousands of dollars that would likely negatively impact customer rates.

OPC stated that it did not oppose the use of abbreviations but recommended that the abbreviations should be commission approved and included in the common terms and definitions on the websites of the commission and the CTUs. OPC also agreed with the parties that the commission rule should not be so restrictive as to disallow the use of upper-case or lower-case terms interchangeably. OPC opined that the allowance of alternative terms may lead to customer confusion and difficulty in customer comparison shopping. If the commission were to allow for alternative terms, then those alternative terms should be defined along with the common terms and delineated in the rule.

Commission Response

The commission agrees with the commenters that the rule should allow the use of abbreviated terms and different capitalization of terms. In order to meet HB 1822's objective of facilitating consumer understanding of relevant billing elements, the commission determines that the language should be standard among telecommunications bills and that the use of alternative terms should not be permitted. The commission modifies the rule accordingly.

Subsection (a)

TTA proposed that the term "telecommunications provider" be used instead of "CTU" in the descriptions as the CTU term is not familiar to customers. OPC agreed with TTA's proposal to use the term "telecommunications provider."

T-Mobile opposed the use of the term "telecommunications provider" in lieu of the term "CTU" and pointed out that the term "telecommunications provider" is a statutorily defined term at PURA §51.002(10) and has significantly broader application than the term "CTU" that would include CMRS providers. T-Mobile opined that CMRS service is explicitly exempted from regulation in PURA §51.003 and requested that the commission reject TTA's proposal to expand jurisdiction beyond what was intended and expressed in HB 1822.

Commission Response

The commission appreciates OPC's and TTA's proposal to use the term "telecommunications provider" as being more familiar to customers than CTU but does not adopt the suggestion. The current rule uses the term "certificated telecommunications utilities" as does HB 1822. The commission agrees with T-Mobile that the term "telecommunications provider" is a statutorily defined term that has significantly broader application than the term "CTU." Therefore, the commission does not make any changes in response to these comments.

Subsection (e)(3)

JSI, TEXALTEL, TSTCI, and Verizon asked that the commission clarify that §26.25(e)(3) requires CTUs to use the list of terms but does not require CTUs to include the definitions on customer bills. A requirement to print the term as well as the definition of that term on a customer's bill would create significant expense both in programming costs as well as costs associated with an increase in the amount of paper necessary to generate the bill and possible postage rate increases. The result would be more cumbersome for customers and not provide the simplicity envisioned by the legislation. JSI and TEXALTEL requested that the terms, along with alternatives and abbreviations, and definitions be posted on the commission's website and that companies be allowed to direct customers to that centralized list for the definition of the terms. JSI proposed consideration of alternative language to be added as §26.25(e)(7) to clarify the intent. AT&T, TCA, TEXALTEL, TTA, and Verizon opposed OPC's suggestion that CTUs be required to provide customers with a bill insert annually providing the terms and definitions. AT&T, TTA, and Verizon pointed to Chairman Solomons' letter that suggested the common billing terms should be provided to consumers in a readily accessible manner such as in a "directory or online source" not in a duplicative and costly annual bill insert. Verizon stated that the commission already has a list of existing terms and definitions on its website under the broad heading of "Consumer Fact Sheets, Charges on Your Telephone Bill" and suggested that this website could be updated to include the results of this project. AT&T and Verizon added that bill inserts are costly to produce, insert, and mail and would be inconsistent with Chairman Solomons' guidance as to the intent of HB 1822 not to increase costs to the industry and ultimately to consumers. TCA opined that the rule would have to be republished in order to include the requirement for annual bill inserts.

TCA opposed JSI's and TEXALTEL's proposal to post the terms on the commission's website and require CTUs to provide a link on customer bills to the website because this would require even more bill revisions resulting in additional economic burdens. TCA noted that definitions of terms are contained throughout the commission's rules and requiring CTUs to provide links to some definitions but not others is unreasonable, especially in view of the increased costs.

OPC agreed with JSI, TEXALTEL, TSTCI, and Verizon that the terms and definitions need not be placed on every billing statement. OPC pointed out that in Project Number 37070, commission staff proposed providing the definitions of the terms on the utility's website and opined that telecommunications service providers should be required to use defined terms on customer bills and post the terms on the utility's website along with the definitions. OPC suggested that utilities be required to train their customer service representatives about the billing terminology and assist those customers without Internet access. OPC asked that the commission and OPC list the common terms and defi-

nitions on their customer-information websites and inform intake personnel of the location of these definitions to assist customers in reading their bills. In addition to listing the terms and definitions on its website, OPC encouraged the commission to require each CTU to once annually send a bill insert that informs customers of the terms and definitions along with any additional terms that the CTU might utilize. OPC recognized the annual bill insert might have additional costs but offered that certain telecommunications expenses may not be avoidable as providing common terms is a legislative mandate.

Commission Response

The commission agrees with the CTU parties and OPC that the rule should be modified to clarify that the CTUs are not required to include the definitions of the terms on customer bills and modifies the rule accordingly.

The commission agrees that the commission's website "Consumer Fact Sheets, Charges on Your Telephone Bill" should be updated to include the results of this project but rejects the recommendation to require CTUs to modify billing systems to include a specific reference to the commission's website where these terms and definitions are listed. The commission concludes that, to the extent that a CTU has a website that explains customer bills, it must modify those websites to include the terms and definitions in this rule. The commission agrees that the benefits of the additional information to customers should be weighed against the costs, and it is not its intention to impose requirements that cause significant additional expenses for CTUs without customer benefits that outweigh those expenses. Based on commenters' discussions of the cost of bill inserts, the commission does not adopt OPC's recommendation to require CTUs to send annual bill inserts to its customers.

The commission believes that CTUs will adequately train their customer service representatives on billing terminology and continue assisting customers without Internet access, and the commission does not at this time need to amend the rule to include such requirements. If it becomes clear that there are inadequacies in the performance of customer services representatives, bill information, or providing assistance to customers by telephone and the Internet, the commission has the latitude to address such inadequacies in the future.

Subsection (e)(7)(A)

AT&T and TTA suggested that the word "tax" be omitted from the term "Federal excise tax" if the term is listed under a bill section entitled "Taxes" to avoid redundancy and permit CTUs to omit the potentially confusing word "excise" as part of alternative allowable terms.

Commission Response

The commission believes that standardization among providers is important, and therefore, does not agree with AT&T and TTA to omit the word "tax" from the term "Federal excise tax" if the term is listed under a bill section entitled "Taxes." Also, the commission does not agree that CTUs should be allowed to use an alternate term that would exclude the word "excise." Therefore, the commission makes no change in response to these comments.

Subsection (e)(7)(B)

JSI, TCA, and TTA proposed deletion of the last two sentences as not being needed to define the term "Federal subscriber line charge." They argued that a discussion that highlights that CTUs

are not required to charge the subscriber line charge and how they may use the revenue from this charge is neither necessary nor appropriate for inclusion in the definition and could potentially confuse customers.

Commission Response

The commission agrees that the last two sentences are not needed to define the term but believes that further clarification of the charge is appropriate, and further clarification will help customers understand the purpose of the charge and will assist them in understanding why some CTUs charge it and others do not. Therefore, the commission makes no change in response to these comments.

Subsection (e)(7)(C)

JSI and TTA proposed deletion of the last two sentences as not being needed to define the term "Federal universal service fee" and state that inclusion in the definition could potentially confuse customers. JSI proposed that the definition be edited to include "low-income customers" in addition to schools, libraries, and rural health care providers.

Commission Response

The commission agrees that the last two sentences are not needed to define the term but believes that further clarification of the charge is appropriate and will help customers understand the purpose of the charge and will assist them in understanding why some CTUs charge it and others do not. Additionally, the commission believes that it is helpful for customers to know what regulatory agency is responsible for approving the level of the fee. Therefore, the commission does not remove the last two sentences from the rule. The commission agrees with JSI that the definition should be edited to include a reference to low-income customers and modifies the rule accordingly.

Subsection (e)(7)(D)

AT&T, TCA, and Verizon proposed that the term "Late payment charge" be deleted as it is a commonly used term in all customer bills, from credit cards to mortgage statements, and is not unique to telecommunications services and does not concern or reflect a government or regulatory related fee, charge, or tax.

Commission Response

The commission agrees that the term "Late payment charge" is not unique to telecommunications services and is a commonly understood term on all customer bills. The commission modifies the rule to remove the term "Late payment charge" and renumbers the rule accordingly.

Subsection (e)(7)(F)

AT&T, JSI, TSTCI, TCA, TTA, and Verizon proposed deletion of the term "Municipal sales tax" as the term would incorrectly describe Texas sales taxes which are often some combination of state taxes, city taxes, other local entity taxes, transit authority taxes, and/or special purpose district taxes. AT&T, JSI, TTA, and Verizon added the tax is not separately itemized from state taxes and most companies are not able to separately identify the municipal tax without incurring significant costs to alter their billing systems and the creation of customer confusion. The additional programming changes would be expensive and contrary to Chairman Solomons' intent. OPC agreed with parties to delete the term "Municipal sales tax."

Commission Response

The commission agrees with the CTU parties and OPC to delete the term "Municipal sales tax" and modifies and renumbers the rule accordingly.

Subsection (e)(7)(G)

AT&T proposed deletion of the term "PUC fee" as the Public Utility Regulatory Act §16.001(c) directs interexchange carriers but not CTUs to refer to this fee on customer bills as "utility gross receipts assessment."

Commission Response

PURA §16.001 states that the assessment applies to public utilities (ILEC CTUs) and interexchange telecommunications carriers (IXCs) but permits only IXCs to collect the fee from its customers through an additional bill item stated as a "utility gross receipts assessment." The fee is not assessed on CLEC CTUs as they do not meet the definition of public utility. While ILEC CTUs are assessed the fee, they are not permitted to collect the fee from their customers as an additional, separately stated bill item. As the term is not applicable to customer bills sent by CTUs to their customers, the commission modifies the rule to remove the term "PUC fee" and renumbers the rule accordingly.

Subsection (e)(7)(H)

AT&T, JSI, TSTCI, and TTA proposed that the word "fee" be deleted from the term "Texas universal service fee" as §26.420(f)(6)(A)(i), relating to the administration of the Texas universal service fund, mandates that this surcharge be listed on retail customer bills as "Texas Universal Service." AT&T recommended that the reference to "Tel-Assistance" be deleted from this definition since that program was discontinued by HB 2156 on September 1, 2001. OPC agreed to delete the word "fee" from the term.

Commission Response

The commission agrees with the CTU parties and OPC to delete the word "fee" from the term as §26.420(f)(6)(A)(i) mandates that this surcharge be listed on retail customer bills as "Texas Universal Service." The commission adopts AT&T's recommendation to delete the reference to "Tel-Assistance" from the definition. The commission modifies the rule accordingly.

Subsection (e)(7)(I)

JSI and TTA proposed deletion of the last sentence as not being needed to define the term "9-1-1 fee" and stated that inclusion in the definition could potentially confuse customers. JSI also recommended that the hyphens be removed from the definition as small companies have never hyphenated the terms and the hyphens unnecessarily lengthen the field length on the customer bill.

Commission Response

The commission agrees that the last sentence is not needed to define the term but believes that further clarification of the charge is appropriate and will provide the customer with an understanding of the regulatory agency that is responsible for setting the fee level. The commission notes that various entities use the terms "9-1-1 fee" and "911 fee" interchangeably and modifies the rule to permit a CTU to use the term with or without hyphens.

Subsection (e)(7)(J)

JSI and TTA proposed deletion of the last two sentences as not being needed to define the term "9-1-1 equalization fee." They argued that their inclusion in the definition could potentially con-

fuse customers. JSI also recommended that the hyphens be removed from the definition as small companies have never hyphenated the terms and the hyphens unnecessarily lengthen the field length on the customer bill. JSI also pointed out that the proposed definition is missing the word "cost."

Commission Response

The commission agrees that the last two sentences are not needed to define the term but believes that further clarification of the fee is appropriate and provides the customer with an understanding of the regulatory agency that is responsible for setting the fee level. The commission notes that various entities use the terms "9-1-1 equalization fee" and "911 equalization fee" interchangeably and modifies its rule to permit a CTU to use the term with or without hyphens. The commission appreciates JSI pointing out the missing word "cost" and modifies the rule to correct this omission.

Subsection (g)

AT&T, JSI, Sprint, TCA, and TTA opposed the proposal to make the rule effective 90 days after approval. The parties raised concerns about the time frame to implement the changes to the content and format of bills due to a variety of implementation steps including software updates, billing system changes, and personnel training. JSI and TTA stated that the changes outlined in the proposed rule would require a minimum of 120 days after adoption to implement. If more extensive changes are made, then this timeframe would be negatively impacted. TCA argued that such changes typically take six or more months to successfully test and complete and asked that the commission reject changes to the rule requiring a 90-day implementation period and allow a six-month period for implementation. Sprint provided a very detailed outline of the steps involved in making the billing changes required by the rule and concluded that the information technology changes would require 9-12 months after adoption for an orderly implementation and urged the commission to extend the time for implementing this rule to 12 months. Sprint further noted that it utilizes a single invoice format for all states and it would need to design a Texas-specific invoice at a cost of roughly \$75,000. AT&T added that CTUs cannot begin the billing change process until a final rule is adopted and all requirements are fully known, and thus they cannot get a "head start" on the process. JSI, Sprint, and TCA offered that the rule should include a "good cause" waiver provision to allow CTUs additional time to implement the proposed changes. Sprint pointed out that PURA §17.004(b) and §64.004(b), dealing with Customer Protection Standards, allow the commission to "waive language requirements for good cause." If the commission believes that further specific authority for waiver is needed, Sprint recommended that such waiver authority be included in the adopted rule. TTA added that companies that provide telecommunications billing definitions in their directory will make any necessary changes at the first republication of the directory.

OPC agreed with commission's staff proposed effective date of 90 days after adoption of the rule and disagreed with the parties' purported need for six months to comply. OPC stated that it may be amenable to a temporary waiver for good cause but opposed any across-the-board permanent waiver. OPC noted that §26.23, relating to Refusal of Service, already allows the commission to make exceptions to Chapter 26 for good cause and it is not necessary to add a specific waiver position to this section.

Commission Response

The commission appreciates the CTUs concerns regarding the time to implement this rule. However, the commission believes that implementation of the rule amendment will not require the same level of bill reformatting as required when the existing rule was adopted. HB 1822 requires that the rule be adopted by December 1, 2009 and does not address the time required for implementation or the effective date of the rule. In recognition of the costs and time that CTUs have indicated will be required to change their billing systems, the commission is making the rule effective June 1, 2010. With this period for complying, the commission concludes that a good cause waiver is not needed as part of the rule.

All comments, including any not specifically referenced herein, were fully considered by the commission. In amending this section, the commission makes other minor modifications for the purpose of clarifying its intent.

The amendment is adopted under the Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §14.002 (Vernon 2007 & Supp. 2009) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §17.001, which directs the commission to adopt and enforce customer protection rules; §17.003(c), which requires the commission to require CTUs to give clear and understandable information to customers about rates and to use a list of defined terms; §17.004(a), which provides that customers are entitled to bills that are presented in clear, readable and easy-to-understand language that uses terms defined in the rules adopted under §17.003; §17.102, which directs the commission to adopt and enforce rules requiring that charges on a CTU's bill be clearly and easily identified, using terms defined in the rules adopted under §17.003; and §55.016, which authorizes the commission to enforce a requirement bills for telecommunications services provide sufficient information for customers to understand the basis and source of the charges and identify all charges.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 17.001, 17.003(c), 17.004(a), 17.102, and 55.016.

§26.25. Issuance and Format of Bills.

(a) Application. The provisions of this section apply to residential-customer bills issued by all certificated telecommunications utilities (CTUs).

(b) Purpose. The purpose of this section is to specify the information that should be included in a user-friendly, simplified format for residential customer bills that include charges for local exchange telephone service.

(c) Frequency of bills and billing detail. Bills of CTUs shall be issued monthly for any amount unless the bill covers service that is for less than one month, or unless through mutual agreement between the company and the customer a less frequent or more frequent billing interval is established. Through mutual agreement with the CTU, a customer may request and receive a bill with more detailed or less detailed information than otherwise would be required by the provisions of this section if the CTU also will provide the customer with detailed information on request.

(d) Billing information.

(1) All residential customers shall receive their bills via the United States mail, or other mail service, unless the customer agrees with the CTU to receive a bill through different means, such as electronically via the Internet.

(2) Customer billing sent through the United States mail, or other mail service, shall be sent in an envelope or by any other method that ensures the confidentiality of the customer's telephone number and/or account number.

(3) A CTU shall maintain by billing cycle the billing records for each of its accounts for at least two years after the date the bill is mailed. The billing records shall contain sufficient data to reconstruct a customer's billing for a given month. A copy of a customer's billing records may be obtained by the customer on request.

(e) Bill content requirements. The following requirements apply to bills sent via the U.S. mail, or other mail service. Bills rendered via the Internet shall provide the information specified in this subsection in a readily discernible manner.

(1) The first page of each residential customer's bill containing charges for local exchange telephone service shall include the following information, clearly and conspicuously displayed:

(A) the grand total amount due for all services being billed;

(B) the payment due date; and

(C) a notification of any change in the identity of a service provider. The notification should describe the nature of the relationship with the customer, including the description of whether the new service provider is the presubscribed local exchange or interexchange carrier. For purposes of this subparagraph, "new service provider" means a service provider that did not bill the customer for services during the service provider's last billing cycle. This definition shall include only providers that have continuing relationships with the customer that will result in periodic charges on the customer's bill, unless the service is subsequently canceled. This notification may be accomplished with a sentence that directs the customers to details of this change located elsewhere on the bill.

(D) If possible, the first page of the bill shall list each applicable telephone number or account number for which charges are being summarized on the bill. If such inclusion is not possible, the first page shall show the main telephone number or account number, and subsequent pages shall clearly identify the additional numbers.

(2) Each residential customer's bill shall include the following information in a clear and conspicuous manner that provides customers sufficient information to understand the basis and source of the charges in the bill:

(A) the service descriptions and charges for local service provided by the billing CTU;

(B) the service descriptions and charges for non-local services provided by the billing CTU;

(C) the service description, service provider's name, and charges for any services provided by parties other than the billing CTU, with a separate line for each different provider;

(D) applicable taxes, fees and surcharges, showing the specific amount associated with each charge;

(E) the billing period or billing end date; and

(F) an identification of those charges for which non-payment will not result in disconnection of basic local telecommunications service, along with an explicit statement that failure to pay these charges will not result in the loss of basic local service; or an identification of those charges that must be paid to retain basic local telecommunications service, along with an explicit statement that failure to pay these charges will result in the loss of basic local service.

(3) Charges must be accompanied by a brief, clear, non-misleading, plain-language description of the service being rendered. The description must be sufficiently clear in presentation and specific enough in content to enable customers to accurately assess the services for which they are being billed. Additionally, explanations shall be provided for any non-obvious abbreviations, symbols, or acronyms used to identify specific charges. The CTU shall use the term or acceptable abbreviation, in paragraph (7) of this subsection to the extent they apply to the customer's bill. If an abbreviation other than the acceptable abbreviation is used for the term, then the term must also be identified on the customer's bill. Terms and abbreviations may be completely capitalized, partially capitalized, not capitalized, hyphenated, or not hyphenated.

(4) Charges for bundled-service packages that include basic local telecommunications service are not required to be separately stated. However, a brief, clear, non-misleading, plain-language description of the services included in a bundled-service package is required to be provided either in the description or as a footnote.

(5) Each customer's bill shall include specific per-call detail for time-sensitive charges, itemized by service provider and by telephone or account number (if the customer's bill is for more than one such number). Each customer's bill shall include the rate and specific number of billing occurrences for per-use services, itemized by service provider and by telephone or account number. Additionally, time-sensitive charges and per-use charges may be displayed as subtotals in summary sections of the bill.

(6) Bills shall provide a clear and conspicuous toll-free number that a customer can call to resolve disputes and obtain information from the CTU. If the CTU is billing the customer for any services from another service provider, the bill shall identify the name of the service provider and provide a toll-free number that the customer can call to resolve disputes or obtain information from that service provider.

(7) Defined terms.

(A) Federal excise tax--Federal tax assessed on non-usage sensitive basic local service that is billed separately from long distance service. Acceptable abbreviation: Fed excise tax.

(B) Federal subscriber line charge--A charge that the Federal Communications Commission (FCC) allows a CTU to impose on its customers to recover costs associated with interstate access to the local telecommunications networks. The FCC does not require a CTU company to impose this charge, and the CTU does not remit the charge to the federal government. The charge may be used by the CTU to pay for a part of the cost of lines, wires, poles, conduit, equipment and facilities that provide interstate access to the local telecommunications network. Acceptable abbreviation: Fed subscriber line chg.

(C) Federal universal service fee--A federal fee for a fund that supports affordable basic phone service to all Americans, including low-income customers, schools, libraries, and rural health care providers. CTUs impose this fee to cover their required support for the fund. The fee is set by the FCC. Acceptable abbreviation: Fed universal svc fee.

(D) Municipal right-of-way fee--A fee used to compensate municipalities for the use of their rights-of-way. Acceptable abbreviation: Municipal ROW fee.

(E) Texas universal service--A state fee for a fund that supports affordable service to customers in high-cost rural areas, funds the Relay Texas service and related assistance for the hearing-disabled, and funds telecommunications services discounts for low-income customers (Lifeline). The fee is set by the Public Utility Commission.

(F) 9-1-1 fee--A fee used to fund the 9-1-1 telephone network that allows callers to reach a public safety agency when they dial the digits "9-1-1." The amount of the fee varies by region and is set by the Texas Commission on State Emergency Communications.

(G) 9-1-1 equalization fee--A fee used to provide financial support for regions where the 9-1-1 fee does not fully offset the cost of 9-1-1 service. The fee is imposed on each customer receiving intrastate long-distance service. The fee is set by the Texas Commission on State Emergency Communications.

(f) Compliance review of bill formats. A CTU shall file for review a copy of any portion of its bill format that has not previously been reviewed and approved by the commission pursuant to this section. The CTU will be advised if the format does or does not comply with the requirements of this section. Two alternative projects will be established for such reviews. CTUs may submit new or altered bill formats in either of these projects as follows:

(1) Expedited review. The commission staff shall establish a project for expedited reviews. CTUs may submit proposed new bills or bill format changes prior to implementation in the expedited review project. A notice of sufficiency or a notice of deficiency will be issued to the CTU within 15 business days. The CTU may appeal a notice of deficiency by requesting its submission be docketed for further review or may respond with a revised submission that corrects the deficiency within ten business days of the deficiency notice. The CTU's revised submission will be reviewed and either a notice of sufficiency or a notice of deficiency will be issued within 15 business days. This process will be repeated until the CTU's submission has received a notice of sufficiency or the CTU has requested that its submission be docketed as a contested case. A contested case may also be requested by commission staff to resolve disputes regarding the CTU's submission.

(2) Annual review. The commission staff shall establish a project for annual reviews. CTUs may choose to file bill format changes in the annual review project. If the CTU's bill format change has already been approved pursuant to paragraph (1) of this subsection, the CTU does not need to file the same changes under the annual review process. Submissions for annual review must be made between September 1st and October 1st each year. All submissions shall be responded to with a notice of sufficiency or deficiency issued no later than November 15th of that year. A CTU may appeal a notice of deficiency by requesting its submission be docketed for further review or may respond with a revised submission that corrects the deficiency within ten business days of the deficiency notice. Revised submissions will be reviewed within 15 business days and a new notice of either sufficiency or deficiency will be issued. This process will be repeated until the CTU's submission has received a notice of sufficiency or the CTU has requested that its submission be docketed as a contested case. A contested case may also be requested by commission staff to resolve disputes regarding the CTU's submission.

(g) Effective date. The effective date of this section is June 1, 2010.

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

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

TRD-200905232

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: June 1, 2010
Proposal publication date: August 14, 2009
For further information, please call: (512) 936-7223

◆ ◆ ◆

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 45. MARKETING PRACTICES

The Texas Alcoholic Beverage Commission (commission) adopts the repeal of §45.131, entitled consumers and noncommercial organizations without changes, and adopts the new §45.131, entitled payment regulations for malt beverages, with changes to the proposed text as published in the October 9, 2009, issue of the *Texas Register* (34 TexReg 6967).

For clarification, the commission has changed the title of subchapter E, from Miscellaneous to Regulation of Credit Transactions, to accurately reflect the content of and statutory authority for the subchapter.

Section 102.31 of the Texas Alcoholic Beverage Code (Code) provides that the terms of sale for beer by distributor licensees, and malt beverages by a local distributor permittee to a mixed beverage or daily temporary mixed beverage permit holder, must be by cash only, on or before the delivery to the purchaser. The section also requires that any failure by a retailer to make payment in cash must be reported to the commission within 2 days, as required by the commission. The section authorizes the commission to adopt rules to implement its provisions.

Existing §45.131 is being repealed under this section and subchapter, because it derives its authority from §108.06, relating to inducements, rather than the regulation of credit transactions, under §102.31.

The adopted new section sets forth the requirements of §102.31 and other sections of the Code relating to cash payment terms for the sale and purchase of malt beverages.

New subsection (a) states the purpose of and statutory authority for the new section.

New subsection (b) provides definitions used in the new section.

New subsection (c) contains the requirements for invoices.

New subsection (d) provides that it is a violation of this section to fail to make cash payment for malt beverages.

New subsection (e) provides a requirement that violations be reported to the commission within two days by sellers, and makes a failure to report a violation.

New subsection (f) provides an exception to a retailer who has a good faith dispute regarding whether a violation of the section occurred.

New subsection (g) provides a penalty for repeat violations of the section for both retailers and sellers.

Comments were received from individuals and representatives of the following industry members: the Texas Package Store Association, the Beer Alliance of Texas, and the Wholesale Beer Distributors of Texas. Comments were also received from

agency staff. As a result of these comments, changes were made to the proposed sections as follows:

Comment: Regarding §45.131(a), agency staff recommended that the provision of the Code that applies the cash requirement for malt beverages to mixed beverage permit holders in §28.12 be included in the statutory references.

Response: The commission agrees with the comment. Section 28.12 is added to the section and new subsection (g) (see comment below).

Comment: Regarding §45.131(b)(1), agency staff suggested that beer is a malt beverage and should be included in the definition of that term and not separately defined.

Response: The commission agrees with the comment and the section was changed as a result of the comment. The separate definition for beer is deleted and included under the definition of malt beverage. The subsection was renumbered as a result, and where "beer" appeared throughout the text of the section it was deleted.

Comment: Regarding §45.131(b)(7), staff commented that the local distributor permit holder should be listed separately from the distributor licensees to avoid confusion between a local distributor license holder and the local distributor permit holder.

Response: The commission agrees and the section was changed as a result of the comment.

Comment: Also regarding §45.131(b)(7), staff suggested that the definition should include a subsidiary or affiliate of any of the listed permit or license holders to conform to the statute.

Response: The commission agrees with the comment and the rule was changed as a result of the comment.

Comment: Regarding §45.131(d)(2) and (d)(3), commission staff commented that the commission does not currently track when cash violation payments are made between the seller and the retailer; therefore the commission is unable to implement the provision at this time.

Response: The commission agrees with the comment and the subsections have been deleted as a result of the comment. Additionally, the commission notes that the amendment to §102.32 of the Code made by HB 2560, 81st Legislature which made it mandatory for the commission to track and act on an unpaid credit law violation, did not make it applicable to an unpaid cash law violation under §102.31. Additionally, the commission has deleted reference to payment in §45.131(e), (e)(1), (3) and (4).

Comment: Regarding §45.131(d)(2), commission staff suggested that "manager" be added to the list of persons accountable for a cash law violations.

Response: The commission agrees with the comment and manager was added to the section. In addition, the commission has added present tense terms to the text.

Comment: Regarding §45.131(f), commission staff commented that the good faith dispute must be submitted to the commission with supporting documents, which may not be electronic, so the requirement that this be submitted electronically be deleted to allow for either paper or electronic submission of supporting documents.

Response: The commission agrees with the comment and the text was changed as a result of the comment.

Comment: Regarding the section generally, commission staff commented that a calculation of time provision might be helpful.

Response: The commission agrees with the comment and new subsection (g), calculation of time, is added from §102.31 of the Code.

SUBCHAPTER E. MISCELLANEOUS DIVISION 2. CASH LAW

16 TAC §45.131

The repeal is adopted under the authority of §5.31 and §102.31 of the Code. Section 5.31 gives the commission authority to prescribe and publish rules necessary to carry out the provisions of the Code. Section 102.31 of the Code provides the specific authority to adopt these rules to give effect to the section.

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

Filed with the Office of the Secretary of State on November 9, 2009.

TRD-200905149

Alan Steen
Administrator

Texas Alcoholic Beverage Commission

Effective date: November 29, 2009

Proposal publication date: October 9, 2009

For further information, please call: (512) 206-3204



SUBCHAPTER E. REGULATION OF CREDIT TRANSACTIONS DIVISION 2. CASH LAW

16 TAC §45.131

The new rule is adopted under the authority of §5.31 and §102.31 of the Code. Section 5.31 gives the commission authority to prescribe and publish rules necessary to carry out the provisions of the Code. Section 102.31 of the Code provides the specific authority to adopt these rules to give effect to the section.

§45.131. Payment Regulations for Malt Beverages.

(a) Purpose. This rule implements §§102.31, 11.61(b)(2), 11.66, 28.12, 61.72 and 61.73 of the Texas Alcoholic Beverage Code (Code).

(b) Definitions.

(1) Cash equivalent--A financial transaction or instrument that is not conditioned on the availability of funds upon presentment, including, money order, cashier's check, certified check or completed electronic funds transfer.

(2) Cash payment--United States Currency and coins, or a cash equivalent financial transaction or instrument.

(3) Event--A financial transaction or instrument that fails to provide payment to a Retailer and results in one or more incidents to one or more Sellers.

(4) Incident--One financial transaction or instrument made by a Retailer that fails to provide payment in full for malt beverages delivered by a Seller to the Retailer.

(5) Malt beverages--Ale or malt liquor containing more than four percent of alcohol by weight and beer containing one-half of one percent or more of alcohol by volume and not more than four percent alcohol by weight.

(6) Retailer--A license or permit holder and their agents, servants and employees, authorized to sell malt beverages for on or off-premise consumption to an ultimate consumer.

(7) Seller--A general, local or branch distributor license holder, or a local distributor's permit holder and their agents, servants, employees, or a subsidiary or affiliate, authorized to sell malt beverages to a retailer.

(c) Invoices. A delivery of malt beverages by a Seller, to a Retailer, must be accompanied by an invoice of sale showing the name and permit number of the Seller and the Retailer, a full description of the malt beverages, the price, the place and date of delivery.

(1) The Seller's copy of the invoice must be signed by the Retailer to verify receipt of malt beverages and accuracy of invoice and by the Seller to acknowledge payment was received on or before the delivery.

(2) The Seller and Retailer must retain invoices for four years from the date of delivery.

(3) Invoices may be created, signed and retained in an electronic or internet based inventory system, and may be retained on or off the licensed premise, as long as the records can be accessed from the licensed premise and made available to the commission during normal business hours.

(d) Cash Payment Violation. A Retailer who fails to make a cash payment to a Seller for the delivery of malt beverages violates this section unless an exception applies.

(1) A Retailer who violates this section must pay the amount due, and a Seller may accept payment, only in cash or cash equivalent financial transaction or instrument.

(2) For purposes of this section, the Retailer includes all persons who are or were owners, officers, directors, managers or shareholders of the Retailer at the time a cash payment violation occurs.

(e) Reporting Violation; Failure to Report.

(1) A report of a violation must be submitted electronically on the forms provided on the commission's web based reporting system at www.tabc.state.tx.us.

(2) A Seller who cannot access the commission's web based reporting system must either:

(A) submit a request for exception to submit reports by paper; or

(B) contract with another seller or service provider to make electronic reports on behalf of the Seller.

(3) All reports of violations under this subsection must be made to the commission within two business days from the date the violation is discovered by the Seller.

(4) A Seller who fails to report a violation as required by this subsection is in violation of this section.

(f) Exception. A Retailer who wishes to dispute a violation of this section, based on a good faith dispute between the Retailer and the Seller may submit supporting documents and a detailed written statement to the commission with a copy to the Seller explaining the basis of the dispute.

(1) The written statement must be submitted with documents and/or other records tending to support the Retailer's dispute, which may include:

(A) a copy of the front and back of the cancelled check of Retailer showing endorsement and deposit by Seller;

(B) bank statement or records of bank showing funds were available in the account of Retailer on the date the check was delivered to Seller; and

(C) bank statement or records showing bank error or circumstances beyond the control of Retailer caused the check to be returned to Seller unpaid; or

(D) bank statement or records showing the check cleared Retailer's account and funds were withdrawn from Retailer's account in the amount of the check.

(2) The Retailer must immediately submit a notice of resolution of a dispute to the commission under this subsection.

(g) Penalty for Violation. An action to cancel or suspend a permit or license may be initiated under §§11.61, 28.12, 61.71, 61.73 or 61.74 of the Code for repeat violations of this section. The commission may consider whether the repeat violations are the result of an event or incident when initiating an action under this subsection.

(h) Calculation of Time. Sundays and legal holidays are not counted in determining time periods under this section.

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

Filed with the Office of the Secretary of State on November 9, 2009.

TRD-200905150

Alan Steen
Administrator

Texas Alcoholic Beverage Commission

Effective date: November 29, 2009

Proposal publication date: October 9, 2009

For further information, please call: (512) 206-3204



TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §1.16

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §1.16, concerning Contracts for Materials and Services, with changes to the proposed text as published in the September 25, 2009, issue of the *Texas Register* (34 TexReg 6588).

Specifically, these amendments provide for the approval of requests for the purchase of materials and services by the Board committee responsible for such an agenda item rather than the Agency Operations Committee alone. The amendments, as adopted, also include minor modifications to the proposed

text as published in the *Texas Register* and provide for ultimate contract approval by a majority of the Chair and Vice Chair of the Board and the Chair of the responsible committee.

No comments were received concerning the proposed amendments; however, staff recommended changes to subsections (a), (b), (g) and (h) of this section for further clarification.

The amendments are adopted under the Texas Education Code, §61.027, which gives the Coordinating Board the authority to adopt rules governing its proceedings.

§1.16. *Contracts for Materials and Services.*

(a) The Board shall approve all requests for the purchase of materials or services if the cost for those materials or services is expected to exceed \$750,000. After a vendor is selected, a majority of the Chair and Vice Chair of the Board and the Chair of the responsible Board committee shall provide final approval of the contract with the selected vendor.

(b) The Board committee to which an item is assigned shall approve all requests relating to that item for the purchase of materials or services if the cost for those materials or services is greater than \$100,000 but less than or equal to \$750,000. After a vendor is selected, a majority of the Chair and Vice Chair of the Board and the Chair of the responsible Board committee shall provide final approval of the contract with the selected vendor.

(c) The Commissioner or the Deputy Commissioner for Business and Finance/Chief Operating Officer shall approve all contracts for the purchase of materials or services if the contract amount is less than or equal to \$100,000. The Commissioner may delegate his approval authority to a deputy, associate, or assistant commissioner if:

(1) The contract amount is less than or equal to \$5,000; or

(2) The Commissioner and the Deputy Commissioner for Business and Finance/Chief Operating Officer will be away from the agency and unavailable to approve contracts for more than one business day.

(d) The Commissioner shall provide a report to the Board, at least quarterly, describing all contracts for the purchase of materials or services.

(e) The Chair and Vice Chair of the Board shall have the authority to approve emergency purchase requests and contracts for materials or services over \$100,000 that must be entered into in order to prevent a hazard to life, health, safety, welfare, property or to avoid undue additional cost to the state. Emergency purchase requests and contracts shall be exempt from subsections (a) and (b) of this section.

(f) In the event that the agency is required by statute to enter into a contract for the purchase of materials or services with a value of over \$100,000, including the awarding of grants, approval of such a request or contract by the Board or a Board committee pursuant to subsection (a) or (b) of this section, as appropriate, shall not be required when such an award involves no discretion by the Board or agency staff. The Commissioner shall approve such contracts and report them to the Board at the next quarterly Board meeting following the approval.

(g) In the event that a contract for a given amount has been approved by either the Board or a Board committee, as applicable, and circumstances alter such that the expenditure necessary under the contract increases by not more than ten per cent, the Commissioner or the Deputy Commissioner for Business and Finance/Chief Operating Officer may approve such an increase. Should the increase in expenditure exceed ten per cent, the contract must be resubmitted for approval by the Board or the responsible Board committee, as appropriate.

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

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

Filed with the Office of the Secretary of State on November 13, 2009.

TRD-200905242

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: December 3, 2009

Proposal publication date: September 25, 2009

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



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) adopts new §4.36, concerning Undergraduate Academic Certificate, without changes to the proposed text as published in the August 7, 2009, issue of the *Texas Register* (34 TexReg 5272).

Specifically, 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 following comments were received regarding the new section:

Comments: From Lone Star College-Montgomery, voicing support for the proposed new section.

Response: No action was required by staff.

The new section is adopted under the Texas Education Code, §61.051(g), which gives the Coordinating Board the authority to develop and implement policies to provide for the free transfer-

ability of lower division course credit among institutions of higher education.

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

Filed with the Office of the Secretary of State on November 13, 2009.

TRD-200905243

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: December 3, 2009

Proposal publication date: August 7, 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) adopts amendments to §§4.151, 4.153, 4.155, and 4.161, concerning Early College High Schools and Middle Colleges, without changes to the proposed text as published in the August 7, 2009, issue of the *Texas Register* (34 TexReg 5272).

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, §102.1091.

The following comments were received regarding the amendments:

Comment: Several comments from two-year institutions of higher education were received that supported the proposed rules changes, acknowledging the alignment with the Commissioner's rules and the Texas Education Agency's (TEA) procedures for ECHS designation.

Response: Board staff appreciated the support for the amendments from the commenters.

Comment: One comment requested future acknowledgement that Career and Technical Education course credits are being earned in some Middle Colleges.

Response: While not explicitly stated in the proposed rules, students enrolled in a Middle College are not prohibited from taking workforce education credit courses. No changes were made as a result of this comment.

Comment: One institution was concerned that students enrolled in Middle Colleges were ineligible to earn dual credit in the ninth and tenth grades. This institution had "advanced students" who were academically college ready and interested in pursuing dual credit in the ninth and tenth grades. Additionally, this institution was concerned that the pursuit of the associate's degree was not explicit in the definition of Middle College, and thus not available to students.

Response: The proposed rules allow for students to earn dual credit beginning in the ninth grade if they are enrolled in an Early College High School, a model approved by TEA. If an institution wishes to offer dual credit to students in the ninth and tenth grades, it has an avenue available. There is, as well, provision for advanced students to take dual credit in the ninth and tenth grades upon approval from the principal of the high school and from the chief academic officer of the institution offering the college credit, according to §4.85(b)(6) of Board rule regarding Dual Credit Partnerships Between Secondary Schools and Texas Public Colleges. Regarding the second concern, while the earning of an associate's degree by a student enrolled in a Middle College is not stipulated in the proposed rules, it is neither explicitly prohibited. No changes were made as a result of this comment.

The amendments are adopted 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.

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

Filed with the Office of the Secretary of State on November 10, 2009.

TRD-200905226

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: November 30, 2009

Proposal publication date: August 7, 2009

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



SUBCHAPTER H. P-16 COLLEGE READINESS AND SUCCESS

19 TAC §4.177

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §4.177, concerning Criteria for Student Participation and Institutional and Public School Eligibility for Implementing Programs to Enhance Student Success, without changes to the proposed text as published in the July 31, 2009, issue of the *Texas Register* (34 TexReg 4991).

Specifically, these amendments expand the focus of bridging programs to include programs offered during summer or other time frames approved by the Coordinating Board, expand the content areas of bridging programs to include Social Science, and adds Intensive Programs as a category of initiatives to the Programs to Enhance Student Success, providing the purpose of the program, student eligibility, as well as requirements for the implementation of the program. The amendments are mandated by Senate Bill 2258, 81st Texas Legislature, and reflect changes to the program requirements for Higher Education Bridging Programs for the 2010-2011 academic years and later.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §61.0762, which gives the Coordinating Board the authority to adopt rules to implement higher education bridging 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.

Filed with the Office of the Secretary of State on November 13, 2009.

TRD-200905244

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: December 3, 2009

Proposal publication date: July 31, 2009

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



SUBCHAPTER L. INTENSIVE SUMMER PROGRAM GRANTS

19 TAC §§4.210 - 4.214

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of §§4.210 - 4.214, concerning Intensive Summer Program Grants, without changes to the proposal as published in the July 31, 2009, issue of the *Texas Register* (34 TexReg 4992).

Specifically, the repeal of these sections incorporates Intensive Summer Programs into §4.177 and implements Senate Bill 2258, 81st Texas Legislature. Senate Bill 2258 moves the statutory authority for the Higher Education Intensive Summer Programs into Texas Education Code, §61.0762, Programs to Enhance Student Success. Section 4.177 of the Coordinating Board rules addresses each of the programs established by this section of Texas statutes.

No comments were received regarding the repeal of these sections.

The repeal is adopted under the Texas Education Code, §61.0762 which provides the Coordinating Board with the authority to adopt rules to implement the program.

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

Filed with the Office of the Secretary of State on November 13, 2009.

TRD-200905245

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: December 3, 2009

Proposal publication date: July 31, 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 (Coordinating Board) adopts new §§4.225 - 4.229, concerning Public Access to Course Information. Sections 4.225 and 4.227 - 4.229 are adopted with changes to the proposed text as published in the August 7, 2009, issue of the *Texas Register* (34 TexReg 5273). Section 4.226 is being adopted without changes and will not be republished.

Specifically, these new sections provide that each institution of higher education, other than a medical and dental unit, is to make available to the public on the institution's Internet website certain course information and information about available work-study opportunities. For each classroom course offered for credit (including on-campus, off-campus, distance education, and dual-credit courses), the institution is to provide a syllabus, a curriculum vitae for the regular instructor(s), and (if available) a departmental operating budget from the most recent semester during which the institution offered the course. All course information must be accessible from the institution's Internet website home page by use of not more than three links, searchable by keywords and phrases, and accessible to the public without requiring registration. The information is to be made available by the seventh day after the first day of classes and updated as soon as practical after the information changes. The information is to remain available for at least two years. Each institution of higher education shall also establish and maintain an online list of work-study employment opportunities available to students on the institution's campus, sorted by department as appropriate.

The following comments were received regarding the new sections:

In addition to the comments below, Coordinating Board staff changed the language in §4.225 from "course information" to "undergraduate course information" to clarify which courses are to be included. Coordinating Board staff also deleted "administrative positions relevant to higher education" in §4.227(2) in order to simplify the requirements and reduce the burden of reporting.

Comment from Texas Tech University: In §4.227(2), the term "regular instructor" should be replaced with "instructor of record" to be made consistent with the definition.

Response: Coordinating Board staff agree and have made the recommended change.

Comment from The University of Texas System, and the University of North Texas: In §4.227(2)(A), the inclusion of attendance dates for degrees earned is considered personal information by some that may lead to age discrimination. Change language from "all institutions of higher education attended, with the dates of attendance and degree(s) earned" to "all institutions of higher education attended, with the degree(s) earned."

Response: Coordinating Board staff agree and have made the recommended change.

Comment from The University of Texas System: In §4.227(2)(B), delete language that the vitae include a "brief description of the position's responsibilities." This language is unnecessary, and if a position requires explanation beyond the job title, it is permissible under existing language that vitae include "at least the following."

Response: Coordinating Board staff agree and have made the recommended change.

Comment from The University of Texas System: In §4.227(2)(C), "publication data" should be changed to "citation data" since some faculty may have written major works outside of academia.

Response: Coordinating Board staff agree and have made the recommended change.

Comment from The University of Texas System: In §4.227(2)(D), the language "It may not require personal information about the instructor" should be changed to "Vitae are not required to include personal information about the instructor," since some faculty may wish to allow their students to contact them at home.

Response: Coordinating Board staff agree and have made the recommended change.

Comment from the UT System: In §4.227(3), language should be added stating "If the institution posts general budget data on its website in which the information required by statute is reported, it may substitute a hyperlink to that data in place of a separate departmental budget report." Gathering information for this report will be time-consuming and duplicate efforts already being done.

Response: Coordinating Board staff agree and have made the recommended change.

Comment from Texas Tech University and The University of Texas: In §4.227(5), "graduate assistants" should be changed to "graduate assistants (who are not working under the supervision of an instructor of record)".

Response: Coordinating Board staff agree and have made the recommended change.

Comment from The University of Texas: In §4.227(8), delete "notices of discoveries filed/patents". Proprietary information related to patents need not be included on vitae.

Response: Coordinating Board staff agree and have made the recommended change.

Comment from The University of Texas: In §4.227(9)(B), "learning objectives" should be deleted since there is no consensus about their definitions or efficacy.

Response: Coordinating Board staff disagreed and felt that the term "learning objectives" is sufficiently broad to provide flexibility to faculty, and staff recommend no change.

Comments from the University of North Texas, The University of Texas System, and Texas Tech University: Relating to §4.227(9), faculty felt that this requirement duplicates information already available, is restrictive since exact course content is often unpredictable and adaptive to student needs and current events, is vague about the level of detail required, imposes time-consuming burdens on faculty that will reduce the quality and creativity of instruction, extends course syllabi to unreasonable lengths, invites political interference from those outside of the institution, and invites theft of intellectual property.

Response: Coordinating Board staff disagreed and felt that the language of the rules provides adequate flexibility to the faculty in summarizing the subject matter of their individual class sessions, so we recommend no changes.

Comment from the University of North Texas: In §4.227(10), a "classroom course" should be defined as one with an enrollment that meets the state minimum for undergraduate classes, which is one with 10 or more students.

Response: Coordinating Board staff have made the change in the definition of "undergraduate classroom course" from "more than one student" to "five or more students." This revision is designed to protect students in small classes from being identified by course evaluations.

Comment from Texas Tech University: The information in §4.227(11) related to available work-study opportunities would more appropriately fit in Chapter 21 with other financial aid rules.

Response: Coordinating Board staff agree, and this change will be effected at the January 2010 Board meeting.

Comment from The University of Texas: In §4.227(11), "any additional programs sponsored by the institution" should be changed to "any similar financial aid employment programs sponsored by the institution" in order to prevent misunderstandings about volunteer and various unpaid programs.

Response: Coordinating Board staff agree and have made the recommended change.

Comment from The University of Texas: In §4.227(11), the phrase "fair market wage" is subjective and imprecise.

Response: Coordinating Board staff agree and have deleted the entire sentence that described what work-study is not, in order to avoid confusion.

Comment from Texas Tech University: In §4.228(a), the term "regular instructor" should be replaced with "instructor of record" to be made consistent with the definition.

Response: Coordinating Board staff agree and have made the recommended change.

Comment from The University of Texas System: In §4.228(a), language should be added to allow links to existing data elsewhere on an institution's website so long as they meet the requirements as defined in these rules.

Response: Coordinating Board staff agree and have added language the language "Links to existing data that meet legislative requirements may suffice."

Comment from The University of Texas: In §4.228(b), graduate assistants teaching under the supervision of a regular faculty member should not be excluded from posting curricula vitae.

Response: Coordinating Board staff recommend no substantive change. If a graduate student is working under the direct supervision of a faculty member who is listed as the instructor of record, then it is the instructor of record who is ultimately responsible for the course content. To prevent confusion, Coordinating Board staff have clarified the language in §4.228(b) from "each instructor(s) of each section" to "each instructor(s) of record for each section." This change refers institutions back to the definition of "instructor(s) of record," where graduate students working under the supervision of a faculty member are specifically excluded.

Comment from the University of North Texas: In §4.228(c)(5), updating the subject matter of each class lecture or discussion will prove unduly time-consuming for faculty and will strain staff and technological resources.

Response: Coordinating Board staff agree that some institutions will have more resources than others, so we have clarified the rules to state that updates and changes to the course information and faculty vitae should be updated "at least once for every semester in which the course is offered."

Comment from The University of Texas System: In §4.228(d), language should be added stating "An up-to-date curriculum vitae must be available for each instructor of each course for two years after the course is taught." Institutions should not have to keep multiple, outdated copies of faculty vitae when keeping course information archived for two years.

Response: Coordinating Board staff agree and have made the recommended change.

Comments from Lamar University, Stephen F. Austin State University, The University of Texas, the University of North Texas, and McLennan Community College: Section 4.228(e) received many comments about the content, role, definition, and effectiveness of course evaluations as the sole measure of teacher performance.

Response: In accordance with the legislation, the language of the rules states that institutions are only to submit a plan for making course evaluations available on the web. Coordinating Board staff, therefore, recommend making no substantive changes at this time.

Comment from Texas Tech University: The language in §4.228(e) is wordy. Change "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)" to "Institutions shall conduct end-of-course student evaluations of faculty for each undergraduate classroom course as defined in §4.227(10), and develop a plan to make evaluations publicly available on the institution's website."

Response: Coordinating Board staff agree and have made the recommended change.

Comment from the University of North Texas: In §4.228(f), the amount of data, the storage capacity to preserve it for at least two years, and the redesign of institutions' web pages will require more than one administrator, and all of this will prove to be a significant burden on faculty and staff. The required compliance report to lawmakers will accomplish little besides encouraging political intervention in course content, and it should be submitted only to the Coordinating Board.

Response: As institutional staffing and budgeting are beyond the Coordinating Board's control, and as we cannot change the requirements of the legislation, Coordinating Board staff recommend no changes.

Comment from Texas Tech University and The University of Texas System: In §4.228(g), the implementation date of "January 1, 2010" should be changed to "August 15, 2010" to align with the language of the legislation that reads §51.974, Education Code, as added by this Act, applies beginning with the 2010 fall semester."

Response: Coordinating Board staff agree and have made the recommended change.

Comment from The University of Texas: In §4.229(a), language should be added stipulating that information be posted no later than April 1, 2010, in order to be consistent with the legislation and to prevent confusion with the compliance date for the course information.

Response: Coordinating Board staff agree and have made the recommended change, adding the language "Information should be made available no later than April 1, 2010."

The new sections are adopted under the Texas Education Code, Chapter 51, §51.974(g), which gives the Coordinating Board the authority to adopt rules necessary to administer this section.

§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 undergraduate course information, and information about available work-study opportunities.

§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 instructor of record, including at least the following:

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

(B) all previous teaching positions, including the names of the institutions, the position, beginning and ending dates; and

(C) a list of significant professional publications relevant to the academic positions held, including full citation 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. Vitae are not required to 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. If the institution posts general budget data on its website in which the information required by statute is reported, it may substitute a hyperlink to that data in place of a separate departmental budget report. 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 (who are not working under the supervision of an instructor of record). 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, and juried creative performance accomplishments.

(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) 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 five or more students. 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 in the Federal College Work-Study Program, the State of Texas Work-Study Program, and any similar financial aid employment programs sponsored by the institution. For the purposes of this subchapter, work-study applies only to resident undergraduate students.

§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 instructor(s) of record, and (if available) a departmental operating budget from the most recent semester or other academic term during which the institution offered the course. Links to existing data that meet legislative requirements may suffice.

(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 record for 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, at least once for every semester in which the course is offered.

(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. An up-to-date curriculum vitae must be available for each instructor of each course for two years after the course is taught.

(e) Institutions shall conduct end-of-course student evaluations of faculty for each undergraduate classroom course as defined in §4.227(10) of this title, and develop a plan to make evaluations publicly available on the institution's website.

(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 August 15, 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. Information should be made available no later than April 1, 2010.

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

Filed with the Office of the Secretary of State on November 13, 2009.

TRD-200905246

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: December 3, 2009

Proposal publication date: August 7, 2009

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 (Coordinating Board) adopts 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, without changes to the proposed text as published in the August 7, 2009, issue of the *Texas Register* (34 TexReg 5283). Specifically, the amendment clarifies the 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.

No comments were received regarding the amendment.

The amendment is adopted under the Texas Education Code, §61.051(f), which gives the Coordinating Board the authority to encourage and develop new certificate programs in technical and vocational education in Texas public technical institutes and public community colleges.

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

Filed with the Office of the Secretary of State on November 13, 2009.

TRD-200905247

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: December 3, 2009

Proposal publication date: August 7, 2009

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



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 (Coordinating Board) adopts new §§5.120 - 5.122, concerning Strategic Planning and Grant Programs Related to Emerging Research and/or Research Universities. Section 5.122 is adopted with changes to the proposed text as published in the August 7, 2009, issue of the *Texas Register* (34 TexReg 5284). Sections 5.120 and 5.121 are being adopted without changes and will not be republished.

Specifically, these new sections provide that each institution of higher education designated as a research university or emerging research university have a long-term strategic plan for achieving recognition as a research university or enhancing the institution's reputation at 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 due one year after each institution's statutory four-year review.

The following comments were received regarding the new sections:

Comment from The University of Texas System: The UT System institutions request that §5.122 be amended to require submission of the updated strategic plans one year following the institution's statutory four-year review. This will provide an institution with more time to reallocate resources to strengthen its research capacity. It will also enable the board of regents to focus sharply on the progress made by institutions and avoid the confusion that could result from a concurrent review of the Table of Programs and mission.

Response: Staff agree and have made the requested change.

The new sections are adopted under the Texas Education Code, Chapter 51, §51.358, which gives the Coordinating Board the authority to adopt rules for the administration of these sections.

§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 due one year after each institution's statutory four-year review.

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

Filed with the Office of the Secretary of State on November 13, 2009.

TRD-200905248

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: December 3, 2009

Proposal publication date: August 7, 2009

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 (Coordinating Board) adopts new §§5.130 - 5.134, concerning University Funding for Excellence in Specific Programs and Fields Incentive Grant Awards, without changes to the proposed text as published in the August 7, 2009, issue of the *Texas Register* (34 TexReg 5284).

Specifically, these new sections establish the guidelines by which institutions may submit program for consideration of receiving a University Funding in Excellence in Specific Programs and Fields Incentive Award or a University Funding for Excellence in Specific Program's and Fields Incentive Benchmark Grant.

No comments were received regarding the new sections.

The new sections are adopted under the Texas Education Code, §61.0596, which gives the Coordinating Board the authority to administer these 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.

Filed with the Office of the Secretary of State on November 13, 2009.

TRD-200905249

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: December 3, 2009

Proposal publication date: August 7, 2009

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



CHAPTER 6. HEALTH EDUCATION, TRAINING, AND RESEARCH FUNDS

SUBCHAPTER D. TEXAS HOSPITAL-BASED NURSING EDUCATION GRANT PROGRAM

19 TAC §§6.81 - 6.83

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §§6.81 - 6.83, concerning Texas Hospital-Based Nursing Education Grant Program. Sections 6.82 and 6.83 are adopted with changes to the proposed text as published in the September 4, 2009, issue of the *Texas Register* (34 TexReg 6054). Section 6.81 is adopted without changes and will not be republished.

Specifically, these amendments align the rules with the statute as it relates to the Board's criteria and process for awarding grants under the program. The amended language also clarifies conditions of eligibility.

The following comments were received regarding the amendments:

Comment: Comments received from the Texas Nurses Association suggested clarification that §6.83(a)(1)(E) refers to the marginal cost to the state for the partnership.

Response: Staff agreed and made the change.

After posting the proposed amendments, staff noted a typographical error in §6.83(a)(1)(A)(iv). The proposed amendments

as posted state that the bachelor of science and the master of science degrees in nursing offered by the eligible nursing program must have a concentration in nursing education. It was intended that the concentration in nursing education apply only to the master of science degree. The proposed amendments were corrected.

The amendments are adopted under the Texas Education Code, §§61.9751 - 61.9759, which gives the Coordinating Board the authority to establish rules for providing funding to eligible hospitals in partnership with one or more nursing schools under the Texas Hospital-Based Nursing Education Partnership Grant Program.

§6.82. 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) Hospital--A health care facility that provides in-patient services in the state, that is in good standing with all regulators and accreditation bodies, and that is not owned, maintained, or operated by the federal or state government or an agency of the federal or state government.

(4) Hospital-based nursing education partnership--A partnership that:

(A) consists of one or more hospitals in this state that are not owned, maintained, or operated by the federal or state government or an agency of the federal or state government and one or more nursing education programs in this state; and

(B) serves to increase the number of students enrolled in and graduating from one or more degree programs as a result of the partnership.

(5) Nursing Education Program--Refers to an undergraduate or graduate professional nursing education program as defined in subparagraphs (A) and (B) of this paragraph:

(A) Undergraduate professional nursing program--A public or private educational program for preparing students for initial licensure as registered nurses.

(B) Graduate professional nursing program--An educational program of a public or private institution of higher education that prepares students for a master's or doctoral degree in nursing.

§6.83. General Information.

(a) To be considered for a grant under the Texas Hospital-Based Nursing Education Partnership Grant Program, a program must be determined to be eligible to apply.

(1) An eligible degree program is one that offers degree programs through hospital-based nursing education partnerships which:

(A) provide courses and learning experiences leading to:

(i) an associate degree in nursing;

(ii) a baccalaureate degree in nursing, leading to initial licensure as a registered nurse;

(iii) a master's degree in nursing with a concentration in nursing education; and/or

(iv) an academic program designed to advance a registered nurse from an associate degree to a bachelor of science degree in nursing or to a master of science degree in nursing with a concentration in nursing education.

(B) use existing expertise and facilities of the partners. This restriction does not prohibit a hospital or nursing school from requesting grant funds to support reasonable development and initial implementation costs necessary to support a new degree program. Hospitals and nursing schools proposing an expansion of an existing degree program may request grant funds to support reasonable development and implementation costs for expanding the degree program with the specific intent to increase the number of students enrolled. Hospitals and nursing schools in existing partnerships may not request grant funds for initial or on-going costs incurred in operating an existing degree program. The Commissioner shall make the final determination of a partnership's eligibility for funding to support development and initial implementation costs.

(C) meet applicable Board and Texas Board of Nursing standards for instruction and student competency, or if Texas Board of Nursing standards are not met receive approval from the Texas Board of Nursing to waive those standards as a pilot project.

(D) require each nursing school participating in the partnership, as a result of the partnership, to enroll in the degree program a sufficient number of additional students.

(E) propose a marginal cost to the state for the partnership producing a nursing graduate that is equal to or less than the marginal cost to the state for producing a nursing graduate. The state marginal cost is defined as all formula funding appropriations to nursing education programs on a full-time student equivalent basis. The range of acceptable marginal costs will be calculated by the Board and contained in the Request for Application.

(F) provide students with appropriate clinical placements to fulfill licensing and academic requirements of the degree.

(2) Application requirements. Applications for funding shall be submitted to the Board in the format and at the time specified by the Board.

(3) General Selection Criteria shall be designed to award grants that provide the best overall value to the state. Selection criteria shall be based on:

(A) program quality as determined by peer reviewers;

(B) impact the grant award will have on academic instruction and training in nursing education in the state;

(C) cost of the proposed program; and

(D) other factors to be considered by the Board, including financial ability to implement the program, state and regional needs and priorities, ability to continue the program after the grant period, and past performance.

(4) Maximum award length. A program is eligible to receive funding for up to three years, contingent upon available funds, submission of required documents, a positive evaluation of progress, and a positive evaluation of the effectiveness of the program after the first and second years of funding.

(b) Peer Review.

(1) The Board shall use peer reviewers to evaluate the quality of applications.

(2) The Commissioner shall select qualified individuals to serve as reviewers. Peer reviewers shall demonstrate appropriate credentials to evaluate grant applications in nursing education. Reviewers shall not evaluate any applications for which they have a conflict of interest.

(3) Board staff shall provide written instructions and training for peer reviewers.

(4) The peer reviewers shall score each application according to these award criteria which incorporate the specific priority criteria stated in Texas Education Code, §61.9754:

(A) Partnership design, including:

(i) structure of partner participation;

(ii) provision of access to clinical training positions for nursing education students in programs not participating in the partnership;

(iii) provision for tracking post-graduation employment of students in a nursing education program participating in the partnership.

(B) Evaluation and expected outcomes, including:

(i) increase in student enrollment and graduation and in the number of nursing faculty employed by each nursing education program participating in the partnership;

(ii) improvement in student retention in each nursing education program.

(C) Availability of funds to match all or a portion of the grant funds;

(D) Provision for completion of a class admitted under this project to be funded by all members of the partnership if the funded project ends before the class graduation date;

(E) Potential replication; and

(F) Sustainability of partnership beyond the grant period.

(c) Application Review Process.

(1) The Board staff shall review applications to determine if they adhere to the grant program requirements and the funding priorities contained in the Request for Application. Qualified applications shall be forwarded to the peer reviewers for evaluation. Board staff shall notify applicants eliminated through the screening process within 30 days of the submission deadline.

(2) Peer reviewers shall evaluate applications and assign scores based on award criteria. All evaluations and scores of the reviewers are final.

(3) Board staff shall rank each application based on points assigned by peer reviewers, and may request that individuals representing the most highly-ranked applications make oral presentations on their applications to the peer reviewers and Board staff. The Board staff may consider reviewer comments from the oral presentations in recommending a priority-ranked list of applications to the Commissioner for approval.

(d) Funding Decisions.

(1) Applications for grant funding shall be evaluated only upon the information provided in the written application.

(2) The Board will approve grants based upon the recommendation of peer reviewers and Board staff.

(3) Funding recommendations to the Board shall consist of the most highly ranked and recommended applications up to the limit of available funds. If available funds are insufficient to fund a proposal after the higher-ranking and recommended applications have been funded, staff shall negotiate with the applicant to determine if a lesser amount would be acceptable. If the applicant does not agree to the lesser amount, the staff shall negotiate with the next applicant on the list of highly ranked applications.

(4) If the Board does not use all of the available funds for the program, unspent funds may be used to make grants under the Professional Nursing Shortage Reduction Program and the Nursing, Allied Health, and Other-Health-related Education Grant Program.

(e) Contract. Following approval of grant awards by the Board, the successful applicants must sign a contract issued by Board staff and based on the information contained in the application.

(f) Cancellation or Suspension of Grants. The Board has the right to reject all applications and cancel a grant solicitation at any point.

(g) Request for Proposal. The full text of the administrative regulations, budget guidelines, reporting requirements, and other standards of accountability for this program are contained in the official Request for Application available upon request from the Board.

(h) Grants, Gifts, and Donations. The Board may solicit, receive, and spend grants, gifts, and donations from any public or private source for the purpose of this subchapter.

(i) Administrative Costs. Three percent of any money appropriated for purposes of this subchapter may be used to pay the costs of administering the program.

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

Filed with the Office of the Secretary of State on November 13, 2009.

TRD-200905250
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: December 3, 2009
Proposal publication date: September 4, 2009
For further information, please call: (512) 427-6114



CHAPTER 7. DEGREE GRANTING COLLEGES AND UNIVERSITIES OTHER THAN TEXAS PUBLIC INSTITUTIONS SUBCHAPTER A. GENERAL PROVISIONS 19 TAC §§7.1 - 7.17

The Texas Higher Education Coordinating Board adopts the repeal of §§7.1 - 7.17, concerning Degree-Granting Colleges and Universities Other Than Texas Public Institutions, without changes to the proposed text as published in the August 7, 2009, issue of the *Texas Register* (34 TexReg 5286).

Specifically, the repeal allows for the restatement of the existing Chapter 7 in a more direct and explicit manner without substantive change.

No comments were received on the repeal of Chapter 7.

The repeal is adopted under the Texas Education Code, Chapter 61, Subchapter G, §§61.301 - 61.321, Subchapter H, §§61.401 - 61.405, and Chapter 132.

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

Filed with the Office of the Secretary of State on November 16, 2009.

TRD-200905274
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: December 6, 2009
Proposal publication date: August 7, 2009
For further information, please call: (512) 427-6114



19 TAC §§7.1 - 7.13

The Texas Higher Education Coordinating Board adopts new §§7.1 - 7.13, concerning Degree-Granting Colleges and Universities Other Than Texas Public Institutions, with changes to §7.4 and §7.7 of the proposed text as published in the August 7, 2009, issue of the *Texas Register* (34 TexReg 5287). Sections 7.1 - 7.3, 7.5, 7.6, and 7.8 - 7.13 are being adopted without changes and will not be republished.

Specifically, these new sections provide a more direct and explicit presentation of the rules contained in the previous Chapter 7.

The following comments were received regarding the new sections:

Comment: Career Colleges and Schools of Texas has recommended that §7.4 be amended to add in the third sentence, "under the Certificate of Authorization process."

Response: Staff agree with the recommendation and have made the amendment.

Comment: Career Colleges and Schools of Texas has recommended that §7.4(2)(B) be amended clarifying that a Chief Academic Officer would preferably hold an earned doctorate, "or highest degree typically recognized in the field."

Response: As a result of this comment, no changes were made. Staff believes that the fact that this is a noted preference does not in any way preclude the Chief Academic Officer from holding another terminal degree.

Comment: Career Colleges and Schools of Texas has recommended that §7.4(2)(B) be amended by removing the reference that a prospective Chief Academic Officer have experience with "tenure (where applicable)."

Response: No change was made based upon this comment. Staff believes that an institution which recognizes tenure would be benefited by having a Chief Academic Officer with a background in that process, and those institutions which do not have that process would not need to consider this factor in selection criteria.

Comment: Career Colleges and Schools of Texas has recommended that §7.4(11) be amended to remove the requirement that faculty members must have a baccalaureate degree and at least 18 hours of graduate credit in the discipline or a closely related discipline prior to teaching general education courses in an applied associate degree program. In the alternative, it is suggested that the 18 hours be reduced to 15.

Response: No change was made based upon this comment. Staff will work with the Career Colleges and Schools of Texas to evaluate alternatives to the current language.

Comment: Career Colleges and Schools of Texas has recommended that §7.7(1)(B) be amended to include the specific degree level when describing degrees or courses leading to degrees.

Response: No change was made based upon this comment. Staff believes that the subsection is clear that only degrees or courses leading to degrees for which an institution is accredited may be offered by the institution under a certificate of authorization. Accrediting bodies specify the level of degree which the institutions is authorized to offer.

Comment: Career Colleges and Schools of Texas has recommended that §7.7 be amended to clearly express that accredited institutions are exempt from all tenets of the rules once they receive the certificate of authorization.

Response: No change was made based upon this comment. Staff believes that the institution under a certificate of authorization are clearly informed of those sections to which they must adhere. No further clarification is necessary. Staff will work with Career Colleges and Schools of Texas to clarify further if necessary.

Comment: The University of Phoenix has recommended that the first sentence of §7.7 be amended to add "of institution of higher education contained".

Response: Staff agree and have made the amendment.

Comment: The University of Phoenix has recommended that §7.7(1)(A)(vi) be amended to add to eliminate the reference to §7.11 regarding change of ownership as this applies only to career schools and colleges.

Response: No change was made based upon this comment. Staff believes that any revision should be made after further consideration of the impacts. Staff will work with the institutions to evaluate potential impact and revise accordingly.

The new sections are adopted under the Texas Education Code, Chapter 61, Subchapter G, §§61.301 - 61.321, Subchapter H, §§61.401 - 61.405, and Chapter 132.

§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 under the Certificate of authorization process. 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 eight-

teen (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, adhered 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 insti-

tution 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.

§7.7. Institutions Accredited by Board Recognized Accreditors. An institution which does not meet the definition of institution of higher education contained 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 paragraph (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).

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

Filed with the Office of the Secretary of State on November 16, 2009.

TRD-200905273
 Bill Franz
 General Counsel
 Texas Higher Education Coordinating Board
 Effective date: December 6, 2009
 Proposal publication date: August 7, 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

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of §§10.1 - 10.3, concerning Institutional Effectiveness in Public Two-Year Colleges, without changes to the proposal as published in the August 7, 2009, issue of the *Texas Register* (34 TexReg 5315).

Specifically, these sections are being repealed so that a new evaluation process may be developed and implemented.

No comments were received regarding the repeal.

The repeal is adopted under the Texas Education Code, Chapter 61, §61.051 which gives the Coordinating Board the authority to coordinate higher education in Texas.

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

Filed with the Office of the Secretary of State on November 10, 2009.

TRD-200905213

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: November 30, 2009

Proposal publication date: August 7, 2009

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



SUBCHAPTER B. GENERAL PROVISIONS

19 TAC §§10.21 - 10.24

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of §§10.21 - 10.24, concerning Institutional Effectiveness in Public Two-Year Colleges, without changes to the proposal as published in the August 7, 2009, issue of the *Texas Register* (34 TexReg 5315).

Specifically these sections are being repealed so that a new evaluation process may be developed and implemented.

No comments were received regarding the repeal.

The repeal is adopted under the Texas Education Code, Chapter 61, §61.051, which gives the Coordinating Board the authority to coordinate higher education in Texas.

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

Filed with the Office of the Secretary of State on November 10, 2009.

TRD-200905214

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: November 30, 2009

Proposal publication date: August 7, 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 adopts new §§13.150 - 13.152, concerning rules applying to general provision of programs related to performance incentive funding. Sec-

tion 13.152 is adopted with changes to the proposed text as published in the August 7, 2009, issue of the *Texas Register* (34 TexReg 5316). Section 13.150 and §13.151 are adopted without changes to the proposed text and will not be republished.

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.

Summary of comments received:

Comment: Received from University of North Texas clarifying that §13.152(c)(3) should read "not at-risk student".

Response: Staff agrees and has made the change.

The new sections are adopted under the Texas Education Code, §62.073.

§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 as 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--not at-risk student: 2 points
- (4) Critical field--at-risk student: 3 points

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

Filed with the Office of the Secretary of State on November 10, 2009.

TRD-200905215

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: November 30, 2009

Proposal publication date: August 7, 2009

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



CHAPTER 15. NATIONAL RESEARCH UNIVERSITIES

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §15.1, §15.10

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §15.1 and §15.10, concerning rules applying to provisions related to the Texas Research Incentive Program, with changes to the proposed text as published in the August 7, 2009, issue of the *Texas Register* (34 TexReg 5317).

Specifically, in compliance with House Bill 51, 81st Texas Legislature, the proposed rules would establish rules regarding the Texas Research Incentive Program.

Summary of comments received:

Comment: The University of Texas System comments included a request for clarification on the following topics: eligibility of "bundled" gifts for matching funds; all gifts must have been originally donated for research purposes; and timing of matching amounts by certification date.

Response: Coordinating Board staff has made appropriate changes for clarification. In response to the comments, changes were made to §15.10(c)(1).

Comment: The University of Texas System asked what institutions will need to provide to certify eligible gifts received via credit card.

Response: Coordinating Board staff agreed that guidance was needed on the topic of credit card gifts and appropriate changes have been made to §15.10(f)(1) (proposed §15.10(d)(1)).

Comment: Texas Tech University commented: a restructuring of the rules to move definitions and authorities into the TRIP subsection of the rule to avoid confusion with the definitions of the other programs associate with the research programs; a definition for "bundled gifts"; and modifications to definitions to better fit available documentation.

Response: Coordinating Board staff made modifications to the rules to accommodate most of Texas Tech University's suggestions. In response to the comments, changes were made to §15.10(c). In addition, §15.2 is being withdrawn and incorporated into §15.10.

The new sections are adopted under the Texas Education Code, §§62.121 - 62.124.

§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 or Board--The Texas Higher Education Coordinating Board.

§15.10. Texas Research Incentive Program (TRIP).

(a) Purpose. The purpose of this program is to provide matching funds to assist eligible public institutions in leveraging private gifts for the enhancement of research productivity and faculty recruitment.

(b) Authority.

(1) 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.

(2) Texas Education Code, §62.123, establishes the rate of matching and authorizes the Board, to establish procedures for the certification of gifts.

(3) Texas Education Code, §62.124, authorizes the Board, to adopt rules for the administration of the program.

(c) Definitions

(1) Bundled Gifts--Gifts that would otherwise be an eligible gift, but that individually do not have sufficient monetary value to be eligible for Matching Grants, that are combined by the eligible public institution in an attempt to establish eligibility for Matching Grants.

(2) 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 shall be certified as the date the gift is converted to cash, and is considered to have been received on that date.

(3) Eligible Funds--Gifts or endowments certified on or after September 1, 2009, to an eligible public institution 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 fellowships. Including gifts that are bundled from a private source. All gifts, cash and non-cash, must have been originally donated for research purposes.

(4) Eligible Public Institution--An institution of higher education designated as an emerging research university under the Coordinating Board's Accountability System or a university affiliated entity of an emerging research university.

(5) Gift--Including cash, cash equivalents, marketable securities, closely held securities, money market holdings, partnership interests, personal property, real property, minerals, and life insurance proceeds.

(6) Ineligible Funds--A gift for undergraduate scholarships or grants, bundled gifts, or any portion in excess of \$10 million of gifts or endowments received from a single source in a state fiscal year or gifts that are bundled by an universities-associated entity.

(7) Private Sources--Any individual or entity that cannot levy taxes, and is not directly supported by tax funds.

(8) Program--The Texas Research Incentive Program (TRIP) established under Texas Education Code, Chapter 62, Subchapter G.

(9) University-Affiliated Entity--An entity whose sole purpose is to support the mission or programs of university.

(d) Matching Grants. Eligible funds will be matched at the following rates:

(1) 50 percent of the amount if the amount of a gift or endowment made by a donor on a certain date is at least \$100,000, but not more than \$999,999;

(2) 75 percent of the amount if the amount of a gift or endowment made by a donor on a certain date is at least \$1 million but not more than \$1,999,999; or

(3) 100 percent of the amount if the amount of a gift or endowment made by a donor on a certain date is \$2 million but not more than \$10 million.

(e) Distribution of matching grants

(1) Matching grants will be distributed in order of the 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 eligible funds with the same date of certification, those eligible funds will be prorated and any remaining unmatched eligible funds shall be eligible for matching grants in the following fiscal years using funds appropriated to the program, to the extent funds are available.

(f) Certification. Any gift must be certified by the Board in order to be considered eligible for Matching Grants. In order for a gift to be certified, the eligible public institution must submit the following information to the Board:

(1) A written statement by the bank verifying the amount, and date of the deposit, and name of the donor; or a credit card certification showing the date the institution submitted a charge to the donor's credit card company for payment;

(2) A copy of the fully executed donor agreement describing the purpose and the restrictions of the gift meeting the definition of eligible funds; and

(3) All information must be provided to the Coordinating Board within 30 days of the date of bank or credit card verification.

(g) Eligible public institutions shall provide a complete list of all university-affiliated entities to the Board upon initial application for matching grants and thereafter apprise the Board of any updates to the submitted list.

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

Filed with the Office of the Secretary of State on November 10, 2009.

TRD-200905216

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: November 30, 2009

Proposal publication date: August 7, 2009

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



CHAPTER 21. STUDENT SERVICES

SUBCHAPTER E. TEXAS B-ON-TIME LOAN PROGRAM

19 TAC §21.122, §21.129

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §21.122 and §21.129, concerning the Texas B-On-Time Loan Program. Section 21.122 is adopted with changes because paragraph (7) was proposed with an incorrect subchapter title. Section 21.129 is being adopted without changes as published in the August 21, 2009, issue of the *Texas Register* (34 TexReg 5636) and will not be republished.

Specifically, the amendments to §21.122 add definitions for "Degree in Architecture," "Degree in Engineering," and "Texas CIP Codes." The inclusion of these definitions will clarify for students the degrees for which the statute allows five years for graduation. They will also guide institutions in completing forms for verification of student eligibility for loan forgiveness. Other definitions

are renumbered accordingly. Section 21.129 pertains to the requirements for forgiveness of loans. The amendments add the requirement that institutions must certify to the Board that a given program requires more than four years for completion, if applicable. The number of years required to complete a program, as certified by the institution, determines whether or not a student has graduated "on time."

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §56.453, which provides the Coordinating Board with the authority to adopt any rules necessary to implement the Texas B-On-Time Loan Program.

§21.122. 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) Degree in Architecture--The completion credential awarded to a student who has completed satisfactorily the curriculum that the Board has approved as a baccalaureate degree program identified as belonging to Category 04.0201 of the Texas CIP Codes.

(4) Degree in Engineering--The completion credential awarded to a student who has completed satisfactorily the curriculum that the Board has approved as a baccalaureate degree program identified as belonging to Category 14 of the Texas CIP Codes.

(5) Default--The failure of a borrower to make loan installment payments for a total of 180 days.

(6) Recommended or Distinguished Achievement Program--Advanced High School Program--The high school curriculum recommended under §28.025(a) of the Texas Education Code.

(7) Resident of Texas--A resident of the State of Texas as determined in accordance with Chapter 21, Subchapter B, of this title (relating to Determination of Resident Status and Waiver Programs for Certain Nonresident Persons). Nonresident students eligible to pay resident tuition rates are not included unless they qualify as eligible nonresidents under §21.124(a)(1) of this title (relating to Initial Eligibility for Loans).

(8) Texas CIP Codes--Classification codes for degree programs, agreed upon by institutions and approved by the Board, based on curricular content belonging to categories within the federal Classification of Instructional Programs (CIP) published by the National Center for Educational Statistics. Texas CIP Codes are available at <http://www.thecb.state.tx.us/apps/ProgramInventory/>.

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

Filed with the Office of the Secretary of State on November 10, 2009.

TRD-200905217

Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 30, 2009
Proposal publication date: August 21, 2009
For further information, please call: (512) 427-6114

◆ ◆ ◆

SUBCHAPTER J. THE PHYSICIAN EDUCATION LOAN REPAYMENT PROGRAM

19 TAC §§21.251 - 21.263

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of §§21.251 - 21.263, concerning the Physician Education Loan Repayment Program, without changes to the proposed text as published in the August 21, 2009, issue of the *Texas Register* (34 TexReg 5637).

Specifically, §§21.251 - 21.263 are being repealed in order to reorganize and integrate into the sections the new statutory provisions mandated by House Bill 2154, 81st Texas Legislature. New sections for The Physician Education Loan Repayment Program are being adopted simultaneously with this repeal.

No comments were received regarding the repeal.

The repeal is adopted under the Texas Education Code, §61.537, which provides the Coordinating Board with the authority to adopt rules for the Physician Education Loan Repayment Program.

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

Filed with the Office of the Secretary of State on November 10, 2009.

TRD-200905218
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 30, 2009
Proposal publication date: August 21, 2009
For further information, please call: (512) 427-6114

◆ ◆ ◆

19 TAC §§21.251 - 21.262

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §§21.251 - 21.262, concerning the Physician Education Loan Repayment Program, with changes to §§21.251, 21.253, 21.254, 21.256 - 21.260, and 21.262 of the proposed text as published in the August 21, 2009, issue of the *Texas Register* (34 TexReg 5638). Sections 21.252, 21.255, and 21.261 are being adopted without changes and will not be reprinted. Specifically, the new sections replace repealed §§21.251 - 21.263 and incorporate amendments to the Texas Education Code, §§61.532 - 61.540, as mandated by House Bill 2154, 81st Texas Legislature, including changes to eligibility requirements, changes to how loan repayments may be made, removal of language referring to an inactive portion of the program for family practice residents, and clarification of repayment assistance amounts.

The following comments were received regarding the new sections:

Comment: The Texas Medical Association (TMA) noted inconsistency in the references to designation of Health Professional Shortage Areas (HPSAs). The statement of purpose in §21.251(b) referred to areas designated by the Texas Department of State Health Services, whereas the HPSA definition in §21.254(7) refers to areas designated by the U.S. Department of Health and Human Services. TMA expressed concern about delays in federal designation of health professional shortage areas following state recommendation.

Response: The staff agreed and §21.251(b) was changed to reflect the designation by the United States Department of Health and Human Services. Section 21.254(7) reflects an updated federal definition of "HPSAs." There is a new automated HPSA designation system that eliminates the delays that formerly existed.

Comment: TMA suggested amending the definition of "primary care specialty" to include medicine-pediatrics.

Response: The staff agreed and §21.254(9) reflects this change.

Comment: A medical faculty member commented that the definition of "primary care specialty" should be limited to family medicine, internal medicine, and pediatrics.

Response: The staff disagreed with this recommendation. With the exception of geriatrics, HPSAs are determined on the basis of the primary care specialties listed in §21.254(9). Geriatrics is considered a subspecialty of Internal Medicine or Family Medicine.

Comment: TMA recommended that emergency medicine and general surgery be retained "as priority specialties as identified in the original program."

Response: The staff did not agree with the recommendation to identify general surgery and emergency medicine as priority specialties because these specialties are not a factor in determining HPSAs. Furthermore, general surgeons and emergency medicine physicians can qualify for loan repayment under the proposed rule.

Comment: TMA endorsed adoption of minimum Medicaid caseload requirements, as applicable by specialty, rather than requiring all participants to accept an unlimited number of Medicaid and CHIP patients.

Response: The staff disagreed and made no change based on this comment. Section 21.256(b) mirrors the statutory language and does not state that physicians must accept an unlimited number of Medicaid and CHIP patients.

Comment: TMA recommended allowing priority ranking of applications from physicians who obtain board certification by the third year of the four-year service commitment, rather than requiring board certification for all participants.

Response: The staff agreed and §21.256(b)(3) reflects that the physician must have obtained board certification to receive the fourth-year loan repayment award.

Comment: The Texas Association of Community Health Centers (TACHC) recommended prioritizing renewal applications from primary care physicians over renewal applications from other types of providers.

Response: The staff agreed and §21.257(1) reflects this change.

Comment: Both the Texas Medical Association and the Texas Primary Care Coalition, Inc. expressed concern about the financial viability of establishing medical practices if physicians were required to provide "health care to all who present for care, regardless of ability to pay or lack of insurance and to accept payments on a sliding fee scale." These organizations recommended omitting this language. The Texas Association of Community Health Centers (TACHC) recommended deleting this language from §21.256, "Eligibility," and moving it to the top priorities in §21.257, "Application Ranking Criteria."

Response: The staff agreed and added subsection 21.257(2).

Comment: TMA expressed support for §21.257(2) as proposed and which "assigns first priority to physicians in primary care specialties."

Response: Section 21.257 actually assigns first priority to renewal applications. To address the concerns about requiring all physicians to accept all patients regardless of ability to pay, the Board adopted new subsection 21.257(2), which assigns priority, after renewal applications, to applications from primary care physicians practicing in rural geographic whole county Health Professional Shortage Areas (HPSAs) and applications from physicians practicing in Federally Qualified Health Centers or practice sites that accept payments on a sliding fee scale and follow a policy of providing health care to all who present for care.

Comment: TACHC recommended that the rules allow THECB discretion in determining loan eligibility.

Response: The staff agreed and §21.258(a) reflects this change.

Comment: TACHC, and also a practicing physician, recommended deleting the requirement that education loans must have been for education in the United States.

Response: The staff agreed and §21.258(b)(1) reflects this change.

Comment: TACHC recommended specification of a minimum number of hours--20 hours of direct patient care--required for pro-rated loan repayment.

Response: The staff agreed and §21.259(c) reflects this change.

Comment: TACHC recommended various non-substantive word changes to clarify meaning and to eliminate duplicative or unnecessary language.

Response: The staff agreed and adopted the recommendations.

Comment: TMA recommended adopting a provision that would allow the Texas Higher Education Coordinating Board (THECB) to use discretion to re-evaluate a physician's service obligation if there are insufficient funds.

Response: The Board made no change based on this comment, as that provision is more appropriate for inclusion in the written agreement between the physician and THECB.

Comment: TACHC recommended that higher priority be given to applications from new primary care physician applicants over renewal applications from non-primary care physicians.

Response: The staff disagreed and made no change based on this comment. One of the main principles underlying the program is the commitment to four service periods. If DSHS determines that there is a critical shortage of a non-primary care specialty in an HPSA and a physician practicing that specialty is willing to commit to practice for four years in that HPSA, it would not be

appropriate to place a new applicant ahead of that physician for the second, third, or fourth year of loan repayment. Such a rule could discourage all non-primary care physicians from considering participation in the program.

Comment: A medical unit at an institution of higher education recommended that physicians working in Hospital District hospitals and clinics throughout the State should be eligible for loan repayment even if the clinics are not located in an HPSA.

Response: The staff disagreed with this recommendation. The statute requires practice in an HPSA.

The new sections are adopted under the Texas Education Code, §61.537, which provides the Coordinating Board with the authority to adopt rules for the Physician Education Loan Repayment Program.

§21.251. Authority and Purpose.

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, Subchapter J, Repayment of Certain Physician Education Loans. These rules establish procedures to administer the subchapter as prescribed in the Texas Education Code, §§61.531 - 61.540.

(b) Purpose. The purpose of the Physician Education Loan Repayment Program is to encourage qualified physicians to practice medicine in a health professional shortage area designated by the U. S. Department of Health and Human Services, and provide health care services to recipients under the medical assistance program authorized by the Texas Human Resources Code, Chapter 32, and to enrollees under the child health plan program authorized by the Texas Health and Safety Code, Chapter 62.

§21.253. Dissemination of Information.

The Texas Higher Education Coordinating Board shall disseminate information about the Physician Education Loan Repayment program to health-related institutions of higher education, appropriate state agencies, interested professional associations, and the public.

§21.254. 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) CHIP--The Children's Health Insurance Program, authorized by the Texas Health and Safety Code, Chapter 62.
- (3) Commissioner--The commissioner of higher education, the chief executive officer of the Board.
- (4) Federally Qualified Health Center--Any entity in Texas defined under 42 USC §1396d (1)(2)(B).
- (5) DSHS--The Texas Department of State Health Services.
- (6) Full-time Service--An average of at least 32.5 hours of direct patient care per week during the service period at the HPSA practice site.
- (7) HPSAs--Health Professional Shortage Areas (HPSAs) are designated by the U. S. Department of Health and Human Services (HHS) as having shortages of primary medical care, dental or mental health providers and may be geographic (a county or service area), demographic (low income population) or institutional (comprehensive health center, federally qualified health center or other public facility).

Designations meet the requirements of Sec. 332 of the Public Health Service Act, 90 Stat. 2270-2272 (42 U.S.C. 254e). Texas HPSAs are recommended for designation by HHS based on analysis of data by DSHS.

(8) Medicaid--The medical assistance program authorized by Chapter 32, Texas Human Resources Code.

(9) Primary Care Specialty--Family medicine, family practice, general practice, obstetrics/gynecology, general internal medicine, general pediatrics, medicine-pediatrics, psychiatry, or geriatrics.

(10) Rural HPSA--A HPSA-designated county or a HPSA-designated area or population in a county of less than 50,000 people.

(11) Service Period--A period of 12 consecutive months qualifying a physician for loan repayment.

§21.256. Eligibility.

(a) To be eligible for the Board to reserve loan repayment funds, a physician must:

(1) ensure that the Board or its designee has received the completed application by the stated deadline;

(2) be a U.S. citizen or a Legal Permanent Resident and, at the time of application, hold a Full Physician License from the Texas Medical Board, with no restrictions;

(3) not be currently fulfilling another obligation to provide medical services as part of a scholarship agreement, a student loan agreement, or another student loan repayment agreement;

(4) during the first, second, and third service period, if the physician has not earned and maintained board certification, be eligible to take the exam for board certification from:

(A) an American Specialty Board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists in a primary care specialty, or

(B) an American Specialty Board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists in a specialty other than primary care if the DSHS determines there is a critical need for the applicant's specialty in the HPSA where the practice is located; and

(5) agree to provide four consecutive service periods in a HPSA.

(b) To be eligible to receive loan repayment assistance, a physician must:

(1) have completed one, two, three, or four consecutive service periods in a HPSA;

(2) during the service period, have provided direct patient care to:

(A) Medicaid enrollees and

(B) CHIP enrollees.

(3) for loan repayment based on the fourth service period, have earned certification from an American Specialty Board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists in a primary care specialty, or in a specialty other than primary care if the DSHS has determined that there is a critical need for the applicant's specialty in the HPSA where the practice is located.

§21.257. Application Ranking Criteria.

If there are not sufficient funds to award loan repayment assistance for all eligible physicians whose applications are received by the stated

deadline, applications shall be ranked according to the following criteria, in priority order:

(1) renewal applications, with first priority assigned to those for primary care;

(2) applications from primary care physicians practicing in rural geographic whole-county HPSAs and applications from physicians practicing in Federally Qualified Health Centers or practice sites that accept payments on a sliding fee scale and follow a policy of providing health care to all who present for care;

(3) HPSA score for applicant practice location.

§21.258. Eligible Lender and Eligible Education Loan.

(a) The Board shall retain the right to determine the eligibility of lenders and holders of education loans to which payments may be made. An eligible lender or holder shall, in general, make or hold education loans made to individuals for purposes of undergraduate, medical and graduate medical education and shall not be any private individual. An eligible lender or holder may be, but is not limited to, a bank, savings and loan association, credit union, institution of higher education, secondary market, governmental agency, or private foundation.

(b) To be eligible for repayment, an education loan must:

(1) be evidenced by a promissory note for loans to pay for the cost of attendance for undergraduate, graduate, or medical education;

(2) not have been made during residency;

(3) not be in default at the time of the physician's application;

(4) not have an existing obligation to provide service for loan forgiveness through another program;

(5) not be subject to repayment through another student loan repayment or loan forgiveness program;

(6) if the loan was consolidated with other loans, the physician must provide documentation of the portion of the consolidated debt that was originated to pay for the cost of attendance for the physician's undergraduate, graduate, or medical education; and

(7) not be an education loan made to oneself from one's own insurance policy or pension plan or from the insurance policy or pension plan of a spouse or other relative.

§21.259. Amount of Repayment Assistance.

(a) A physician whose total student loan indebtedness is at least \$160,000 may receive repayment assistance based on full-time service for the following amounts:

(1) for the first service period, \$25,000;

(2) for the second service period, \$35,000;

(3) for the third service period, \$45,000;

(4) for the fourth service period, \$55,000.

(b) If a physician's total student loan indebtedness is less than \$160,000, the annual loan repayment amounts based on full-time service will be the amounts required to repay the indebtedness over a period of four years, with annual increases that are proportional to the annual increases for physicians whose student loan indebtedness is at least \$160,000.

(c) A physician may receive prorated loan repayment assistance based on the percentage of full-time service provided for each

service period, if providing direct patient care for a minimum of 20 hours per week for each service period.

§21.260. *Limitations.*

(a) The total amount of repayment assistance to a physician may not exceed \$160,000 over a period of no more than four periods of service.

(b) Except under circumstances determined by the Board and DSHS to constitute good cause, failure to meet the program requirements will result in non-payment for that service period and removal from the program. Additionally, providers who do not meet the requirements will be ineligible to apply for other loan repayment programs in Texas.

§21.262. *Reporting of Retention Rates.*

Prior to September 1 of every even-numbered year, the Board shall report to the Legislative Budget Board and the Governor the results of annual verification of the practice sites of physicians who have completed a Physician Education Loan Repayment Program agreement to practice in a HPSA to determine short-term and long-term rates of retention in those shortage areas and counties.

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

Filed with the Office of the Secretary of State on November 10, 2009.

TRD-200905219

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: November 30, 2009

Proposal publication date: August 21, 2009

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



SUBCHAPTER R. DENTAL EDUCATION LOAN REPAYMENT PROGRAM

19 TAC §21.566

The Texas Higher Education Coordinating Board (Coordinating Board) adopts an amendment to §21.566, concerning the Dental Education Loan Repayment Program, without changes to the proposed text as published in the August 21, 2009, issue of the *Texas Register* (34 TexReg 5640). Specifically, the amendment to paragraph (3) removes the reference to the annual loan repayment amount of \$10,000. The reference to a specific amount contradicts the rule within the same section authorizing the commissioner of higher education to determine award amounts providing incentives for continuous service and service in the most underserved areas. This amendment also brings the annual loan repayment amount for this program in line with that of the Physician Education Loan Repayment Program. The amendment to paragraph (6) clarifies that it refers to the commissioner of higher education.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §61.908, which provides the Coordinating Board with the authority to adopt any rules necessary for the administration of the Dental Education Loan Repayment Program.

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

Filed with the Office of the Secretary of State on November 10, 2009.

TRD-200905220

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: November 30, 2009

Proposal publication date: August 21, 2009

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



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 (Coordinating Board) adopts 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, with changes to §21.611 of the proposed text as published in the August 7, 2009, issue of the *Texas Register* (34 TexReg 5318). Sections 21.610 and 21.612 - 21.614 are being adopted without changes and will not be republished. Specifically, these new sections provide rules for a first-time student enrolled at a public or private institution of higher education, including a transfer student, who resides in, or has applied for on-campus housing, to provide evidence of being vaccinated against bacterial meningitis. The 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.

The following comments were received regarding the new sections:

Comment: Carlos Martinez, Assistant Vice Chancellor for Governmental Relations at The University of Texas System is concerned that §21.613(c), which provides that students must receive the vaccination at least 10 days prior to the student taking up residence in on-campus housing, could be burdensome or impossible for some students and can leave them without housing. He relays that there are many instances where out-of-state or international students arrive at an institution several days before taking up residence in on-campus housing. He recommends that the rules be changed to require that students show evidence of vaccination any time prior to taking up residence.

Response: As a result of this comment, no changes were made. Coordinating Board staff believes that since the rules would not go into effect until January 1, 2010, institutions have adequate time to provide all students, including international students with advanced notification about vaccination requirements. In accordance with the Center for Disease Control, it takes ten days for

an individual to develop antibodies against the disease after receiving the vaccination. Because students living in close conditions (such as a dorm) are at a higher risk of contracting bacterial meningitis, staff believes that the public health benefit of being immunized ten days prior to taking up residence in a dormitory is necessary to preserve the safety of students.

Comment: Carlos Martinez, Assistant Vice Chancellor for Governmental Relations at The University of Texas System identifies an unintended "loop-hole" that he believes should be addressed in the rules. As it stands now, a first-time or transfer student can avoid the vaccination requirement simply by waiting to apply for on-campus housing during that student's second semester and not the first. Since students are no longer considered first-time or transfer students after their first semester, these students will be able to avoid the vaccination requirement.

Response: As a result of this comment, no changes were made. Staff agrees that students may avoid the vaccination requirement by not living in on-campus housing. However, the proposed rules are in line with the statute which requires the vaccination for first-time students of an institution of higher education, including a transfer student, who has applied for and been approved to reside in on-campus housing.

The new subchapter is adopted under the Texas Education Code, §2, Subchapter Z, Chapter 51, which gives the Coordinating Board the authority to adopt rules for the bacterial meningitis vaccination requirement for certain students at institutions of higher education, including rules establishing the timeframe by which a student is required to comply with the vaccination requirement and submit evidence of compliance.

§21.611. Authority.

Texas Education Code, §51.9192, Subchapter Z, establishes 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.

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

Filed with the Office of the Secretary of State on November 10, 2009.

TRD-200905221

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: November 30, 2009

Proposal publication date: August 7, 2009

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



SUBCHAPTER NN. EXEMPTION PROGRAM FOR VETERANS AND THEIR DEPENDENTS (THE HAZLEWOOD ACT)

19 TAC §21.2101, §21.2102

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §21.2101 and §21.2102, con-

cerning the Exemption Program for Veterans and Their Dependents (Hazlewood Act), without changes to the proposed text as published in the September 11, 2009, issue of the *Texas Register* (34 TexReg 6250).

Specifically, the amendment to §21.2101 clarifies that certain institutions may establish fees for programs having extraordinary costs and may determine that the exemption does not apply to these fees. The amendment to §21.2102 implements a provision of Senate Bill 93, 81st Texas Legislature, which deletes the requirement that an eligible veteran cannot be in default on a federal student loan. Previously, veterans were ineligible if they were in default on a federal education loan if the default prevented them from qualifying for other federal education benefits for veterans. Senate Bill 93 only references defaults on state education loans and not federal education loans.

No comments were received regarding the amendments.

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

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

Filed with the Office of the Secretary of State on November 10, 2009.

TRD-200905222

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: November 30, 2009

Proposal publication date: September 11, 2009

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



SUBCHAPTER PP. PROVISIONS FOR UNIFORM STANDARDS FOR PUBLICATION OF COST OF ATTENDANCE INFORMATION

19 TAC §§21.2220 - 21.2222

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §§21.2220 - 21.2222, concerning Provisions for Uniform Standards for Publication of Cost of Attendance Information, with changes to §21.2221 and §21.2222 as proposed in the August 21, 2009, issue of the *Texas Register* (34 TexReg 5641). Section 21.2220 is being adopted without changes and will not be republished.

Specifically, the new sections implement House Bill 2504, 81st Texas Legislature, which amended the Texas Education Code by adding §61.0777. The sections are intended to ensure that information regarding the cost of attendance at institutions of higher education is available to the public in a manner that is consumer-friendly and readily understandable to prospective students and their families. Each institution of higher education will be required to make available to the public on the institution's Internet website estimates of the cost of attendance for full-time students. In addition, institutions will provide the Coordinating Board with the information necessary for Coordinating

Board Staff to calculate the net cost of attendance for a first-time entering full-time student.

The following comments were received regarding the new sections:

Comment: Staff commented that the phrase "by an entering full-time, first-year student" in §21.2222(a) should be changed to "for a first-time entering full-time student" in order to match the wording of the term in §21.2221, concerning Definitions.

Response: The Board agreed with the comment and made the changes.

Comment: UT System made several comments, including: that certain definitions should be clarified, match existing federal definitions, and use existing or commonly used phrases and terms; and that certain revisions would enhance clarity.

Response: The Board agreed and made the changes with the exception that, after consulting with financial aid officers, the definition of "Total Cost of Attendance" was not changed. A new definition, for "Net Price of Attendance," was adopted.

Comment: Financial aid officers also made several comments to clarify the definitions and to delete the definition of "Full-time Enrollment."

Response: The Board agreed and made the changes.

The new sections are adopted under the Texas Education Code, §61.0777, which provides the Coordinating Board with the authority to prescribe uniform standards for the implementation of this section.

§21.2221. 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) Board Staff--The staff of 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) First-Time Entering Full-Time Student--A student who has no prior postsecondary experience (except as noted below) attending any institution for the first time at the undergraduate level and who enrolls for 15 credit hours per semester for two consecutive semesters. This includes students enrolled in academic or occupational programs. It also includes students enrolled in the fall term who attended college for the first time in the prior summer term, and students who entered with advanced standing (college credits earned before graduation from high school).

(5) 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) that enrolls entering freshmen.

(6) Net Cost of Attendance--The total cost of attendance less the student's estimated merit- and need-based grant aid. The net cost may be a range.

(7) Net Price of Attendance--The total cost of attendance less the student's estimated merit and need based grant aid. The net cost may be a range.

(8) Total Cost of Attendance--Expenses incurred by a typical student in attending a particular college. It includes tuition, fees, books, and supplies, room and board, transportation, and other personal expenses.

§21.2222. Internet Access to Cost Information.

(a) Each institution of higher education that offers an undergraduate degree or certificate program shall prominently display on the institution's Internet website the cost of attendance for a first-time entering full-time student in accordance with the uniform standards prescribed by the Commissioner. These standards may be updated on an annual basis. In addition, each institution must provide a link to the Free Application for Federal Student Aid (FAFSA) website.

(b) The institution shall conform to the uniform standards prescribed by the Commissioner in any electronic or printed materials intended to provide information regarding the cost of attendance to prospective undergraduate students.

(c) The uniform standards prescribed by the Commissioner shall also be considered by institutions when providing information regarding the cost of attendance for nonresident students, graduate students, or students enrolled in professional programs.

(d) Institutions shall provide the Board, upon request (at least annually), any information necessary for the Board Staff to calculate the net cost of attendance for a first-time entering full-time student.

(e) Institutions of higher education shall comply with the standards and requirements not later than April 1, 2010.

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

Filed with the Office of the Secretary of State on November 10, 2009.

TRD-200905223

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: November 30, 2009

Proposal publication date: August 21, 2009

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



SUBCHAPTER QQ. PROVISIONS FOR NOTICE TO STUDENTS REGARDING TUITION SET ASIDE FOR FINANCIAL ASSISTANCE

19 TAC §§21.2230 - 21.2232

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §§21.2230 - 21.2232, concerning Provisions for Notice to Students Regarding Tuition Set Aside for Financial Assistance, without changes to the proposed text as published in the August 28, 2009, issue of the *Texas Register* (34 TexReg 5852).

Specifically, the new sections implement Senate Bill 1304, 81st Texas Legislature, which amended the Texas Education Code by adding §56.014. The sections prescribe minimum standards for institutions of higher education to use in providing notices to students regarding the specific amount of each student's designated tuition required to be set aside for financial assistance.

No comments were received regarding the new sections.

The new sections are adopted under the Texas Education Code, §56.014, which provides the Coordinating Board with the authority to prescribe minimum standards for the implementation of this section.

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

Filed with the Office of the Secretary of State on November 10, 2009.

TRD-200905224

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: November 30, 2009

Proposal publication date: August 28, 2009

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



SUBCHAPTER RR. TEXAS ARMED SERVICES SCHOLARSHIP PROGRAM

19 TAC §§21.2240 - 21.2250

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §§21.2240 - 21.2250, concerning the Texas Armed Services Scholarship Program, without changes to the proposed text as published in the August 28, 2009, issue of the *Texas Register* (34 TexReg 5852). The new sections implement House Bill 3452, 81st Texas Legislature, which amended the Texas Education Code by adding §§61.9771 - 61.9776.

Specifically, the new sections describe the authority and purpose of the program, provide definitions of terms used, outline program award amounts and limits, and set forth requirements whereby elected officials may appoint students to receive a scholarship. The new sections also outline initial award eligibility and agreement requirements, describe the requirement that a recipient must sign a promissory note acknowledging the conditional nature of the scholarship, describe the eligibility requirements for continued awards, and outline the circumstances under which a scholarship may be converted to a loan. The new sections also describe the repayment terms of loans, the actions that may be taken by the Board to enforce collection of a scholarship converted to a loan, and the circumstances under which a recipient may be exempted from the repayment and/or service obligations of the program.

No comments were received regarding the new sections.

The new sections are adopted under the Texas Education Code, §61.9771 which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, Chapter 61, Subchapter FF.

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

Filed with the Office of the Secretary of State on November 10, 2009.

TRD-200905225

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: November 30, 2009

Proposal publication date: August 28, 2009

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



TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 163. LICENSURE

22 TAC §§163.1, 163.2, 163.4 - 163.7, 163.11

The Texas Medical Board (Board) adopts amendments to §§163.1, 163.2, 163.4 - 163.7 and 163.11, concerning Licensure, without changes to the proposed text as published in the October 2, 2009, issue of the *Texas Register* (34 TexReg 6752) and will not be republished.

The amendment to §163.1, relating to Definitions, deletes definition of "country of graduation" because the provision is no longer needed.

The amendment to §163.2, relating to Full Texas Medical License, is based on House Bill 3674 passed by the 81st Legislature to allow applicants for licensure to demonstrate board certification to satisfy requirements relating to substantial equivalence of medical education and permits applicants who are foreign graduates to apply one year of their postgraduate training obtained outside the U.S. or Canada for licensure requirements, if the training is approved by the American Board of Medical Specialties or the Bureau of Osteopathic Specialists. A change also includes deletion of language relating to sitting for monitored examinations and instead requires board certification in relation to fifth pathway applicants to be consistent with other provisions of the chapter.

The amendment to §163.4, relating to Procedural Rules for Licensure Applicants, removes reference to the current three-attempt limit on the jurisprudence examination.

The amendment to §163.5, relating to Licensure Documentation, deletes the requirement of presentation of a certificate of registration in relation to foreign medical school graduates since the Board obtains other documentation from applicants to demonstrate graduation from medical school.

The amendment to §163.6, relating to Examinations Accepted for Licensure, allows for more than three attempts on the jurisprudence examination if the applicant demonstrates good cause.

The amendment to §163.7, relating to the Ten Year Rule, requires applicants for licensure who have not passed and taken an acceptable licensure examination in the ten years prior to the date of application to demonstrate board certification, rather than just passage of a monitored examination.

The amendment to §163.11, relating to Active Practice of Medicine, clarifies that if an applicant for licensure is unable to demonstrate that the applicant has actively practiced medicine prior to the date of application, the applicant can present proof of board certification obtained within two years of date of application.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by §155.003 and §155.104, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on November 9, 2009.

TRD-200905154

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: November 29, 2009

Proposal publication date: October 2, 2009

For further information, please call: (512) 305-7016



CHAPTER 166. PHYSICIAN REGISTRATION

22 TAC §§166.1 - 166.4, 166.6

The Texas Medical Board (Board) adopts amendments to §§166.1 - 166.4 and §166.6, concerning Physician Registration, without changes to the proposed text as published in the October 2, 2009, issue of the *Texas Register* (34 TexReg 6761) and will not be republished.

The amendment to §166.1, relating to Physician Registration, adds new language to require licensees to submit emergency contact information, if available, pursuant to Senate Bill 292 passed by the 81st Legislature.

The amendment to §166.2, relating to Continuing Medical Education, deletes language relating to temporary continuing medical education licenses because these temporary licenses are no longer required since practicing with a delinquent license is not considered practicing without a license.

The amendment to §166.3, relating to Retired Physician Exception, deletes the requirement that a physician must have an active license and not be under investigation to qualify for the retired physician exception for continuing medical education (CME) requirements.

The amendment to §166.4, relating to Expired Registration Permits, adds language to require applicants for exceptions for CME requirements to pay delinquent fees in order to be eligible for an exception.

The amendment to §166.6, relating to Exemption From Registration Fee for Retired Physician Providing Voluntary Charity Care, deletes the requirement that a licensee must apply for the exemption while the licensee's license is active.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by §156.006, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on November 9, 2009.

TRD-200905155

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: November 29, 2009

Proposal publication date: October 2, 2009

For further information, please call: (512) 305-7016



CHAPTER 168. CRIMINAL HISTORY EVALUATION LETTERS

22 TAC §168.1, §168.2

The Texas Medical Board (Board) adopts new §168.1 and §168.2, concerning Criminal History Evaluation Letters, without changes to the proposed text as published in the October 2, 2009, issue of the *Texas Register* (34 TexReg 6765) and will not be republished.

New §168.1, relating to Purpose, establishes the purpose of the chapter based on the passage of House Bill 963 during the 81st Legislative Session that allows potential applicants for licensure to obtain criminal history evaluation letters regarding potential eligibility for licensure.

New §168.2, relating to Criminal History Evaluation Letters, establishes the process for potential licensure applicants for obtaining criminal history evaluation letters pursuant to House Bill 963 passed during the 81st Legislative Session.

No comments were received regarding adoption of the rules.

The new sections are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The new sections are also authorized by §§53.101 et seq., Texas Occupations Code.

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

Filed with the Office of the Secretary of State on November 9, 2009.

TRD-200905156

Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: November 29, 2009
Proposal publication date: October 2, 2009
For further information, please call: (512) 305-7016



CHAPTER 171. POSTGRADUATE TRAINING PERMITS

22 TAC §§171.3 - 171.5

The Texas Medical Board (Board) adopts amendments to §§171.3 - 171.5, concerning Postgraduate Training Permits, without changes to the proposed text as published in the October 2, 2009, issue of the *Texas Register* (34 TexReg 6766) and will not be republished.

The amendment to §171.3, relating to Physician-in-Training Permits, removes "board-approved fellowship" from the definition of "fellowship" to avoid misinterpretation that a board-approved fellowship may be obtained prior to completion of other residency training and adds a definition for "subspecialty training program."

The amendment to §171.4, relating to Board-Approved Fellowships, clarifies provisions relating to board-approved fellowships consistent with changes to §171.3.

The amendment to §171.5, relating to Duties of PIT Holders to Report, requires PIT holders to report criminal fines of \$250 rather than \$100.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by §155.105, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on November 9, 2009.

TRD-200905157
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: November 29, 2009
Proposal publication date: October 2, 2009
For further information, please call: (512) 305-7016



CHAPTER 172. TEMPORARY AND LIMITED LICENSES

The Texas Medical Board (Board) adopts amendments to §172.8 and new §172.16, concerning Temporary and Limited Licenses, without changes to the proposed text as published in the October 2, 2009, issue of the *Texas Register* (34 TexReg 6770) and will not be republished.

The amendment to §172.8, relating to Faculty Temporary License, allows applicants for faculty temporary licenses (FTL) to be given additional attempts on the jurisprudence examination if good cause is shown; requires sponsoring institutions to affirm that the institutions have reviewed the physician's professional and criminal background; and, pursuant to Senate Bill 1225 passed by the 81st Legislature, allows nonprofit corporations that are affiliated with programs accredited by the Accreditation Council for Graduate Medical Education to sponsor physicians for FTLs. The new language added as a new rule to §172.16, relating to Provisional Licenses for Medically Underserved Areas, is based on adoption of Senate Bill 202 by the 81st legislature to allow applicants for full licensure to obtain provisional licenses under certain conditions to work in medically underserved areas prior to having a determination made on the applicants' applications for full licensure.

No comments were received regarding adoption of the rules.

SUBCHAPTER B. TEMPORARY LICENSES

22 TAC §172.8

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by §155.104, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on November 9, 2009.

TRD-200905158
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: November 29, 2009
Proposal publication date: October 2, 2009
For further information, please call: (512) 305-7016



SUBCHAPTER C. LIMITED LICENSES

22 TAC §172.16

The new section is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The new section is also authorized by §155.104, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on November 9, 2009.

TRD-200905159

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: November 29, 2009

Proposal publication date: October 2, 2009

For further information, please call: (512) 305-7016



CHAPTER 173. PHYSICIAN PROFILES

22 TAC §173.1, §173.4

The Texas Medical Board (Board) adopts amendments to §173.1 and §173.4, concerning Physician Profiles, without changes to the proposed text as published in the October 2, 2009, issue of the *Texas Register* (34 TexReg 6771) and will not be republished.

The amendment to §173.1, relating to Profile Contents, clarifies that a licensee's mailing address will be posted on the licensee's profile only if the licensee does not provide a practice address to the board and requires the removal of references to medical malpractice investigations if closed by the Board for over five years and no disciplinary action was ever taken.

The amendment to §173.4, relating to Updates to the Physician's Profile Due to Board Action, requires the removal of references on a licensee's profile of complaints filed at the State Office of Administrative Hearings when the complaint has been dismissed for over five years and was determined to be baseless or no action was ever taken on the complaint.

No comments were received regarding adoption of the rules.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by §154.006, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on November 9, 2009.

TRD-200905160

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: November 29, 2009

Proposal publication date: October 2, 2009

For further information, please call: (512) 305-7016



CHAPTER 175. FEES, PENALTIES AND FORMS

The Texas Medical Board (Board) adopts an amendment to §175.1 and the repeal of §175.4, concerning Fees, Penalties, and Forms, without changes to the proposed text as published in the October 2, 2009, issue of the *Texas Register* (34 TexReg 6776) and will not be republished.

The amendment to §175.1, relating to Application Fees, deletes references to temporary licenses for medically underserved areas, establishes fees for physician-in-training permits for physicians who perform rotations in Texas, and sets fees for criminal history evaluation letters.

The repeal of §175.4, relating to Application Form, repeals the section based on the determination that it was no longer needed and created confusion when forms became obsolete or required name changes.

No comments were received regarding adoption of the rules.

22 TAC §175.1

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by §§53.105, 153.001, 155.105, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on November 9, 2009.

TRD-200905161

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: November 29, 2009

Proposal publication date: October 2, 2009

For further information, please call: (512) 305-7016



22 TAC §175.4

The repeal is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The repeal is also authorized by §§53.105, 153.001, 155.105, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on November 9, 2009.

TRD-200905162
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: November 29, 2009
Proposal publication date: October 2, 2009
For further information, please call: (512) 305-7016



CHAPTER 179. INVESTIGATIONS

22 TAC §179.4

The Texas Medical Board (Board) adopts amendments to §179.4, concerning Investigations, without changes to the proposed text as published in the October 2, 2009, issue of the *Texas Register* (34 TexReg 6777) and will not be republished.

The amendment to §179.4, relating to Request for Information and Records from Physicians, sets out the procedure for requiring that, based on probable cause, an applicant or licensee submit to a physical or mental examination based on an order of the Board issued by the Executive Director.

No comments were received regarding adoption of the rules.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by §164.056, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on November 9, 2009.

TRD-200905163
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: November 29, 2009
Proposal publication date: October 2, 2009
For further information, please call: (512) 305-7016



CHAPTER 180. REHABILITATION ORDERS

The Texas Medical Board (Board) adopts the repeal of §180.1, concerning Rehabilitation Orders, and new §§180.1 - 180.3 and 180.7, concerning Texas Physician Health Program and Rehabilitation Orders. The repeal of §180.1 and new §§180.1, 180.3 and 180.7 are adopted without changes to the proposed text as published in the September 18, 2009, issue of the *Texas Register* (34 TexReg 6408) and will not be republished. New §180.2 is adopted with nonsubstantive changes to the proposed text as published and the text of the rule will be republished.

Elsewhere in this issue of the *Texas Register*, the Board contemporaneously withdraws the emergency repeal and replacement

of Chapter 180. The withdrawal is effective upon the date of permanent adoption of Chapter 180.

The repeal of §180.1, relating to Rehabilitation Orders, repeals this provision.

New §180.1, concerning Purpose, establishes the statutory authority and the purpose for the Texas Physician Health Program and the use of rehabilitation orders.

New §180.2, concerning Definitions, establishes definitions that pertain to the Texas Physician Health Program.

New §180.3, concerning Texas Physician Health Program, establishes the qualifications and responsibilities for the governing board, physician health advisory committee, and medical director of the Texas Physician Health Program.

New §180.7, concerning Rehabilitation Orders, provides that rehabilitation orders entered into on or before January 1, 2010 shall be subject to all laws that existed immediately before that date as they relate to rehabilitation orders.

No comments were received regarding adoption of the repeal or new rules.

22 TAC §180.1

The repeal is adopted under the authority of the Texas Occupations Code Annotated, §§153.001, 204.101, 205.101, and 206.101 which provide authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The repeal is also authorized by §153.001, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on November 9, 2009.

TRD-200905164
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: November 29, 2009
Proposal publication date: September 18, 2009
For further information, please call: (512) 305-7016



CHAPTER 180. TEXAS PHYSICIAN HEALTH PROGRAM AND REHABILITATION ORDERS

22 TAC §§180.1 - 180.3, 180.7

The new rules are adopted under the authority of the Texas Occupations Code Annotated, §§153.001, 204.101, 205.101, and 206.101 which provide authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The new rules are also authorized by §153.001, Texas Occupations Code.

§180.2. *Definitions.*

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

- (1) Acupuncture Board--Texas State Board of Acupuncture Examiners.
- (2) Agency--the medical board, physician assistant board, and acupuncture board collectively.
- (3) Committee--the Physician Health and Rehabilitation Advisory Committee.
- (4) Governing board--the governing board of the program.
- (5) License--includes the whole or part of any board permit, certificate, approval, registration or similar form of permission authorized by law.
- (6) Medical Board--the Texas Medical Board.
- (7) Medical director--a physician licensed by the board who has expertise in a field of medicine relating to disorders commonly affecting physicians or physician assistants, including substance abuse disorders, and who provides clinical and policy oversight for the program.
- (8) PA Board--the Texas Physician Assistant Board.
- (9) Program--the Texas Physician Health Program.
- (10) Program participant--a physician, physician assistant, acupuncturist, or surgical assistant who is licensed or who has applied for licensure and who receives services under the program.

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

Filed with the Office of the Secretary of State on November 9, 2009.

TRD-200905165
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: November 29, 2009
Proposal publication date: September 18, 2009
For further information, please call: (512) 305-7016



CHAPTER 187. PROCEDURAL RULES

The Texas Medical Board (Board) adopts amendments to §§187.25 - 187.27 and §187.37, concerning Procedural Rules, without changes to the proposed text as published in the October 2, 2009, issue of the *Texas Register* (34 TexReg 6778) and will not be republished.

The amendment to §187.25, relating to Notice of Adjudicative Hearing, modifies the required content of notice of adjudicative hearings to be consistent with State Office of Administrative Hearings (SOAH) rules and establishes that default judgments may be granted due to a party's failure to appear at a hearing upon a remand of the case at SOAH back to the Board.

The amendments to §187.26, relating to Service in SOAH Proceedings, establishes the distinction between notices of adjudicative hearings and notice of complaints at the State Office of

Administrative Hearings and that remand to the Board of a SOAH case prevents conflicting jurisdiction.

The amendments to §187.27, relating to Written Answers in SOAH Proceedings and Default Orders, provide that a written answer to a complaint filed at SOAH is to be in response to service of the complaint and not to the Notice of Adjudicative Hearings, and clarify the process for obtaining Determinations of Defaults.

The amendment to §187.37, relating to Final Decisions and Orders, clarify that sanctions are determined and issued by the Board.

No comments were received regarding adoption of the amendments.

SUBCHAPTER C. FORMAL BOARD PROCEEDINGS AT SOAH

22 TAC §§187.25 - 187.27

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by §164.001 and §164.006, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on November 9, 2009.

TRD-200905166
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: November 29, 2009
Proposal publication date: October 2, 2009
For further information, please call: (512) 305-7016



SUBCHAPTER D. FORMAL BOARD PROCEEDINGS

22 TAC §187.37

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by §164.001 and §164.006, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on November 9, 2009.

TRD-200905167

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: November 29, 2009

Proposal publication date: October 2, 2009

For further information, please call: (512) 305-7016



CHAPTER 190. DISCIPLINARY GUIDELINES

The Texas Medical Board (Board) adopts amendments to §190.2 and §190.14, concerning Disciplinary Guidelines, §190.2 is adopted without changes and §190.14 is adopted with changes to the proposed text as published in the October 2, 2009, issue of the *Texas Register* (34 TexReg 6781).

The amendment to §190.2, relating to Board's Role, removes language that invites recommendations from administrative law judges regarding sanctions on cases held at the State Office of Administrative Hearings.

The amendment to §190.14, relating to Disciplinary Sanction Guidelines, corrects a citation relating to violations of Board rules.

No comments were received regarding adoption of the rules.

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §190.2

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by §164.001, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on November 9, 2009.

TRD-200905168

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: November 29, 2009

Proposal publication date: October 2, 2009

For further information, please call: (512) 305-7016



SUBCHAPTER C. SANCTION GUIDELINES

22 TAC §190.14

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority

for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by §164.001, Texas Occupations Code.

§190.14. Disciplinary Sanction Guidelines.

These disciplinary sanction guidelines are designed to provide guidance in assessing sanctions for violations of the Medical Practice Act (Act). The ultimate purpose of disciplinary sanctions is to protect the public, deter future violations, offer opportunities for rehabilitation if appropriate, punish violators, and deter others from violations. These guidelines are intended to promote consistent sanctions for similar violations, facilitate timely resolution of cases, and encourage settlements.

(1) The standard sanctions outlined below shall apply to cases involving a single violation of the Act, and in which there are no aggravating or mitigating factors that apply. The board may impose more restrictive sanctions when there are multiple violations of the Act. The board may impose more or less severe or restrictive sanctions, based on any aggravating and/or mitigating factors listed in §190.15 of this chapter (relating to Aggravating and Mitigating Factors) that are found to apply in a particular case.

(2) The standard and minimum sanctions outlined below are applicable to first time violators. In accordance with §164.001(g)(2) of the Act, the board shall consider revoking the person's license if the person is a repeat offender.

(3) The standard and minimum sanctions outlined below are based on the conclusion stated in §164.001(j) of the Act that a violation related directly to patient care is more serious than one that involves only an administrative violation. An administrative violation may be handled informally in accordance with §187.14(7) of this title (relating to Informal Resolutions of Violations). Administrative violations may be more or less serious, depending on the nature of the violation. Administrative violations that are considered by the board to be more serious are designated as being an "aggravated administrative violation".

(4) The maximum sanction in all cases is revocation of the licensee's license, which may be accompanied by an administrative penalty of up to \$5,000 per violation. In accordance with §165.003 of the Act, each day the violation continues is a separate violation.

(5) Each statutory violation constitutes a separate offense, even if arising out of a single act.

(6) If the licensee acknowledges a violation and agrees to comply with terms and conditions of remedial action through an agreed order, the standard sanctions may be reduced.

(7) The following standard sanctions shall apply to violations of the Act:

(A) Failure to timely provide copies of medical or billing records upon written request or overcharging for medical records is an administrative violation.

(i) Violation of:

(I) Section 159.006 of the Act - information furnished by licensee; and

(II) Section 164.051(a)(3) of the Act - violation of Board Rule, to wit: §165.2 of this title (relating to Medical Record Release and Charges).

(ii) Standard Sanction: administrative penalty of \$1,000 per violation.

(B) Failure to timely comply with a board subpoena or request for information is an administrative violation.

(i) Violation of §160.009 of the Act and board rule §179.4 of this title (relating to Request for Information and Records from Physicians).

(ii) Standard Sanction is an administrative penalty of \$2,000.

(C) Conviction or deferred adjudication for a felony may be either an aggravated administrative violation or a patient care violation, depending on the facts underlying the offense.

(i) Violation of §164.051(a)(2)(A) of the Act, §204.303(a)(2) of the Physician Assistant Act, and §205.351(a)(7) of the Acupuncture Act.

(ii) In accordance with §164.057(a)(1)(A) of the Act, the board shall suspend a licensee's license on proof that the licensee has been initially convicted of any felony.

(iii) In accordance with §164.057(b) of the Act, the board shall revoke the licensee's license on final conviction for a felony.

(D) Conviction or deferred adjudication for a misdemeanor involving moral turpitude may be either an aggravated administrative violation or a patient care violation, depending on the facts underlying the offense.

(i) Violation of §164.051(a)(2)(B) of the Act and §205.351(a)(7) of the Acupuncture Act.

(ii) Standard Sanction:

(I) If the offense is related to the duties and responsibilities of the licensed occupation, the standard sanction shall be revocation of the license.

(II) If the offense is not related to the duties and responsibilities of the licensed occupation, the standard sanction shall require:

(-a-) Suspension of license, which may be probated after 90 days;

(-b-) compliance with all restrictions, conditions and terms imposed by any order of probation or deferred adjudication;

(-c-) public reprimand; and

(-d-) administrative penalty of \$2,000 per violation.

(E) Conviction of a misdemeanor that directly relates to the duties and responsibilities of the licensed occupation may be either an administrative violation or a patient care violation, depending on the facts underlying the offense.

(i) Violation of §53.021, Tex. Occ. Code.

(ii) Standard Sanction:

(I) If the offense involves patient care, the standard sanction shall be revocation of the license.

(II) If the offense does not involve patient care and is an administrative violation only, the standard sanction shall require:

(-a-) public reprimand; and

(-b-) an administrative penalty of \$2,000 per violation.

(F) Conviction of Certain Misdemeanors may be either an administrative violation or a patient care violation, depending on the facts underlying the offense.

(i) In accordance with §164.057(a)(1)(B), (C), (D), and (E) of the Act, the board shall suspend a licensee's license on proof that the licensee has been initially convicted any of the following misdemeanors:

(I) a misdemeanor under Chapter 22, Penal Code, other than a misdemeanor punishable by fine only;

(II) a misdemeanor on conviction of which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure;

(III) a misdemeanor under §25.07, Penal Code,

or
(IV) a misdemeanor under §25.071, Penal Code.

(ii) In accordance with §164.057(b) of the Act, the board shall revoke the licensee's license on final conviction of any of these misdemeanors.

(G) Failure to obtain/document continuing medical education is an administrative violation.

(i) Violation of §164.051(a)(3) of the Act, or violation of board rule §166.2 of this title (relating to Continuing Medical Education).

(ii) Standard Sanction shall be an administrative penalty of:

(I) \$500 if lacking 5 hours or less;

(II) \$1,000 if lacking 6 to 10 hours; or

(III) \$2,000 if lacking more than 10 hours.

(H) Impairment of ability to practice may be either an aggravated administrative violation or a patient care violation, depending on the whether a violation of the standard of care has resulted from the impairment.

(i) Within the meaning of §164.051(a)(4) of the Act - inability to practice medicine with reasonable skill and safety to patients because of illness, drunkenness, excessive use of drugs, or a mental condition.

(ii) Standard Sanction: suspension of license until such time as the licensee can demonstrate that the licensee is safe and competent to practice medicine.

(iii) Alternate Standard Sanction: probation of suspension for 10 years under terms and conditions, including, but not limited to:

(I) drug testing;

(II) restrictions on practice;

(III) alcoholics anonymous/narcotics anonymous attendance;

(IV) psychiatric/psychological evaluation and treatment; and

(V) proficiency testing.

(iv) Chapter 180 of this title (relating to Texas Physician Health Program and Rehabilitation Orders) provides guidance on whether a licensee is eligible for and should be placed under a confidential rehabilitation order.

(I) Failure to maintain adequate medical records may be either an administrative violation or a patient care violation, depending on whether a patient was harmed because of the failure.

(i) Violation of:

(I) Section 164.051(a)(6) of the Act - professional failure to practice medicine consistent with the public health and welfare;

(II) Section 164.054 of the Act - additional requirements regarding drug records;

(III) Section 164.053(a)(2) of the Act - failure to keep complete and accurate records of purchases and disposals of controlled substances and dangerous drugs, and

(IV) Section 164.051(a)(3) of the Act - violation of board rules, including:

(-a-) board rule §165.1(a) of this title (relating to Medical Records) - failure to maintain adequate medical records; and

(-b-) board rule §170.3 of this title (relating to Authority of Physician to Prescribe for the Treatment of Pain) - prescribing guidelines for the treatment of pain.

(ii) Standard Sanction: probation for 2 years under terms and conditions, including, but not limited to:

(I) competency testing;

(II) directed CME;

(III) monitoring of practice; and

(IV) administrative penalty of \$2,000 per violation.

(J) Quality of Care is a patient care violation.

(i) Violations of:

(I) Section 164.051(a)(6) of the Act - failure to practice medicine in a professional manner consistent with the public health and welfare; and

(II) Section 164.051(a)(8) of the Act - repeated and meritorious medical malpractice claims.

(ii) Standard Sanction:

(I) The standard sanction, which shall apply in the case of a single patient with no substantial patient harm and no other aggravating or mitigating circumstances, shall be one or more of the following:

(-a-) limiting the practice of the person, or excluding one or more specified activities of medicine;

(-b-) proficiency testing;

(-c-) directed CME;

(-d-) monitoring of the practice;

(-e-) public reprimand; and

(-f-) administrative penalty of \$3,000 per violation.

(II) Standard sanction in a case involving patient harm or other aggravating factors shall be:

(-a-) suspension of license for 3 years;

(-b-) suspension may be probated after 90 days under terms and conditions similar to those described in subclause (I) of this clause, immediately preceding.

(K) Discipline by peers may be either an administrative violation or a patient care violation, depending on the facts underlying the disciplinary action.

(i) Within the meaning of §164.051(a)(7) of the Act.

(ii) Standard Sanction: See the applicable standard sanction for the violation of the Texas Medical Practice Act that most closely relates to the basis of the disciplinary action by peers. In addition, the licensee shall comply with all restrictions, conditions and terms imposed by the disciplinary action by peers.

(iii) Alternate Standard Sanction:

(I) public reprimand;

(II) comply with all restrictions, conditions and terms imposed by the disciplinary action by peers; and

(III) administrative penalty of \$1,000 per violation.

(L) Disciplined by another state or military may be either an administrative violation or a patient care violation, depending on the facts underlying the disciplinary action.

(i) Within the meaning of §164.051(a)(9) of the Act.

(ii) Standard Sanction: See the applicable standard sanction for the most similar violation of the Act. In addition, the licensee shall comply with all restrictions, conditions and terms imposed by the other state or military.

(iii) Alternate Standard Sanction:

(I) comply with all restrictions, conditions and terms imposed by the other state or military; and

(II) administrative penalty of \$1,000 per violation.

(iv) The standard sanction for a licensee whose license has been revoked by another state or who has voluntarily surrendered his license while an investigation or disciplinary action is pending shall be revocation of the license.

(M) Improper prescribing, dispensing, or administering of drugs is a patient care violation.

(i) Violation of:

(I) Section 164.053(a)(3) of the Act - prescribing or dispensing drugs to a drug abuser;

(II) Section 164.053(a)(5) of the Act - prescribing or administering drugs in a non therapeutic manner; and

(III) Section 164.053(a)(6) of the Act - prescribing or administering drugs in a manner inconsistent with the public health and welfare.

(ii) Standard Sanction: The standard sanction, which shall apply in the case of a single patient with no substantial patient harm and no other aggravating or mitigating circumstances, shall be:

(I) suspension of license for 2 years.

(II) suspension probated after 60 days under terms and conditions, including, but not limited to:

(-a-) restrictions on practice, including prescribing, administering controlled substances and dangerous drugs;

(-b-) proficiency testing;

(-c-) directed CME; and

(-d-) administrative penalty of \$2,000 per violation.

(N) Writing false or fictitious prescriptions is a patient care violation.

(i) Violation of §164.053(a)(4) of the Act.

(ii) Standard Sanction:

(I) suspension of license for 4 years;

(II) suspension probated after 90 days under terms and conditions, including, but not limited to:

(-a-) restrictions on practice including restrictions on prescribing, administering controlled substances and dangerous drugs;

(-b-) proficiency testing;

(-c-) directed CME; and

(-d-) administrative penalty of \$2,000 per violation.

(O) Fraudulent, improper billing practices is an aggravated administrative violation.

(i) Violation of §164.053(a)(7) of the Act.

(ii) Standard Sanction:

(I) suspension of license for 3 years;

(II) suspension probated after 90 days under terms and conditions, including, but not limited to:

(-a-) monitoring of practice, including billing practices;

(-b-) directed CME;

(-c-) restitution; and

(-d-) administrative penalty of \$3,000 per violation.

(P) Failing to adequately supervise subordinates and improper delegation is a patient care violation.

(i) Violation of:

(I) Section 164.053(a)(8) of the Act and

(II) Section 164.053(a)(9) of the Act.

(ii) Standard Sanction:

(I) suspension of license for 3 years;

(II) suspension probated after 60 days under terms and conditions, including, but not limited to:

(-a-) monitoring of practice;

(-b-) directed CME; and

(-c-) administrative penalty of \$2,000 per violation.

(Q) Failure to comply with the terms and conditions of a Board order may be either an aggravated administrative violation or a patient care violation, depending on the facts underlying the failure.

(i) Within the meaning of §164.103 of the Act - rescission of probation.

(ii) Standard Sanction:

(I) public reprimand;

(II) extension of the Board order by 6 months for each violation; and

(III) administrative penalty of \$2,000 per violation.

(iii) Unless the board finds that the facts warrant a less severe sanction, the license of a person who violates a Board order to abstain from the consumption of alcohol and/or drugs, as evidenced by a positive drug test or other proof, shall be revoked.

(R) Failure to report a health care liability claim is an administrative violation.

(i) Violation of §160.052(b) of the Act and §176.2 of this title (relating to Reporting Responsibilities).

(ii) Standard Sanction shall be \$500 for each violation.

(S) Failure to notify the board of change in practice or mailing address is an administrative violation.

(i) Violation of §166.1(d) of this title (relating to Physician Registration).

(ii) Standard Sanction shall be \$500.

(T) Failure to maintain drug logs as required by an agreed order is an administrative violation.

(i) Violation of §190.8(2)(A) of this title (relating to Violation Guidelines).

(ii) Standard sanction is \$2,000.

(U) Failure to display a "Notice Concerning Complaints" sign as required by §178.3 of this title (relating to Complaint Procedure Notification) is an administrative violation.

(i) Violation of §178.3 of this title.

(ii) Standard sanction shall be \$1,000.

(V) Use of misleading advertising with regard to board certification is an administrative violation.

(i) Violation of §164.4 of this title (relating to Board Certification).

(ii) Standard sanction shall be \$500.

(W) Reporting false or misleading information on an initial application for licensure or for licensure renewal is an administrative violation.

(i) Violation of §164.052(a)(1) of the Act.

(ii) Standard Sanction is \$1,000.

(X) For any violation of the Act that is not specifically mentioned in this rule, the board shall apply a sanction that generally follows the spirit and scheme of the sanctions stated in subparagraphs (A) - (W) of this paragraph.

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

Filed with the Office of the Secretary of State on November 9, 2009.

TRD-200905169

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: November 29, 2009

Proposal publication date: October 2, 2009

For further information, please call: (512) 305-7016

◆ ◆ ◆
CHAPTER 192. OFFICE-BASED ANESTHESIA
SERVICES AND PAIN MANAGEMENT CLINICS

22 TAC §§192.1, 192.4 - 192.7

The Texas Medical Board (Board) adopts amendments to §§192.1, 192.4, 192.5, and 192.6 and new §192.7, concerning Office-Based Anesthesia Services, without changes to the proposed text as published in the October 2, 2009, issue of the *Texas Register* (34 TexReg 6782) and will not be republished.

The amendment to §192.1, relating to Definitions, amends the definition of "anesthesia services" so that it is consistent with §162.102 of the Texas Occupations Code and defines "pain management clinic" pursuant to Senate Bill 911 passed by the 81st Legislature.

The amendment to §192.4, relating to Registration, establishes requirements for the certification of pain management clinics starting on September 1, 2010.

The amendment to §192.5, relating to Inspections, establishes the grounds on which the Texas Medical Board will inspect pain management clinics.

The amendment to §192.6, relating to Requests for Inspection and Advisory Opinion, clarifies that advisory opinions may be given in relation to office-based anesthesia services.

New §192.7, relating to Operation of Pain Management Clinics, sets out the requirements for the operation, staffing of personnel, standards of care, and patient billing procedures for pain management clinics that are subject to the Board's authority.

The Board received public written comments and several people appeared to testify at the public hearing held on November 6, 2009.

The Board received comments regarding §§192.1 and 192.4 - 192.7 from the Texas Pain Society, the Texas Society of Anesthesiologists, and the Joint Commission.

Comments number 1 and 2:

Texas Society of Anesthesiologists and Texas Pain Society commented that all rules related to pain management should be adopted under a separate chapter to avoid confusion with those rules that apply only to office-based anesthesia. Also, the Texas Pain Society commented that §192.7(f)(4) related to quality assurance procedures should provide specific requirements with regard to practice quality plans, urine drug screen policies, and period quality measures.

The Board has responded to this comment by agreeing that the proposed changes will be presented to the Board at a future meeting so that they may be adopted but due to the statutory mandate that the rules be adopted by March 1, 2010, no substantive changes can be made at this time. The Board believes that this revision will satisfy the concerns expressed by this comment.

Comment number 3:

The Joint Commission commented that pain management clinics accredited by the Joint Commission should be exempt from having to register with the Medical Board just as office-based anesthesia facilities are exempt from registration.

The Board disagrees with this comment. Under §162.102(7)(a) of the Texas Occupations Code, outpatient entities accredited by the Joint Commission are specifically exempt from having to comply with provisions of the Medical Practice Act that relate to office-based anesthesia facilities. However, under SB911 there is no similar exemption provision and therefore pain manage-

ment clinics accredited by the Joint Commission are subject to Chapter 167 of the Texas Occupations Code and Board Rules. For these reasons, the Board does not believe that any changes should be made to this proposed rule as published. The Board has adopted the amendments to this section as published, without changes.

The amendments and new section are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments and new section are also authorized by §167.001 et seq., Texas Occupations Code.

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

Filed with the Office of the Secretary of State on November 10, 2009.

TRD-200905210

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: November 30, 2009

Proposal publication date: October 2, 2009

For further information, please call: (512) 305-7016

CHAPTER 193. STANDING DELEGATION ORDERS

22 TAC §193.6, §193.7

The Texas Medical Board (Board) adopts amendments to §193.6 and §193.7, concerning Standing Delegation Orders, without changes to the proposed text as published in the October 2, 2009, issue of the *Texas Register* (34 TexReg 6785) and will not be republished.

The amendment to §193.6, relating to Delegation of the Carrying Out or Signing of Prescription Drug Orders to Physician Assistants and Advanced Practice Nurses, reflects changes passed during the 81st Legislative Session under Senate Bill No. 532. Specifically, the amendments change requirements relating to primary, alternate and facility-based practice sites; the number of nurse midwives and physician assistants to whom delegation in relation to obstetrical services is appropriate; registration requirements related to prescriptive delegation; and grounds for obtaining waivers regarding supervision and prescription delegation.

The amendment to §193.7, relating to Delegated Drug Therapy Management, based on Senate Bill No. 381 passed by the 81st Legislature, permits physicians to delegate to pharmacists at hospitals, hospital-based clinics, and academic institutions the management of a patient's drug therapy treatment under certain conditions.

No comments were received regarding adoption of the rules.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides author-

ity for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by §§157.101, 157.0511, 157.053, 157.054, 157.0541, 157.0542, 157.059, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on November 10, 2009.

TRD-200905211

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: November 30, 2009

Proposal publication date: October 2, 2009

For further information, please call: (512) 305-7016



CHAPTER 194. NON-CERTIFIED RADIOLOGIC TECHNICIANS

22 TAC §§194.2, 194.3, 194.5

The Texas Medical Board (Board) adopts amendments to §§194.2, 194.3 and 194.5, concerning Non-Certified Radiologic Technicians, without changes to the proposed text as published in the October 2, 2009, issue of the *Texas Register* (34 TexReg 6790) and will not be republished.

The amendment to §194.2, relating to Definitions, updates citations for rules adopted by the Texas Department of State Health Services (DSHS) that relate to non-certified technicians.

The amendment to §194.3, relating to Registration, updates citations for rules adopted by DSHS that relate to non-certified technicians and provides that a person who operates a bone densitometry unit(s) which utilizes x-radiation is not required to obtain a hardship exemption as long as the person is not performing radiologic procedures other than bone densitometry.

The amendment to §194.5, relating to Non-Certified Technician's Scope of Practice, updates citations for rules adopted by DSHS that relate to non-certified technicians.

The Board received public written comments and no one appeared to testify at the public hearing held on November 6, 2009. The following comments were received:

The Board received comments regarding §194.3 from the American Society of Radiologic Technologists.

Comment number 1:

The American Society of Radiologic Technologists (ASRT) commented that the Medical Board should not remove the hardship exemption process requirement for bone densitometry. ASRT believes the process provides certain safeguards and encourages individuals to hire individuals who are certified to do bone densitometry.

The Board disagrees with this comment. The hardship exemption process is established by DSHS and in November 2008,

DSHS removed the requirement as it relates to those performing only bone densitometry, but did establish training requirements for those performing bone densitometry. The Board's amendment to §194.3 merely complies with DSHS's rules. For these reasons, the Board does not believe that any changes should be made to this proposed rule as published. The Board has adopted the amendments to this section as published, without changes.

The Board received no public comments on §194.2 and §194.5.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by Chapter 601 of the Texas Occupations Code.

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

Filed with the Office of the Secretary of State on November 9, 2009.

TRD-200905181

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: November 29, 2009

Proposal publication date: October 2, 2009

For further information, please call: (512) 305-7016



PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.7

The Texas State Board of Examiners of Psychologists adopts amendments to §463.7, Criminal History Record Reports, with changes to the proposed text published in the September 18, 2009, issue of the *Texas Register* (34 TexReg 6412) and will be republished.

The amendments being adopted will establish the requirement that all licensees must provide a fingerprint criminal history record check to the Board.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

§463.7. *Criminal History Record Reports.*

(a) Before issuing a license, the Board will obtain or require the applicant to obtain a criminal history record report as determined by the Board.

(b) The Board will obtain updated criminal history record reports on all licensees quarterly from the Texas Department of Public Safety.

(c) The Board may obtain an updated criminal history record report at any time on a licensee alleged to have violated the Act or rules of the Board.

(d) Each licensee who was not required to submit a fingerprint criminal history record report as a condition of licensure must submit a fingerprint criminal history record report to the Board as a condition for renewal. This one-time renewal requirement begins for January 2011 renewals and will be phased in with approximately one-fourth of licensees required to submit their reports in the first calendar year and remaining licensees required to submit their reports in the following three calendar years as prescribed by the Board. A report must be received by the Board before the eligible licensee is allowed to renew the 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.

Filed with the Office of the Secretary of State on November 13, 2009.

TRD-200905236
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: December 3, 2009
Proposal publication date: September 18, 2009
For further information, please call: (512) 305-7700



CHAPTER 469. COMPLAINTS AND ENFORCEMENT

22 TAC §469.7

The Texas State Board of Examiners of Psychologists adopts amendments to §469.7, Persons with Criminal Backgrounds, without changes to the proposed text published in the September 18, 2009, issue of the *Texas Register* (34 TexReg 6413) and will not be republished.

The amendments being adopted are to ensure the protection and safety of the public.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

Filed with the Office of the Secretary of State on November 13, 2009.

TRD-200905237
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: December 3, 2009
Proposal publication date: September 18, 2009
For further information, please call: (512) 305-7700



CHAPTER 470. ADMINISTRATIVE PROCEDURE

22 TAC §470.2

The Texas State Board of Examiners of Psychologists adopts amendments to §470.2, Definitions, without changes to the proposed text published in the September 18, 2009, issue of the *Texas Register* (34 TexReg 6414) and will not be republished.

The amendments being adopted are to clarify the Board's status as a public health agency.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

Filed with the Office of the Secretary of State on November 13, 2009.

TRD-200905238
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: December 3, 2009
Proposal publication date: September 18, 2009
For further information, please call: (512) 305-7700



CHAPTER 473. FEES

22 TAC §473.5

The Texas State Board of Examiners of Psychologists adopts amendments to §473.5, Miscellaneous Fees (Not Refundable), without changes to the proposed text published in the September

18, 2009, issue of the *Texas Register* (34 TexReg 6415) and will not be republished.

The amendments being adopted to comply with new state law (Texas Occupations Code, Chapter 53, Subchapter D) requiring licensing entities to provide preliminary evaluations of eligibility for licensure for persons with criminal records.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

Filed with the Office of the Secretary of State on November 13, 2009.

TRD-200905239

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Effective date: December 3, 2009

Proposal publication date: September 18, 2009

For further information, please call: (512) 305-7700



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 91. PROGRAM SERVICES

SUBCHAPTER D. HEALTH CARE SERVICES

The Texas Youth Commission (TYC) adopts the repeal of §91.87 (concerning suicide alert explanation of terms), §91.88 (concerning suicide alert for secure programs), §91.89 (concerning suicide alert for non-secure programs), and §91.90 (concerning suicide alert for parole) without changes to the proposed text as published in the September 11, 2009, issue of the *Texas Register* (34 TexReg 6288).

TYC also adopts new §91.87 (concerning suicide alert definitions), §91.88 (concerning suicide alert for high restriction facilities), §91.89 (concerning suicide alert for medium restriction facilities), and §91.90 (concerning suicide prevention for parole) without changes to the proposed text as published in the September 11, 2009, issue of the *Texas Register* (34 TexReg 6288).

The justification for the new rules is the operation of a more effective, evidence-based process for screening youth for suicide risk and responding to suicidal behavior or ideation, as well as providing follow-up care and suicide prevention resources for youth on parole.

The repeal of §§91.87 - 91.90 allows for new rules to be published under the same numbers.

New §91.87 establishes definitions of terms used in TYC's suicide prevention policies.

New §91.88 establishes the process for suicide prevention by identification, assessment, treatment, and protection of youth that may be at risk for suicide at the orientation and assessment units and other high restriction facilities.

New §91.89 establishes the process for suicide prevention at medium restriction facilities by identification, assessment, treatment, and protection of youth that may be at risk for suicide.

New §91.90 establishes responsibilities for providing suicide prevention resources for youth on parole.

No comments were received regarding the repeals or adoption of the new rules.

37 TAC §§91.87 - 91.90

The repeals are adopted under Human Resources Code §61.034, which provides TYC with the authority to make rules appropriate to the proper accomplishment of its functions.

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

Filed with the Office of the Secretary of State on November 9, 2009.

TRD-200905173

Cheryl N. Townsend

Executive Director

Texas Youth Commission

Effective date: December 1, 2009

Proposal publication date: September 11, 2009

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



37 TAC §§91.87 - 91.90

The new rules are adopted under Human Resources Code §61.034, which provides TYC with the authority to make rules appropriate to the proper accomplishment of its functions. The new rules are also adopted under §61.075, which provides TYC with the authority to order a committed child's confinement under conditions it believes best designed for the child's welfare and the interests of the public, as well as §61.076, which provides TYC with the responsibility to provide any medical or psychiatric treatment that is necessary.

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

Filed with the Office of the Secretary of State on November 9, 2009.

TRD-200905174

Cheryl K. Townsend
Executive Director
Texas Youth Commission
Effective date: December 1, 2009
Proposal publication date: September 11, 2009
For further information, please call: (512) 424-6014



CHAPTER 97. SECURITY AND CONTROL

The Texas Youth Commission (TYC) adopts the repeal of §97.45 (concerning protective custody) without changes to the proposed text as published in the September 11, 2009, issue of the *Texas Register* (34 TexReg 6297).

TYC also adopts new §97.45 (concerning protective custody for youth at risk of self-harm) without changes to the proposed text as published in the September 11, 2009, issue of the *Texas Register* (34 TexReg 6297).

The justification for the new rule is to provide for the safety of youth committed to TYC who are in need of protective custody to protect against self-harm.

The repeal of §97.45 allows for a new rule to be published in its place.

New §97.45 provides for a protective custody program for the temporary placement of youth who, as determined by a mental health professional, are at risk of serious harm to themselves. The new rule includes provisions for increased oversight of the program at the local and central office levels.

No comments were received regarding the repeal or adoption of the new rule.

SUBCHAPTER A. SECURITY AND CONTROL

37 TAC §97.45

The repealed rule is adopted under Human Resources Code §61.034, which provides TYC with the authority to make rules appropriate to the proper accomplishment of its functions.

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

Filed with the Office of the Secretary of State on November 9, 2009.

TRD-200905175
Cheryl K. Townsend
Executive Director
Texas Youth Commission
Effective date: December 1, 2009
Proposal publication date: September 11, 2009
For further information, please call: (512) 424-6014



37 TAC §97.45

The new rule is adopted under Human Resources Code §61.075, which provides TYC with the authority to order a committed child's confinement under conditions it believes best designed for the child's welfare and the interests of the public.

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

Filed with the Office of the Secretary of State on November 9, 2009.

TRD-200905176
Cheryl K. Townsend
Executive Director
Texas Youth Commission
Effective date: December 1, 2009
Proposal publication date: September 11, 2009
For further information, please call: (512) 424-6014



REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Agency Rule Review Plan

State Securities Board

Title 7, Part 7

TRD-200905296

Filed: November 16, 2009



Proposed Rule Review

Texas Department of Agriculture

Title 4, Part 1

The Texas Department of Agriculture (the department) proposes to review Title 4, Texas Administrative Code, Part 1, Chapter 5, concerning Fuel Quality, and Chapter 6, concerning Seed Arbitration, pursuant to the Texas Government Code, §2001.039. Section 2001.039 requires state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the original justification for the rules continues to exist.

As part of its review, the department is proposing amendments to Chapter 5, §5.1, relating to Definitions, §5.3, relating to Automotive Fuel Rating, §5.4, relating to Records, §5.6, relating to Fees, and new §5.7,

relating to Minimum Motor Fuel Standards. The proposed amendments and new section are published in the proposed rule section of this issue of the *Texas Register*.

The assessment of Chapter 5 and Chapter 6 by the department at this time indicates that, with the exception of the proposed amendments to §5.1, 5.3, 5.4 and 5.6 and the addition of new §5.7, the reason for readopting without changes all sections in Chapters 5 and 6 continues to exist.

The department is accepting comment on the review of Chapters 5 and 6. Comments on the review must be submitted within 30 days following the publication of this notice in the *Texas Register*. Comments may be submitted to David Kostroun, Assistant Commissioner for Regulatory Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

TRD-200905312

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Filed: November 18, 2009



TABLES &

GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 10 TAC §60.121(l)

Noncompliance Event	Uncorrected Points	Corrected Points	Programs	If HTC, on Form 8823?
Major property condition violations	Material Noncompliance	10	All programs	Yes
Pattern of minor property condition violations	10	5	All programs	Yes
Administrative reporting of property condition violations	0	0	HTC	Yes
Owner refused to lease to a holder of rental assistance certificate/voucher because of the status of the prospective tenant as such a holder	Material Noncompliance	10	See §60.112	Yes
Owner failed to approve and distribute an Affirmative Marketing Plan as required under §60.112 of this chapter	10	3	See §60.112	No
Development failed to comply with requirements limiting minimum income standards for Section 8 residents.	10	3	See §60.112	No
Development is not available to general public	10	0	HTC	Yes
HUD or DOJ notification of possible Fair Housing Act violation	0	0	HTC	Yes
Determination of a violation under the Fair Housing Act	Material Noncompliance	10	All programs	Yes
Development is out of compliance and never expected to comply/ Foreclosure	Material Noncompliance	NA/No correction possible	All programs	Yes
Owner did not allow on-site monitoring review	Material Noncompliance	5	All programs	Yes
LURA not in effect	Material Noncompliance	5	All programs	Yes
Development failed to meet minimum set aside	20	10	HTC Bonds	Yes
No evidence of, or failure to certify to, material participation of a non-profit or HUB, if required by the Land Use Restriction Agreement	10	3	HTC	Yes
Development failed to meet additional State required rent and occupancy restrictions	10	3	All programs	No

Noncompliance Event	Uncorrected Points	Corrected Points	Programs	If HTC, on Form 8823?
The Development failed to provide required supportive services as promised at Application	10	3	HTC Bonds	No
The Development failed to provide housing to the elderly as promised at Application	10	3	All programs	No
Failure to provide special needs housing	10	3	All programs	No
Changes in Eligible Basis or Applicable Percentage	3	NA, No correction possible	HTC	Yes
Failure to submit part or all of the AOCR or failure to submit any other annual, monthly, or quarterly report required by the Department	10	3	All programs	Yes
Utility Allowance not calculated properly	20	10	All programs	Yes
Owner failed to execute required lease provisions, including language required by §60.110 or exclude prohibited lease language	10	3	HTC HOME	No
Failure to provide annual Housing Quality Standards inspection	10	3	HOME	NA
Development has failed to establish and maintain a reserve account in accordance with §1.37 of this title	Material Noncompliance	10	All programs	No
Development substantially changed the scope of services as presented at initial Application without prior Department approval	10	3	HTC	No
Change in Ownership or General Partner without proper notification to and approval of Department	10	3	All programs	No
Failure to provide a notary public as promised at Application	10	3	HTC	No
Violations of the Unit Vacancy Rule	3	1	HTC	Yes
Casualty loss	0	0	All programs	Yes

Figure: 10 TAC §60.121(m)

Noncompliance Event	Uncorrected Points	Corrected Points	Programs	If HTC, on Form 8823?
Unit not leased to Low Income Household	5	1	All programs	Yes
Low Income Units occupied by nonqualified full-time students	3	1	HTC during the compliance period and Bond	Yes
Low Income Units used on transient basis	3	1	HTC Bond	Yes
Household income increased above the re-certification limit and an available Unit was rented to a market tenant	3	1	HTC During the compliance period Bonds HOME HTF	Yes
Gross rent exceeds the highest rent allowed under the LURA or other deed restriction	5	1	All programs	Yes
Failure to maintain or provide tenant income certification and documentation	3	1	All programs	Yes
Unit not available for rent	3	1	All programs	Yes
Failure to maintain or provide Annual Eligibility Certification	3	1	All programs	No
Development evicted or terminated the tenancy of a low income tenant for other than good cause	10	3	HTC HOME	Yes
Household income increased above 80% at recertification and Owner failed to properly determine rent	3	1	HOME	NA

**Texas Assessment of Knowledge and Skills (TAKS) Scale Score Standards
Horizontal Scale Scores Required to Achieve the "Met Standard" Level
At the Standard Equivalent to the Panel's Recommendation**

Grade	Mathematics		Reading		Writing / ELA *		Social Studies		Science	
	Total TAKS Test Items	TAKS Scale Score Cut	Total TAKS Test Items	TAKS Scale Score Cut	Total TAKS Test Items	TAKS Scale Score Cut	Total TAKS Test Items	TAKS Scale Score Cut	Total TAKS Test Items	TAKS Scale Score Cut
3										
4			32	2100						
5							40	2100		
6										
7			44	2100						
8							48	2100	50	2100
9	52	2100	42	2100						
10	56	2100	73	2100	50	2100	55	2100	55	2100
11	60	2100	73	2100	55	2100	55	2100	55	2100
Spanish-Version Tests										
3										
4			32	2100						
5									40	2100
6										

* An essay rating of 2 or higher is required for Met Standard on the grades 4 and 7 writing tests and the grades 10 and 11 English language arts tests.

**Texas Assessment of Knowledge and Skills (TAKS) Scale Score Standards
Vertical Scale Scores Required to Achieve the "Met Standard" Level
At the Standard Equivalent to the Panel's Recommendation**

Grade	Mathematics		Reading	
	Total TAKS Test Items	TAKS Scale Score Cut	Total TAKS Test Items	TAKS Scale Score Cut
3	40	500	36	483
4	42	554	40	554
5	44	603	42	620
6	46	637	42	644
7	48	670	48	670
8	50	700	48	700
Spanish-Version Tests				
3	40	503	36	503
4	42	555	40	555
5	44	627	42	623
6	46	650	42	650

**Texas Assessment of Knowledge and Skills (TAKS) Scale Score Standards
Vertical Scale Scores Required to Achieve Commended Performance**

Grade	Mathematics		Reading	
	Total TAKS Test Items	TAKS Scale Score Cut	Total TAKS Test Items	TAKS Scale Score Cut
3	40	640	36	659
4	42	698	40	725
5	44	738	42	763
6	46	783	42	797
7	48	823	48	829
8	50	850	48	850
Spanish-Version Tests				
3	40	649	36	657
4	42	692	40	694
5	44	755	42	744
6	46	775	42	775

Figure: 25 TAC §265.306(c)

Disinfectant and Cyanuric Acid Levels	Minimum	Ideal	Maximum
Free Available Chlorine	1.0 ppm	3.0 – 5.0 ppm	8.0 ppm
Bromine	2.5 ppm	5.5 – 7.5 ppm	12.0 ppm
Combined Chlorine	0.0 ppm	0.0 ppm	0.2 ppm
Cyanuric Acid (Stabilizer) – Out-of-Door Facilities Only	0.0 ppm	20 ppm	60 ppm
Cyanuric Acid (Stabilizer) – Indoor Facilities	0.0 ppm	0.0 ppm	0.0 ppm

Figure: 25 TAC §265.306(d)

pH Levels	Minimum	Ideal	Maximum
pH	Not less than 7.0	7.4 – 7.6	7.8

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 State Affordable Housing Corporation

Notice of Request for Proposals

Notice is hereby given of a Request for Proposals (RFP) by TSAHC to financial institutions that can provide depository services for the Corporation. Financial institutions interested in providing depository services must submit all of the materials listed in the RFP which can be found on the Corporation's website at www.tsahc.org.

The deadline for submissions in response to this RFP is Friday, December 18, 2009. No proposal will be accepted after 3:00 p.m. on that date. Neither faxed nor emailed responses will be accepted. For questions or comments, please contact Melinda Smith at (512) 423-2412 or by email at msmith@tsahc.org.

TRD-200905309

David Long

President

Texas State Affordable Housing Corporation

Filed: November 18, 2009



Replacement Reserve Guidelines Now Available for Public Comment

The Texas State Affordable Housing Corporation presents for public comment its draft of the Replacement Reserve Guidelines. A copy of the Replacement Reserve Guidelines may be found on the Corporation's website at www.tsahc.org. The public comment period for the Corporation's Replacement Reserve Guidelines is Friday November 27, 2009 through December 4, 2009.

Written comment may be sent to Joshua Schirr, Manager of Asset Oversight and Compliance at 2200 E. Martin Luther King Jr. Blvd., Austin, TX 78702 or by email at jschirr@tsahc.org.

TRD-200905302

David Long

President

Texas State Affordable Housing Corporation

Filed: November 17, 2009



Ark-Tex Council of Governments

Invitation for Bid

INVITATION: The purpose of this Invitation for Bid is the Design and Construction of a Transportation Administration Office Building, Parking Lot and Landscaping of building area.

PROCURING AGENCY: Ark-Tex Council of Governments located at 4808 Elizabeth Street, Texarkana, Texas 75503

MANDATORY MEETING: All respondents to this Invitation For Bid are REQUIRED to attend a Pre-Bid Conference to be held Friday, December 4, 2009, at 10:00 a.m. at the Ark-Tex Council of Governments, 4808 Elizabeth Street, Texarkana, Texas 75503.

RESPONDENT REQUIREMENT: All Respondents to this Invitation for Bid must be fully bonded and must have the ability to comply with the *Davis Bacon Act of 1931*, that established the requirements for paying the prevailing wages on public works projects and have the ability to complete any and all reporting data subject to the Act.

CONTACT: Point of Contact for this design/build construction project is Mr. Bill Moss, IT Manager, Ark-Tex Council of Governments, 4808 Elizabeth Street, Texarkana, Texas 75503, phone number (903) 832-8636.

DBE: Disadvantaged Business Enterprise (DBE) participation for this solicitation is encouraged.

FUNDING: Funding for this construction project is provided by the *American Recovery and Reinvestment Act of 2009*.

TRD-200905305

L.D. Williamson

Executive Director

Ark-Tex Council of Governments

Filed: November 17, 2009



Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of November 6, 2009, through November 12, 2009. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for this activity extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on November 18, 2009. The public comment period for this project will close at 5:00 p.m. on December 18, 2009.

FEDERAL AGENCY ACTIONS:

Applicant: Davis Petroleum Corporation; Location: The project is located in Sabine Lake, near Port Arthur in Jefferson County, Texas and near the Sabine National Wildlife Refuge in Cameron Parish, Louisiana. The project can be located on the U.S.G.S. quadrangle map titled: West of Greens Bayou, Texas. Approximate UTM Coordinates in NAD 83 (meters): Well No. 1 Zone 15; Easting: 423755.3; Northing: 3309478, Well No. 2 Zone 15; Easting: 423655; Northing: 3308604, Tie In Point Zone 15; Easting: 420081.5; Northing: 3312754. Project Description: The applicant proposes to drill two wells with a barge-mounted drilling rig that will be connected via the installation of a 6-inch-diameter sales pipeline. Additionally, Well

No. 1 will be connected by the installation of a secondary 6-inch-diameter sales pipeline to tie into an existing pipeline permitted under Department of the Army Permit 23402. Wells No. 1 and 2, and the associated walkways and production platforms, will be drilled within Louisiana State Lease No. 19438 and have an impact of 0.14 acre each to Sabine Lake. CCC Project No.: 10-0017-F1. Type of Application: U.S.A.C.E. permit application # SWG-2009-00668 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Matagorda County Navigation District Number 1; Location: The project is located in Tres Palacios Bay, within existing Turning Basins 1, 2, 3, 4, and South Marina, at the Port of Palacios, Matagorda County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Palacios, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 770972; Northing: 3177849. Project Description: The applicant proposes to conduct routine maintenance dredging for a period of 10 years in waters of the U.S. at the Port of Palacios Facilities and the Turning Basins Nos. 1 and 2, for the purpose of maintaining navigation within these basins. The Port's Facilities consist of South Bay Marina, Turning Basins 3, 4, and the adjacent slips and berthing areas to Turning Basins 1, 2, 3, and 4. CCC Project No.: 10-0018-F1. Type of Application: U.S.A.C.E. permit application # SWG-2002-00167 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above, including a copy of the consistency certifications for inspection, may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200905313
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: November 18, 2009

◆ ◆ ◆
Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/23/09 - 11/29/09 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 11/23/09 - 11/29/09 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 12/01/09 - 12/31/09 is 5.00% for Consumer/Agricultural/Commercial/credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 12/01/09 - 12/31/09 is 5.00% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

TRD-200905299
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: November 17, 2009

◆ ◆ ◆
Credit Union Department

Application to Amend Articles of Incorporation

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration:

An application for a name change was received from Pegasus Credit Union, Dallas, Texas. The credit union is proposing to change its name to Pegasus Community Credit Union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200905307
Harold E. Feeney
Commissioner
Credit Union Department
Filed: November 18, 2009

◆ ◆ ◆
Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department (Department) and are under consideration:

An application was received from Cabot & NOI Employees Credit Union, Pampa, Texas to expand its field of membership. The proposal would permit employees of Fluid Compressor Partners, 2538 W. Kentucky, Pampa, TX 79065, to be eligible for membership in the credit union.

An application was received from Winkler County Credit Union, Kermit, Texas to expand its field of membership. The proposal would permit persons who live, work, worship, attend school, or do business in Winkler, Loving, Reeves, Brewster, Jeff Davis, Presidio, and Terrell Counties, Texas, to be eligible for membership in the credit union.

An application was received from EDS Credit Union, Plano, Texas (#1) to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school within a ten-mile radius of the following credit union location: 1300 W. Warm Springs Road, Henderson, NV 89014, to be eligible for membership in the credit union.

An application was received from EDS Credit Union, Plano, Texas (#2) to expand its field of membership. The proposal would permit persons

who live, work, worship, or attend school within a ten-mile radius of the following branch location: 3930 W. Craig, Suite #101, North Las Vegas, NV 89032, to be eligible for membership in the credit union.

An application was received from EDS Credit Union, Plano, Texas (#3) to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school within a ten-mile radius of the following credit union location: 5695 E. Charleston, Suite #106, Las Vegas, NV 89142, to be eligible for membership in the credit union.

An application was received from EDS Credit Union, Plano, Texas (#4) to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school within a ten-mile radius of the following branch location: 6265 S. Rainbow Blvd., Las Vegas, NV 89118, to be eligible for membership in the credit union.

An application was received from EDS Credit Union, Plano, Texas (#5) to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school within a ten-mile radius of the following branch location: 7312 W. Cheyenne, Suite #2, Las Vegas, NV 89129, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at <http://www.tcup.state.tx.us/applications.html>. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200905306
Harold E. Feeney
Commissioner
Credit Union Department
Filed: November 18, 2009



Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Applications to Expand Field of Membership - Approved

Memorial Hermann Credit Union, Houston, Texas - See *Texas Register* issue, dated August 28, 2009.

LibertyOne Credit Union, Dallas, Texas - See *Texas Register* issue, dated August 28, 2009.

Articles of Incorporation - Approved

Abilene State School Credit Union, Abilene, Texas - See *Texas Register* issue, dated September 25, 2009.

TRD-200905308
Harold E. Feeney
Commissioner
Credit Union Department
Filed: November 18, 2009



Employees Retirement System of Texas

Contract Award Announcement

This contract award notice is being filed by the Employees Retirement System of Texas ("ERS"), in relation to a contract award to provide a comprehensive risk reporting service for fixed income portfolio analysis and reporting with enterprise-wide risk management capabilities. The contractor is BlackRock Financial Management, Inc., 40 East 52nd Street, New York, New York 10022. ERS will pay a risk reporting fee comprised of a base fee on a certain level of assets and a percentage fee on any assets in excess of that that level. ERS may also pay portfolio fees if a certain number of portfolios are measured and OTC derivative fees if such assets are included in the reports. The contract was executed on October 23, 2009 and the term of the contract is from September 1, 2009 through August 31, 2011.

TRD-200905229
Paula A. Jones
General Counsel and Chief Compliance Office
Employees Retirement System of Texas
Filed: November 12, 2009



Contract Award Announcement

This contract award notice is being filed by the Employees Retirement System of Texas ("ERS"), in relation to a contract award for an investment product for the TexaSaver 401(k) Plan and the TexaSaver 457 Plan (collectively, the "TexaSaver Program"). The contractor is Barclays Global Investors, N.A. ("Barclays"), 400 Howard Street, San Francisco, California 94105. Barclays will charge (i) a flat fee of 10 basis points of the invested TexaSaver Program participant balances for its services as an investment manager of a bond index fund ("Bond Fund"); and (ii) certain administrative fees, which shall not exceed 2 basis points of the invested TexaSaver Program participant balances, pursuant to the terms of the contract. The contract was executed effective October 26, 2009, and the term of the contract continues until terminated pursuant to the terms of the contract. Barclays will provide monthly and other reporting, as requested by ERS, on performance returns and details of the Bond Fund.

TRD-200905230
Paula A. Jones
General Counsel and Chief Compliance Office
Employees Retirement System of Texas
Filed: November 12, 2009



Request for Applications

Texas Employees Group Benefits Program Health Maintenance Organizations

In accordance with §1551.213 and §1551.214 of the Texas Insurance Code, the Employees Retirement System of Texas ("ERS") is issuing a Request for Application ("RFA") from qualified Health Maintenance Organizations ("HMOs") to provide services within their approved service areas in Texas under the Texas Employees Group Benefits Program ("GBP"), during Fiscal Year 2011, beginning September 1, 2010 through August 31, 2011. The locations in Texas for which applications may be made are included in the RFA. HMOs shall provide the level of benefits required in the RFA and meet other requirements.

An HMO wishing to submit an application to this request must meet at least the following minimum qualifications: 1) have a current Certificate of Authority from the Texas Department of Insurance, 2) have been providing managed care services in the service area for which the application is made at least since March 1, 2009, and 3) demon-

strate that it has a provider network in the proposed service area, as of the due date of the application, adequate to provide health care to GBP participants. The RFA will be available on or after December 4, 2009 from the ERS' website, and all applications must be received at ERS by 12:00 Noon (CT) on January 8, 2010. To access the RFA from the website, qualified HMOs shall email their request to: ivendorquestions@ers.state.tx.us. The email request shall include the HMO's full legal name, street address, as well as phone and fax numbers of an immediate HMO contact. Upon receipt of your emailed request, a user ID and password will be issued to the requesting HMO that will permit access to the secured RFA. General questions concerning the RFA shall be emailed to: ivendorquestions@ers.state.tx.us. Inquiries and responses, if applicable, are frequently updated. The RFA will be discussed at an HMO web-based bidder's conference on December 16, 2009, beginning at 3:00 p.m. (CT). The registration deadline for conference participation is 4:00 p.m. (CT) on December 11, 2009. HMOs may access ERS' website for details regarding the web-based conference by selecting the Vendor link.

The ERS Board of Trustees is not required to select the lowest bid but shall take into consideration other relevant criteria, including ability to service contracts, past experience, and financial ability. ERS reserves the right to select none, one, or more than one HMO per service area when it is determined that such action would be in the best interest of ERS, the GBP, its participants or the state of Texas. ERS reserves the right to reject any or all applications and call for new applications if deemed by ERS to be in the best interests of ERS, the GBP, its participants or the state of Texas. ERS also reserves the right to reject any application submitted that does not fully comply with the RFA's instructions and criteria. ERS is under no legal requirement to execute a contract on the basis of this notice or upon issuance of the RFA and will not pay any costs incurred by any entity in responding to this notice or the RFA or in connection with the preparation thereof. ERS specifically reserves the right to vary all provisions set forth in the RFA and/or contract at any time prior to execution of a contract where ERS deems it to be in the best interest of ERS, the GBP, its participants or the state of Texas.

TRD-200905234

Paula A. Jones

General Counsel and Chief Compliance Officer

Employees Retirement System of Texas

Filed: November 13, 2009



Request for Proposal - Actuarial Audit Services

The Employees Retirement System of Texas (ERS) is soliciting responses to this Request for Proposal (RFP) for an audit of its actuarial consultant. The purpose of this audit is to review the actuarial work performed by ERS' consulting pension actuary, Buck Consultants, to assure that the actuarial condition of the fund is being measured as accurately as possible. ERS is a defined benefit public pension plan. ERS consists of four retirement plans: three that are funded (ERS, Judicial Retirement System of Texas - Plan Two, and Law Enforcement and Custodial Officer Supplemental Retirement Fund of the Employees Retirement System of Texas) and one pay-as-you-go plan (Judicial Retirement System of Texas - Plan One).

Firms wishing to respond to the RFP must be professional actuarial services firms that provide actuarial valuation, experience investigations, actuarial audits, and pension consulting services. The firm must have been in existence as a business entity performing such services for a minimum of five (5) years. The firm must have all necessary permits, licenses, and professional credentials. Appropriate levels and types of fidelity, directors' and officers' or other applicable liability in-

urance must be in full force at the time the response is submitted and throughout the term of the contract. The principal actuary performing the review must be a Fellow of the Society of Actuaries and an enrolled actuary. The principal actuary performing the review must have a minimum of ten (10) years of experience as an actuary providing pension consulting services, experience analysis, and valuation assignments for public retirement systems with at least 100,000 members and annuitants. Any supporting actuary shall have five (5) years of experience as an actuary providing pension consulting services, experience analysis, and valuation assignments for public retirement systems with at least 10,000 members and annuitants. The firm must provide its own work facilities, equipment, supplies and support staff to perform the required services.

ERS will base its evaluation and selection of the firm for the review on the factors and criteria outlined in this notice and in the RFP, including, but not limited to the following, which are not necessarily listed in order of priority: compliance with the RFP; qualifications of the proposed actuarial staff; technical experience, including experience with actuarial audits of other large public pension systems and experience in providing actuarial services to other large public pension systems; the quality of the response, including the demonstration of a clear understanding of the scope of work as well as the appropriateness and adequacy of proposed procedures; the cost of the review; and other factors deemed appropriate by ERS.

ERS reserves the right to reject any response submitted which does not meet the criteria specified in this notice and in the RFP. ERS is under no legal requirement to execute a contract on the basis of this notice. ERS will not pay any costs incurred by any firm in responding to this notice or RFP or in connection with the preparation thereof.

A copy of the complete RFP can be obtained from ERS' website on or after December 2, 2009 by going to: http://www.ers.state.tx.us/business/bid_opportunities.aspx. Questions should be submitted to: purchasing-all@ers.state.tx.us. The deadline to submit responses is **3:00 p.m. CST on December 22, 2009**.

TRD-200905280

Paula A. Jones

General Counsel and Chief Compliance Officer

Employees Retirement System of Texas

Filed: November 16, 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 **December 28, 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 December 28, 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: Attoyac Construction, LLC; DOCKET NUMBER: 2009-1239-MLM-E; IDENTIFIER: RN105726723; LOCATION: San Augustine, San Augustine County; TYPE OF FACILITY: construction business; RULE VIOLATED: 30 Texas Administrative Code (TAC) §330.15(c), by failing to prevent the unauthorized discharge of municipal solid waste; 30 TAC §334.75(b), by failing to contain and immediately clean up a spill or overflow of any petroleum substance or any petroleum product from an aboveground storage tank (AST) that is less than 25 gallons; 30 TAC §334.127(a), by failing to obtain an AST delivery certificate by submitting a properly completed AST registration and self-certification form; 30 TAC §334.125(b), by failing to make available to a common carrier a valid, current TCEQ delivery certificate; 30 TAC §324.6 and 40 Code of Federal Regulations (CFR) §279.22(c)(1), by failing to label or mark containers used to store used oil with the words "Used Oil"; and 30 TAC §324.6 and 40 CFR §279.22(d), by failing to stop a release of used oil, clean up and properly manage the released used oil, and repair or replace any leaking used oil storage containers or tanks prior to returning them to service; PENALTY: \$8,750; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: Ha Van Nguyen dba Austin Aqua System; DOCKET NUMBER: 2009-1125-PWS-E; IDENTIFIER: RN101197986; LOCATION: Burnet, Burnet County; TYPE OF FACILITY: public water supply (PWS); RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(ii) and §290.122(c)(2)(A) and Texas Health and Safety Code (THSC), §341.033(d), by failing to collect routine distribution water samples for coliform analysis and by failing to provide public notification of the failure to sample; 30 TAC §290.109(c)(2)(F) and §290.122(c)(2)(A) and THSC, §341.033(d), by failing to collect at least five routine distribution coliform samples during the months following a total coliform-positive sample result and by failing to provide public notice of the failure to sample; 30 TAC §290.109(f)(3) and §290.122(b)(2)(A) and THSC, §341.031(a), by failing to comply with the maximum contaminant level for total coliform and by failing to provide public notice of the exceedances; and 30 TAC §290.109(c)(3)(A)(ii) and §290.122(c)(2)(A), by failing to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive result for a routine coliform sample and by failing to provide public notice of the failure to collect repeat distribution samples; PENALTY: \$4,142; ENFORCEMENT COORDINATOR: Andrea Linson-Mgbeoduru, (512) 239-1482; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(3) COMPANY: Blue Sky Business Corporation dba Little Buddy 3; DOCKET NUMBER: 2009-1056-PST-E; IDENTIFIER: RN102867934; LOCATION: Texas City, Galveston 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; and 30 TAC §115.246(6) and THSC, §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for review upon request by agency personnel; PENALTY: \$3,983; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: City of Brazoria; DOCKET NUMBER: 2009-1132-MWD-E; IDENTIFIER: RN101613552; LOCATION: Brazoria County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014581001, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, TCEQ Agreed Order Docket Number 2006-0502-MWD-E, Ordering Provision Number 2, and the Code, §26.121(a), by failing to comply with the permit effluent limits for ammonia nitrogen, five-day carbonaceous oxygen demand, total suspended solids (TSS), dissolved oxygen, and flow; PENALTY: \$38,420; Supplemental Environmental Project (SEP) offset amount of \$38,420 applied to Brazoria County - Wastewater Assistance for Low-Income Homeowners; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: CENTRAL NORTH CONSTRUCTION, LLC; DOCKET NUMBER: 2009-1214-WR-E; IDENTIFIER: RN105757025; LOCATION: Navarro County; TYPE OF FACILITY: commercial landscape farm; RULE VIOLATED: 30 TAC §297.11 and the Code, §11.121, by failing to obtain a water rights permit prior to diverting, storing, impounding, taking, or using water of the state; PENALTY: \$900; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Coston & Son, Inc.; DOCKET NUMBER: 2009-1220-IWD-E; IDENTIFIER: RN101874030; LOCATION: Paris, Lamar County; TYPE OF FACILITY: ready mix concrete plant; RULE VIOLATED: 30 TAC §305.125(1), TCEQ General Permit Number TXG110508, Part III, Section A, and the Code, §26.121(a), by failing to comply with the permit effluent limits for pH and TSS; PENALTY: \$5,880; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(7) COMPANY: DCP Midstream, LP; DOCKET NUMBER: 2009-0994-AIR-E; IDENTIFIER: RN100219278; LOCATION: Midland, Crockett County; TYPE OF FACILITY: natural gas compressing and sweetening plant; RULE VIOLATED: 30 TAC §116.115(c), New Source Review (NSR) Permit Number 18370, Special Condition (SC) Numbers 6 and 9, and THSC, §382.085(b), by failing to measure the hydrogen sulfide content; PENALTY: \$8,400; SEP offset amount of \$3,360 applied to Texas Association of Resource Conservation and Development Areas, Inc. (RC&D) - Clean School Buses; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(8) COMPANY: City of Gregory; DOCKET NUMBER: 2009-1197-WQ-E; IDENTIFIER: RN105652937; LOCATION: Gregory, San Patricio County; TYPE OF FACILITY: municipal separate storm sewer system (MS4); RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 CFR §122.26(a), by failing to obtain authorization to discharge storm water under a TPDES Phase II MS4 general permit; PENALTY: \$2,100; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(9) COMPANY: HFOTCO, LLC; DOCKET NUMBER: 2009-1429-AIR-E; IDENTIFIER: RN100223445; LOCATION: Houston, Harris County; TYPE OF FACILITY: fuel terminal; RULE VIOLATED: 30 TAC §122.145(2)(C), Federal Operating Permit (FOP) Number O-01033, General Terms and Conditions (GTC), and THSC, §382.085(b), by failing to submit a deviation report; PENALTY: \$2,125; ENFORCEMENT COORDINATOR: Martina Kusniadi, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: Hong & Taft, Inc. dba H & T Texaco; DOCKET NUMBER: 2009-1281-PST-E; IDENTIFIER: RN101827616; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment and vapor space manifold and dynamic back pressure; PENALTY: \$3,702; ENFORCEMENT COORDINATOR: John Shelton, (512) 239-2563; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: Huntsman Petrochemicals Corporation; DOCKET NUMBER: 2009-0894-AIR-E; IDENTIFIER: RN100219252; LOCATION: Port Neches, Jefferson County; TYPE OF FACILITY: petrochemical manufacturing plant; RULE VIOLATED: 30 TAC §122.121 and §122.133(2), FOP Number O-01322, GTC, and THSC, §382.085(b), by failing to submit a Title V permit renewal application; 30 TAC §116.115(c), NSR Permit Number 20160, SC Numbers 1 and 17, and THSC, §382.085(b), by failing to prevent unauthorized emissions and exceeding the 0.8 parts per million by weight volatile organic compound concentration limit in the water returning to the cooling tower; and 30 TAC §116.115(c), NSR Permit Number 20160, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$68,725; SEP offset amount of \$27,490 applied to Southeast Texas Regional Planning Commission - Southeast Texas Regional Air Monitoring Network Ambient Air Monitoring Station; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(12) COMPANY: Harold Ridlehuber dba J & R Auto; DOCKET NUMBER: 2009-1022-MLM-E; IDENTIFIER: RN100546324; LOCATION: Hillsboro, Hill County; TYPE OF FACILITY: metal parts coating and automotive oil change; RULE VIOLATED: 30 TAC §335.4, by failing to prevent the unauthorized discharge of industrial solid waste; 30 TAC §334.7(a)(1) and the Code, §26.346, by failing to register all underground storage tanks (USTs) in existence on or after September 1, 1987, with the commission; 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; and 30 TAC §334.54(b)(2), by failing to maintain all piping, pumps, manways, and other ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; PENALTY: \$4,725; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(13) COMPANY: Lillie's Kitchen & Store, LLC; DOCKET NUMBER: 2009-1518-PWS-E; IDENTIFIER: RN105692586; LOCATION: Val Verde County; TYPE OF FACILITY: restaurant and store with a PWS; RULE VIOLATED: 30 TAC §290.41(c)(1)(A), by failing to locate the facility's well at least 150 feet away from an underground liquid petroleum pipeline; and 30 TAC §290.41(c)(3)(A), by failing to submit well completion data to the commission for review and approval prior to placing the well into service; PENALTY:

\$367; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3100; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(14) COMPANY: MARYEM SHAMS, INC. dba Johnny's Food Mart; DOCKET NUMBER: 2009-0710-PST-E; IDENTIFIER: RN101661338; LOCATION: Waco, McLennan County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(c)(4) and the Code, §26.3475(d), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; PENALTY: \$2,735; ENFORCEMENT COORDINATOR: Brianna Carlson, (956) 425-6010; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(15) COMPANY: City of Midway; DOCKET NUMBER: 2009-1257-MWD-E; IDENTIFIER: RN101920262; LOCATION: Madison County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0013378001, Operational Requirements Number 4, by failing to provide adequate safeguards to prevent the discharge of untreated or inadequately treated wastewater in the event of an electrical power failure; PENALTY: \$5,175; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(16) COMPANY: Mineral Technologies, Inc.; DOCKET NUMBER: 2009-1592-AIR-E; IDENTIFIER: RN101970648; LOCATION: Pecos County; TYPE OF FACILITY: oil and gas production plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.145(2)(B), General Operating Permit Number O-2870/Oil and Gas General Operating Permit Number 514, Site-Wide Requirements (b)(2), and THSC, §382.085(b), by failing to timely report deviations; PENALTY: \$8,000; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 3300 North A Street, Building 4-107, Midland, Texas 79705-5406, (432) 570-1359.

(17) COMPANY: MPA River Oaks Limited Partnership dba River Oaks Apartments; DOCKET NUMBER: 2009-1299-PST-E; IDENTIFIER: RN102481017; LOCATION: Houston, Harris County; TYPE OF FACILITY: apartment complex with one UST; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (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; 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor the UST system for releases; 30 TAC §334.50(b)(2) and the Code, §26.3475(a), by failing to provide release detection for the piping associated with the UST; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to test the line leak detectors at least once per year for performance and operational reliability; and 30 TAC §334.50(d)(1)(B)(iii)(I) and the Code, §26.3475(c)(1), by failing to record the inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; PENALTY: \$11,295; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(18) COMPANY: NB Retail, Limited; DOCKET NUMBER: 2009-1507-EAQ-E; IDENTIFIER: RN105739023; LOCATION: New Braunfels, Comal County; TYPE OF FACILITY: commercial property; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of a water pollution abatement plan; PENALTY:

\$3,000; ENFORCEMENT COORDINATOR: Jordan Jones, (512) 239-2569; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(19) COMPANY: Ni America Texas Development, LLC; DOCKET NUMBER: 2009-1354-PWS-E; IDENTIFIER: RN101260420; LOCATION: Johnson County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.45(b)(1)(C)(iii), by failing to provide two or more service pumps having a total capacity of two gallons per minute (gpm) per connection; and 30 TAC §290.45(b)(1)(C)(iv), by failing to provide an electrical storage capacity of 100 gallons per connection; PENALTY: \$687; ENFORCEMENT COORDINATOR: Andrea Linson-Mgbeoduru, (512) 239-1482; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: Oxy Vinyls, LP; DOCKET NUMBER: 2009-1079-AIR-E; IDENTIFIER: RN100224674 and RN100706803; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: chemical manufacturing plants; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Numbers 3855B and 4943B, and PSD-TX-876, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$24,850; SEP offset amount of \$12,425 applied to Houston Regional Monitoring Corporation - Houston Area Monitoring; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(21) COMPANY: PVR East Texas Gas Processing, LLC; DOCKET NUMBER: 2009-1388-AIR-E; IDENTIFIER: RN105295505; LOCATION: Marshall, Harrison County; TYPE OF FACILITY: natural gas compression plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.145(2)(B), General Operating Permit Number O-02980/Oil and Gas General Operating Permit Number 514, Site-Wide Requirements (b)(2), and THSC, §382.085(b), by failing to submit a semi-annual deviation report; and 30 TAC §122.143(4), General Operating Permit Number O-02980/Oil and Gas General Operating Permit Number 514, Site-Wide Requirements (b)(2), and THSC, §382.085(b), by failing to maintain records of visible emissions observations; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(22) COMPANY: Ranger Gas Gathering, L.L.C.; DOCKET NUMBER: 2009-1072-AIR-E; IDENTIFIER: RN100219534; LOCATION: Ranger, Eastland County; TYPE OF FACILITY: natural gas compressor station; RULE VIOLATED: 30 TAC §101.10(e) and THSC, §382.085(b), by failing to submit an emissions inventory report; and 30 TAC §122.145(2)(C) and §122.146(2) and THSC, §382.085(b), by failing to submit the permit compliance certification; PENALTY: \$8,875; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(23) COMPANY: Shell Oil Company; DOCKET NUMBER: 2009-0806-AIR-E; IDENTIFIER: RN100211879; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §116.715(a), Flexible Permit Number 21262, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$30,000; SEP offset amount of \$12,000 applied to Houston Regional Monitoring Corporation - Houston Area Monitoring; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77024-1452, (713) 767-3500.

(24) COMPANY: Reyes Cantu dba Spirit Ranch Cafe; DOCKET NUMBER: 2009-1408-PWS-E; IDENTIFIER: RN103140802; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: PWS;

RULE VIOLATED: 30 TAC §290.46(f)(2), by failing to provide facility records to commission personnel at the time of the investigation; and 30 TAC §290.46(d)(2)(A) and THSC, §341.0315(c), by failing to operate the disinfection equipment to maintain a disinfectant residual of at least 0.2 milligrams per liter free chlorine; PENALTY: \$265; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3100; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(25) COMPANY: Gerrit Lozeman dba Tatamo Dairy; DOCKET NUMBER: 2009-1389-AGR-E; IDENTIFIER: RN102096831; LOCATION: Hopkins County; TYPE OF FACILITY: dairy operation; RULE VIOLATED: 30 TAC §321.39(e) and (f) and TCEQ Concentrated Animal Feeding Operations (CAFO) General Permit Number TXG920032, Part III.A.8(c) and B.4., by failing to locate manure and compost areas in the drainage area of the retention control structure (RCS); 30 TAC §321.39(b)(2) and TCEQ CAFO General Permit Number TXG920032, Part III.A.9(a)(2), by failing to maintain the normal operating wastewater level in the RCS; and 30 TAC §321.46(a)(6) and TCEQ CAFO General Permit Number TXG920032, Part III.A.4(a), by failing to update the pollution prevention plan to include descriptions of the silage, manure storage, dead cattle compost, and denuded areas which are potential pollutant sources; PENALTY: \$2,600; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(26) COMPANY: Texas Department of Transportation; DOCKET NUMBER: 2009-1436-PWS-E; IDENTIFIER: RN101203230; LOCATION: Mitchell County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B) and THSC, §341.033(d), by failing to collect routine distribution water samples for coliform analysis and by failing to provide public notification of the failure to sample; PENALTY: \$5,840; SEP offset amount of \$5,840 applied to RC&D - Water or Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(27) COMPANY: The Texas A&M University System; DOCKET NUMBER: 2009-1172-PWS-E; IDENTIFIER: RN102974839; LOCATION: Brazos County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.46(f)(2), (3)(A)(iv), (B)(vi), and (E)(iv), by failing to provide facility records to commission personnel at the time of the investigation; 30 TAC §290.41(c)(1)(D) and THSC, §341.036(d), by failing to ensure that livestock in pastures are not allowed within 50 feet of a water supply well; 30 TAC §290.41(c)(3)(O), by failing to provide an intruder-resistant fence or lockable building to protect the facility's wells; 30 TAC §290.41(c)(3)(J), by failing to provide a concrete sealing block that extends at least three feet in all directions from the well casing; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment; 30 TAC §290.42(e)(4)(B), by failing to properly house the gas chlorine cylinders so that they are protected from adverse weather conditions and vandalism; and 30 TAC §290.42(b)(2)(C), by failing to provide aerators and all other such openings with a 16-mesh or finer corrosion-resistant screen; PENALTY: \$5,355; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3100; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(28) COMPANY: VSNB, LLC dba Lockwood Phillips 66; DOCKET NUMBER: 2009-1196-PST-E; IDENTIFIER: RN102852548; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC

§115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment and vapor space manifolding and dynamic back pressure; PENALTY: \$2,557; ENFORCEMENT COORDINATOR: Ross Fife, (512) 239-2541; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(29) COMPANY: City of Wellman; DOCKET NUMBER: 2009-1145-MWD-E; IDENTIFIER: RN102074879; LOCATION: Terry County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0013642001, Operational Requirements Number 4, by failing to maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures; PENALTY: \$2,725; SEP offset amount of \$2,180 applied to RC&D - Unauthorized Trash Dump Clean-Up; ENFORCEMENT COORDINATOR: Evette Alvarado, (512) 239-2573; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(30) COMPANY: Westwood Shores Municipal Utility District; DOCKET NUMBER: 2009-1585-PWS-E; IDENTIFIER: RN101175560; LOCATION: Trinity County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.45(f)(4), by failing to provide a purchase water contract that authorizes a maximum daily purchase rate of 0.6 gpm per connection; PENALTY: \$305; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-200905298

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: November 17, 2009



Enforcement Orders

An agreed order was entered regarding John Popma dba Marketing Interface Company, Docket No. 2004-0083-IHW-E on November 4, 2009 assessing \$29,250 in administrative penalties with \$14,237 deferred.

Information concerning any aspect of this order may be obtained by contacting James Sallans, Staff Attorney at (512) 239-2053, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding John R. Brickle, Jr., Docket No. 2007-0874-MLM-E on November 4, 2009 assessing \$2,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sharesa Y. Alexander, Staff Attorney at (512) 239-3503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Elegant Craftworks, Inc. dba Allan Products, Docket No. 2007-1480-AIR-E on November 4, 2009 assessing \$5,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna M. Treadwell, Staff Attorney at (512) 239-0974, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Diamond Shamrock Refining Company, L.P., Docket No. 2007-1544-AIR-E on November 4, 2009 assessing \$140,443 in administrative penalties with \$28,088 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of San Augustine, Docket No. 2007-1678-PWS-E on November 5, 2009 assessing \$9,525 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Richard Croston, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Brenda Lewis, Docket No. 2007-1845-IHW-E on November 4, 2009 assessing \$40,000 in administrative penalties with \$38,800 deferred.

Information concerning any aspect of this order may be obtained by contacting Gary K. Shiu, Staff Attorney at (713) 422-8916, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding KM Aviation, Inc., Docket No. 2008-0076-AIR-E on November 4, 2009 assessing \$30,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna M. Treadwell, Staff Attorney at (512) 239-0974, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rhodia Inc., Docket No. 2008-0102-MLM-E on November 4, 2009 assessing \$14,000 in administrative penalties with \$2,800 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Sendero Exteriors, Inc., Docket No. 2008-0212-WQ-E on November 4, 2009 assessing \$8,736 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin O. Thompson, Staff Attorney at (512) 239-1297, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sarkis Janbazian dba 380 Chevron, Docket No. 2008-0474-PST-E on November 4, 2009 assessing \$12,000 in administrative penalties with \$2,400 deferred.

Information concerning any aspect of this order may be obtained by contacting Wallace Myers, Enforcement Coordinator at (512) 239-6580, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding To Nguyen and Quang Huynh aka Quimm Huynh, dba Discount Grocery Store, Docket No. 2008-0527-PST-E on November 4, 2009 assessing \$15,783 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy L. Mitchell, Staff Attorney at (512) 239-0736, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Superior Grocers, Inc., Docket No. 2008-0947-PST-E on November 4, 2009 assessing \$20,148 in administrative penalties with \$4,029 deferred.

Information concerning any aspect of this order may be obtained by contacting Wallace Myers, Enforcement Coordinator at (512) 239-6580, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KABANI CORPORATION aka Silver Spring Enterprises, Inc. dba AGHA Convenience Store, Docket No. 2008-1175-PST-E on November 4, 2009 assessing \$10,662 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Huntsman Petrochemical Corporation, Huntsman International Fuels, L.P., ISP Water Management Services LLC, Huntsman Propylene Oxide, Ltd., and Texas Petrochemicals LP, Docket No. 2008-1177-IWD-E on November 4, 2009 assessing \$39,928 in administrative penalties with \$7,985 deferred.

Information concerning any aspect of this order may be obtained by contacting Pamela Campbell, Enforcement Coordinator at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AKJ Management, Inc. dba A & B Food Mart, Docket No. 2008-1363-PST-E on November 4, 2009 assessing \$5,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, P.G., Staff Attorney at (512) 239-0675, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Marshall, Docket No. 2008-1548-MLM-E on November 4, 2009 assessing \$4,750 in administrative penalties with \$950 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding John Kiouis dba Tech Cafe, Docket No. 2008-1560-PWS-E on November 4, 2009 assessing \$3,484 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tommy Henson, Staff Attorney at (512) 239-0946, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding SINDLO, INC. dba Rubys Food Store, Docket No. 2008-1825-PST-E on November 4, 2009 assessing \$2,884 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephanie Frazee, Staff Attorney at (512) 239-3693, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Parks and Wildlife Department, Docket No. 2008-1863-PWS-E on November 4, 2009 assessing \$1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Combs, Staff Attorney at (512) 239-6939, Texas

Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NN Business, Inc., Docket No. 2008-1892-PST-E on November 4, 2009 assessing \$6,676 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, P.G., Staff Attorney at (512) 239-0675, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Joe Thurman Lodge & Livery, Inc., Docket No. 2009-0159-PWS-E on November 4, 2009 assessing \$2,376 in administrative penalties with \$475 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sunoco, Inc. (R&M), Docket No. 2009-0188-AIR-E on November 4, 2009 assessing \$154,025 in administrative penalties with \$30,805 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Javier Godoy, Docket No. 2009-0265-LII-E on November 4, 2009 assessing \$131 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sheresa Y. Alexander, Staff Attorney at (512) 239-3503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Garrett Davis, Docket No. 2009-0466-LII-E on November 4, 2009 assessing \$262 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sheresa Y. Alexander, Staff Attorney at (512) 239-3503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BRADY IMPLEMENT COMPANY, Docket No. 2009-0482-MLM-E on November 4, 2009 assessing \$3,925 in administrative penalties with \$785 deferred.

Information concerning any aspect of this order may be obtained by contacting Ross Fife, Enforcement Coordinator at (512) 239-2541, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ash Grove Texas, L.P., Docket No. 2009-0501-AIR-E on November 4, 2009 assessing \$5,725 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron Phillips Chemical Company LP, Docket No. 2009-0523-AIR-E on November 4, 2009 assessing \$10,245 in administrative penalties with \$2,049 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lee-Var, Inc. dba Palmer of Texas, Docket No. 2009-0552-AIR-E on November 4, 2009 assessing \$43,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harris County Municipal Utility District No. 148, Docket No. 2009-0575-MWD-E on November 4, 2009 assessing \$21,650 in administrative penalties with \$4,330 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Eagle Pass Water Works System, Docket No. 2009-0607-MWD-E on November 4, 2009 assessing \$24,605 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Wellman, Docket No. 2009-0627-MWD-E on November 4, 2009 assessing \$6,720 in administrative penalties with \$1,344 deferred.

Information concerning any aspect of this order may be obtained by contacting Pamela Campbell, Enforcement Coordinator at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SL Horizon, LLC dba Town & Country Airport, Docket No. 2009-0635-PST-E on November 4, 2009 assessing \$20,502 in administrative penalties with \$4,100 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Homer V. Beltran, Docket No. 2009-0648-LII-E on November 4, 2009 assessing \$750 in administrative penalties with \$150 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Victoria County Water Control and Improvement District 1, Docket No. 2009-0662-MWD-E on November 5, 2009 assessing \$34,676 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CIRCLE BAR TRUCK CORRAL, INC. dba Circle Truck Corral, Docket No. 2009-0666-PST-E on November 4, 2009 assessing \$28,225 in administrative penalties with \$5,645 deferred.

Information concerning any aspect of this order may be obtained by contacting Wallace Myers, Enforcement Coordinator at (512) 239-6580, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Connie Rogers dba Alamo Pumping BLU Site, Docket No. 2009-0673-SLG-E on November 4, 2009 assessing \$2,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin O. Thompson, Staff Attorney at (512) 239-1297, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Stallion Oilfield Services Ltd., Docket No. 2009-0705-SLG-E on November 4, 2009 assessing \$7,360 in administrative penalties with \$1,472 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Beeville, Docket No. 2009-0754-PWS-E on November 4, 2009 assessing \$5,161 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Cameron, Docket No. 2009-0755-PWS-E on November 4, 2009 assessing \$3,264 in administrative penalties with \$652 deferred.

Information concerning any aspect of this order may be obtained by contacting Amanda Henry, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding INEOS USA LLC, Docket No. 2009-0758-AIR-E on November 4, 2009 assessing \$10,000 in administrative penalties with \$2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Martina Kusniadi, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Disposal Properties, LLC, Docket No. 2009-0761-IHW-E on November 4, 2009 assessing \$2,650 in administrative penalties with \$530 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding VICTORIA MOMIN, INC. dba Honey Stop 8, Docket No. 2009-0763-PST-E on November 4, 2009 assessing \$10,459 in administrative penalties with \$2,091 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Deadwood Water Supply Corporation, Docket No. 2009-0774-PWS-E on November 4, 2009 assessing \$735 in administrative penalties with \$147 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harris County Municipal Utility District No. 82, Docket No. 2009-0784-MWD-E on November 4, 2009 assessing \$13,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mark Gibbs dba A&W Auto Repair and Used Parts, Docket No. 2009-0787-WQ-E on November 4, 2009 assessing \$2,140 in administrative penalties with \$428 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Guillermo Saenz, Docket No. 2009-0795-WOC-E on November 4, 2009 assessing \$1,980 in administrative penalties with \$396 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cal-Maine Foods, Inc., Docket No. 2009-0805-WQ-E on November 4, 2009 assessing \$10,968 in administrative penalties with \$2,193 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lower Colorado River Authority, Docket No. 2009-0815-MWD-E on November 4, 2009 assessing \$950 in administrative penalties with \$190 deferred.

Information concerning any aspect of this order may be obtained by contacting Pamela Campbell, Enforcement Coordinator at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LCY ELASTOMERS LP, Docket No. 2009-0853-IWD-E on November 4, 2009 assessing \$24,125 in administrative penalties with \$4,825 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Warren Independent School District, Docket No. 2009-0859-MWD-E on November 4, 2009 assessing \$4,400 in administrative penalties with \$880 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E. I. du Pont de Nemours and Company, Docket No. 2009-0861-AIR-E on November 4, 2009 assessing \$6,075 in administrative penalties with \$1,215 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Helena Chemical Company, Docket No. 2009-0871-AIR-E on November 4, 2009 assessing \$6,250 in administrative penalties with \$1,250 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Fort Worth, Docket No. 2009-0900-WQ-E on November 4, 2009 assessing \$6,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Evette Alvarado, Enforcement Coordinator at (512) 239-2573, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MK1 Construction Services L.L.C., Docket No. 2009-0978-AIR-E on November 4, 2009 assessing \$1,000 in administrative penalties with \$200 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kempner Water Supply Corporation, Docket No. 2009-1005-PWS-E on November 4, 2009 assessing \$1,762 in administrative penalties with \$352 deferred.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2558, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DRJO ENTERPRISE INC. dba Crystal Car Wash, Docket No. 2009-1010-PST-E on November 4, 2009 assessing \$4,933 in administrative penalties with \$986 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Approach Operating LLC, Docket No. 2009-1032-AIR-E on November 4, 2009 assessing \$32,108 in administrative penalties with \$6,421 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Libby Water Supply Corporation, Docket No. 2009-1058-PWS-E on November 4, 2009 assessing \$367 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Amanda Henry, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Capital Metropolitan Transportation Authority, Docket No. 2009-1063-EAQ-E on November 4, 2009 assessing \$750 in administrative penalties with \$150 deferred.

Information concerning any aspect of this order may be obtained by contacting Carlie Konkol, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Larry D. Stephens, Docket No. 2009-1152-OSI-E on November 4, 2009 assessing \$210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Wichita Falls, Docket No. 2009-1154-WQ-E on November 4, 2009 assessing \$890 in administrative penalties with \$178 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Rotan, Docket No. 2009-1176-PWS-E on November 4, 2009 assessing \$2,677 in administrative penalties with \$535 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Double V, Inc. dba Greens Shell, Docket No. 2009-1182-PST-E on November 4, 2009 assessing \$3,047 in administrative penalties with \$609 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Randy Wilson, Docket No. 2009-1345-WOC-E on November 4, 2009 assessing \$210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Filiberto Barrera, Docket No. 2009-1365-WOC-E on November 4, 2009 assessing \$210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Patrick D. Zavala, Docket No. 2009-1382-WOC-E on November 4, 2009 assessing \$210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Claybar Construction, LLP, Docket No. 2009-1423-WQ-E on November 4, 2009 assessing \$700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding Weirich Brothers, L.P., Docket No. 2008-0642-MLM-E on November 4, 2009 assessing \$10,795 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding Kandy King, Docket No. 2008-0901-PST-E on November 12, 2009 assessing \$7,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Thomas Jecha, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200905322
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 18, 2009



Notice of District Petition

Notice issued November 12, 2009.

TCEQ Internal Control No. 07012009-D01; 10324, Inc., (Petitioner) filed a petition with the Texas Commission on Environmental Quality (TCEQ) for the annexation of land into Senna Hills Municipal Utility District of Travis County under Chapter 54 of the Texas Water Code and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner holds title to the Property (the proposed annexation area) and is owner of a majority in value of the land to be included in the District; (2) there is one lien holder (Lloyd Swieden) on the Property; (3) the Property contains approximately 0.708 acres located in Travis County, Texas; and (4) the Property is within the extraterritorial jurisdiction of the City of Austin (City). By affidavit dated April 4, 2008, the lien holder has consented to the proposed annexation of the property into Senna Hills Municipal Utility District. Subsequent correspondence submitted with the petition indicates the lien has been paid in full.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested

case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en Español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200905320

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 18, 2009



Notice of Water Quality Applications

The following notices were issued on November 5, 2009 through November 13, 2009.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

CITY OF WHARTON has applied for a renewal of TPDES Permit No. WQ0010381001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The facility is located on the east bank of the Colorado River approximately 0.8 mile south-southeast of the intersection of State Highway 60 and Farm-to-Market Road 1299 (East Street) in Wharton County, Texas 77488.

GRAYDEN INDUSTRIES, INC., which operates the Grayden Industries, Inc. WWTF, for a cedar wood oil plant, has applied for a renewal of TPDES Permit No. WQ0001391000, which authorizes a discharge of once-through cooling water and boiler blowdown at a daily average flow not to exceed 2,160,000 gallons per day via Outfall 001. The facility is located at 8782 Ranch Road 2169, on the east side of Ranch Road 2169, approximately 1.3 miles north of the intersection of Ranch Road 2169 and U.S. Highway 290 (Interstate Highway 10), approximately 10 miles southeast of the City of Junction, Kimble County, Texas 76849.

SAN ANGELO BY-PRODUCTS, INC., which operates San Angelo By-Products Plant, has applied for a renewal of TCEQ Permit No. WQ0001594000, which authorizes the disposal of brine wastewater from hide treatment operations, water softener backwash, and storm water runoff at an annual average flow not to exceed 13,000 gallons per day via evaporation. This permit will not authorize a discharge of pollutants into water in the State. The facility and evaporation ponds are located on the north side of Farm-to-Market Road 380, approximately 7.5 miles east of the City of San Angelo, Tom Green County, Texas 76866-0550.

THE CITY OF BOERNE has applied for a renewal of TPDES Permit No. WQ0010066001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,200,000 gallons per day. The facility is located on the east side of the City of Boerne, at 350 South Esser Road, approximately 0.1 mile north of its intersection with State Highway 46 in Kendall County, Texas, 78006.

RIVER CROSSING CARRIAGE HOUSES, LTD. has applied for a renewal of TCEQ Permit No. WQ0014637001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 16,500 gallons per day via surface irrigation of 225.6 acres of public access land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site will be located 0.6 mile south of the Guadalupe River Bridge, on the east side of U.S. Highway 281 in Comal County, Texas 78070.

ENTERPRISE PRODUCTS OPERATING LLC, which operates Mont Belvieu Complex, a natural gas liquids fractionation facility, has applied for a major amendment to TPDES Permit No. WQ0002940000 to authorize: (a) removal of total zinc monitoring requirement at Outfall 002, (b) removal of effluent limitations for total zinc at Outfall 002, which are due to be effective on September 1, 2010, (c) removal of Other Requirement No. 14, which listed a schedule of activities for attainment of compliance with water quality-based effluents for total zinc at Outfall 002, (d) authorization of discharge of internal equipment washdown water via Outfall 001, and (e) removal of Other Requirement No. 12 which specified retest requirements for discharges via Outfall 001. The current permit authorizes the discharge of treated processed wastewater, first flush storm water, cooling tower blowdown, and filter backwash at a daily average flow not to exceed 213,000 gallons per day via Outfall 001; non-contact cooling water, cooling tower blowdown and filter backwash at a daily average flow not to exceed 250,000 gallons per day via Outfall 002; and untreated storm water on an intermittent and flow variable basis via Outfall 003. The facility is located at 10207 Farm-to-Market Road (FM) 1942 (approximately one mile west of State Highway 146, bounded on the west side by Hatcherville Road, on the east side by the Southern Pacific Railroad, on the north by the CIWA Canal, and on the south by FM 1942), in the City of Mont Belvieu, Chambers County, Texas.

GULF MARINE FABRICATORS, L.P., which operates Gulf Marine Fabricators - South Yard, has applied for a renewal of TPDES Permit No. WQ0003012000, which authorizes the discharge of treated sanitary wastewater and hydrostatic test water at a daily average flow not to exceed 4,000 gallons per day. The facility is located on the east side of Live Oak Peninsula, on Farm-to-Market Road 1069, approximately 2 miles south of the intersection of Farm-to-Market Roads 1069 and 2725, five (5) miles southwest of the City of Aransas Pass, San Patricio County, Texas, 78335.

ST. MARTIN AQUACULTURE, INC., which operates St. Martin Aquaculture Seafood, a mariculture facility, has applied for a renewal of TPDES Permit No. WQ0003819000, which authorizes the discharge of processed wastewater (aquaculture pond effluent) at a daily average flow not to exceed 4,000,000 gallons per day via Outfall 001. The facility is located on the west side of Farm-to-Market Road 3280; two and one-half miles south of the intersection of Farm-to-Market Road 3280 and State Highway 35; and nine miles west of the City of Palacios, Calhoun County, Texas 77465.

CITY OF PETROLIA has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010247003, to authorize the discharge of treated filter backwash water from a potable water treatment plant at a daily average flow not to exceed 6,000 gallons per day. The facility was previously permitted under TPDES Permit No. WQ0010247002, which expired December

01, 2007. The facility is located adjacent to Old Petrolia Lake, at the dead end of a controlled access city-owned dirt road, 2,800 feet west of Farm-to-Market Road 810 and 3,500 feet north of the Petrolia city limits in Clay County, Texas 76377.

CITY OF SHALLOWATER has applied for a major amendment to TCEQ Permit No. WQ0010609001 to authorize an increase in the acreage irrigated from 54 acres to 114 acres. The current permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 290,000 gallons per day via surface irrigation of 54 acres of non-public access agricultural land. The draft permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 290,000 gallons per day via surface irrigation of 114 acres of non-public access agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located southeast of the intersection of U.S. Highway 84 and Farm-to-Market Road 179, adjacent to the City of Shallowater in Lubbock County, Texas 79363.

MATAGORDA WASTE DISPOSAL AND WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. WQ0010913001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 70,000 gallons per day. The facility is located at 30 Matagorda Street on the northwest corner of the intersection of Matagorda and Bernardo Streets, approximately 0.5 mile southeast of the intersection of Farm-to-Market Road 2031 and State Highway 60 in the community of Matagorda in Matagorda County, Texas 77457.

AQUA UTILITIES, INC. has applied for a renewal of TPDES Permit No. WQ0011332001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The facility is located north of Highcrest Drive between Lakecrest Drive and Moss Downs Drive in Burnet County, Texas 78654.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 82 has applied for a renewal of TPDES Permit No. WQ0011799001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,200,000 gallons per day. The facility is located approximately 1.5 miles east of Aldine-Westfield Road and approximately 3 miles north of Farm-to-Market Road 1960 at 2400 Domino Road in Harris County, Texas 77373.

TEXAS DEPARTMENT OF TRANSPORTATION has applied for a renewal of TPDES Permit No. WQ0012009001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 7,500 gallons per day. The facility is located at 4871 U.S. Highway 59 North within the right-of-way of U.S. Highway 59 approximately six and one-half miles northeast of the City of Linden in Cass County, Texas 75563.

ACME BRICK COMPANY has applied for a renewal of TPDES Permit No. WQ0013192001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 1,200 gallons per day. The facility is located approximately 3.8 miles east of the intersection of Farm-to-Market Road 331 and State Highway 36 in Austin County, Texas 77474.

PRESTON CLUB UTILITY CORPORATION has applied for a renewal of TPDES Permit No. WQ0013309001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The facility is located approximately four miles west of the intersection of United States Highway 82 and Farm-to-Market Road 1417 and 0.5 mile south of United States Highway 82 in Grayson County, Texas 75090.

POLONIA WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. WQ0014033001, which authorizes the

discharge of filter backwash effluent from a water treatment plant at a daily average flow not to exceed 6,000 gallons per day. The facility is located at the northeast side of Farm-to-Market Road 1854 at its junction with Caldwell County Road 189, 0.25 mile southeast of the community of Dale and 1 mile northwest of the intersection of Farm-to-Market Road 1854 and State Highway 20 in Caldwell County, Texas 78616.

POLONIA WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. WQ0014033002, which authorizes the discharge of filter backwash effluent from a water treatment plant at a daily average flow not to exceed 3,000 gallons per day. The facility is located 4.35 miles south of the junction of Farm-to-Market Road 1322 and U.S. Highway 183 on the west side of Farm-to-Market Road 1322 across from Caldwell County Road 197 in Caldwell County, Texas 78644.

SKIDMORE WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. WQ0014112001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 131,000 gallons per day. The facility is located approximately 1,000 feet north of the end of Black Ranch Road and approximately 4,500 feet east and 4,200 feet north of the intersection of Farm-to-Market Road 797 and U.S. Route 181 in Bee County, Texas 78389.

HAYS SHADOW CREEK DEVELOPMENT, INC. AND NORTH HAYS COUNTY MUNICIPAL UTILITY DISTRICT NO. 1, has applied for a renewal of TPDES Permit No. WQ0014431001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 486,000 gallons per day. The facility is located at 330 Dark Horse Lane within the Shadow Creek Subdivision, approximately 1.82 miles east of Interstate 35, along County Road 131 (also known as Windy Hill Road) and approximately 0.60 mile northeast of the intersection of Windy Hill Road and Shadow Creek Boulevard in Hays County, Texas 78640.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 434 has applied for a major amendment to TPDES Permit No. WQ0014576001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 200,000 gallons per day to a daily average flow not to exceed 250,000 gallons per day. The facility is located at 15838 1/2 House Road, approximately 1.3 miles southeast of the intersection of U.S. Highway 290 and Becker Road in Harris County, Texas 77447.

KATY 884 PARTNERS, LTD. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014943001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day. The facility will be located 1,400 feet northwest of the intersection of Stockdick Road and Schlipf Road in Waller County, Texas 77493.

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-200905319
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 18, 2009



Notice of Water Rights Applications

Notices issued October 13, 2009 through November 13, 2009.

APPLICATION NO. 12413; Northtown Municipal Utility District, Applicant, c/o Ms. Sue Brooks Littlefield, Armbrust & Brown, L.L.P., 100 Congress Avenue, Suite 1300, Austin, Texas 78701, has applied for a Water Use Permit to maintain three existing impoundment structures and reservoirs on Harris Branch and on an unnamed tributary of Harris Branch, Colorado River Basin for recreation purposes in Travis County. Applicant has also applied for use of the bed and banks of Harris Branch. More information on the application and how to participate in the permitting process is given below. The application and partial fees were received on December 19, 2008. Additional information and fees were received on March 16, 2009, April 14, 2009 and May 13, 2009. The application was accepted for filing and declared administratively complete on May 21, 2009. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 19-2019C; San Antonio Water System, Applicant, 2800 U.S. Hwy 281 North, San Antonio, TX 78212, has applied to amend Certificate of Adjudication No. 19-2019 to add a diversion point on the reservoir created by Otillo Dam on the San Antonio River, San Antonio River Basin, add agricultural use, and add a new place of use in Bexar County, Texas. More information on the application and how to participate in the permitting process is given below. The application and partial fees were received on February 20, 2008. Additional information and fees were received on August 27, and October 29, 2008, January 30, July 23 and August 8, 2009. The application was accepted for filing and declared administratively complete on July 2, 2009. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by November 11, 2009.

APPLICATION NO. 12412; Flower Mound CBD, LTD., Applicant, 800 Parker Square, Suite 260, Flower Mound, Texas 75028, has applied for a Water Use Permit to use the Bed and Banks of an unnamed tributary of Timber Creek, Trinity River Basin, to convey groundwater to maintain an existing dam and reservoir for recreation purposes and to construct a new dam and reservoir for recreation and agricultural purposes in Denton County, Texas. More information on the application and how to participate in the permitting process is given below. The application and partial fees were received on January 2, 2009. Additional information and fees were received on April 6, April 8, and July 29, 2009. The application was accepted for filing and declared administratively complete on August 6, 2009. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 12432; McPherson Ranch Owners Association, Applicant, P.O. Box 941169, Plano, Texas 75094-1169, has applied for a Water Use Permit to maintain an existing dam and reservoir on an unnamed tributary of Henrietta Creek, Trinity River Basin, for recreation and aesthetic purposes in Tarrant County. More information on the application and how to participate in the permitting process is given below. The application and a portion of the required fees were received on February 11, 2009. Additional information and remaining fees were received on April 22, 27, and 28, and May 6, 2009. The application was declared administratively complete and accepted for filing on May 6, 2009. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 12243; The City of Lamesa, Applicant, 601 South 1st Street, Lamesa, TX 79331, has applied for a Water Use Permit to use the bed and banks of Sulphur Springs Draw, Colorado River Basin,

to transport future groundwater-based and surface water return flows and to subsequently divert and reuse up to 2,240 acre-feet (less losses) of those return flows per year for municipal, industrial, and agricultural purposes in Dawson County, Texas. More information on the application and how to participate in the permitting process is given below. The application and fees were received on August 10, 2007. Additional information and fees were received on November 5, 2007, January 17, March 3, December 12, 2008, June 16 and July 24, 2009. The application was accepted for filing and declared administratively complete on September 3, 2009. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by November 18, 2009.

APPLICATION NO. 12-3555D; Mark C. and Mary Carol Griffin, Applicants, 271 Summit Drive, Round Mountain, Texas 78663, have applied to amend Certificate of Adjudication No. 12-3555 located on an unnamed tributary of the Sabana River, Brazos River Basin, in Comanche County to extend their expiration date. More information on the application and how to participate in the permitting process is given below. The application and partial fees were received March 30, 2009. Additional information and fees were received on May 14, May 26, and July 24, 2009. The application was declared administratively complete and accepted for filing on June 29, 2009. Written public comments and requests for a public meeting should be received in the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 12445; Veolia ES Technical Solutions, LLC, Applicant, P.O. Box 2563, Port Arthur, Texas 77643, has applied for a temporary water use permit to divert and use not to exceed 2,000 acre-feet of water within a period of one year from two diversion points on an unnamed tributary of Fish Box Gully, Neches-Trinity Coastal Basin for industrial and domestic purposes in Jefferson County. More information on the application and how to participate in the permitting process is given below. The application and partial fees were received on March 27, 2009, and additional information and partial fees were received on June 22 and September 10, 2009. The application was declared administratively complete and accepted for filing on July 16, 2009. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by December 4, 2009.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding 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-200905321
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 18, 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 November 10, 2009, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Randall Wayne Lykins; SOAH Docket No. 582-09-2077; TCEQ Docket No. 2008-0763-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Randall Wayne Lykins 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-200905231
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 12, 2009

Texas Facilities Commission

Request for Proposals #303-0-10703

The Texas Facilities Commission (TFC), on behalf of the Department of Family and Protective Services (DFPS), announces the issuance of Request for Proposals (RFP) #303-0-10703. TFC seeks a five (5) or ten (10) year lease of approximately 3,572 square feet of office space in Kountze, Texas.

The deadline for questions is December 4, 2009, and the deadline for proposals is December 18, 2009, at 3:00 p.m. The award date is January 22, 2010. 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=86015.

TRD-200905300
Kay Molina
General Counsel
Texas Facilities Commission
Filed: November 17, 2009

Texas Health and Human Services Commission

Notice of Award of a Major Consulting Contract

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Health and Human Services Commission (HHSC) announces the award of contract #529-10-0021-00001 to **Software Contract Solutions, Inc. (SCS)** an entity with a principal place of business at 4731 Hillcrest Avenue, Fair Oaks, California 95628. The contractor will provide negotiation support services, which will provide a resource for investigating all facets of information technology (IT) software issues that impact price, cost savings measures, risk exposure and overall total cost of ownership.

The total value of the contract with SCS will not exceed \$900,000. The contract was executed on October 30, 2009 and will expire on October 29, 2010, unless extended or terminated sooner by the parties. In response to queries from HHSC, SCS will access its proprietary database to provide information to HHSC concerning proposals in software negotiations. SCS will provide information in the form of business-oriented analyses, in-depth knowledge of licensing trends; maintenance rates and pricing; and changing technologies and their impact on the IT industry.

TRD-200905252
David Brown
Assistant General Counsel
Texas Health and Human Services Commission
Filed: November 16, 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 purpose of the amendment is to extend the rate for Mental Health rehabilitation services that was in effect on September 30, 2009, through September 30, 2010. An earlier notice published in the September 21, 2007, issue of the *Texas Register* (32 TexReg 6669) extended the effective date of the Mental Health rehabilitation services rate from September 30, 2007 through September 30, 2009.

The proposed amendment will have no fiscal impact to the state or federal budgets.

Interested parties may obtain copies of the proposed amendment by contacting Dan Huggins, Director of Rate Analysis for Acute Care Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1432; by facsimile at (512) 491-1998; or by e-mail at dan.huggins@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 (DADS).

TRD-200905253
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: November 16, 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 purpose of the amendment is to extend the rate for Early Childhood Intervention (ECI) targeted case management services that was in effect on September 30, 2009, through September 30, 2010. An earlier notice published in the September 21, 2007, issue of the *Texas Register* (32 TexReg 6668) extended the effective date of the ECI targeted case management rate from September 30, 2007 through September 30, 2009.

The proposed amendment will have no fiscal impact to the state or the federal budgets.

Interested parties may obtain copies of the proposed amendment by contacting Dan Huggins, Director of Rate Analysis for Acute Care Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1432; by facsimile at (512) 491-1998; or by e-mail at dan.huggins@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 (DADS).

TRD-200905254
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: November 16, 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 purpose of the amendment is to extend the rate for Mental Retardation case management services that was in effect on September 30, 2009, through September 30, 2010. An earlier notice published in the September 21, 2007, issue of the *Texas Register* (32 TexReg 6669) extended the effective date for Mental Retardation case management services from September 30, 2007 through September 30, 2009.

The proposed amendment will have no fiscal impact to the state or the federal budgets.

Interested parties may obtain copies of the proposed amendment by contacting Dan Huggins, Director of Rate Analysis for Acute Care Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1432; by facsimile at (512) 491-1998; or by e-mail at dan.huggins@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 (DADS).

TRD-200905255

Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: November 16, 2009



Request for Public Comment

The Texas Health and Human Services Commission (HHSC) is seeking comments from the public on its estimate and methodology for determining the Temporary Assistance for Needy Families (TANF) Program caseload reduction credit for Federal Fiscal Year (FFY) 2010. HHSC will base the methodology on caseload reduction occurring from FFY 2005 to FFY 2009. This methodology and the resulting estimated caseload reduction credit will be submitted to the U.S. Department of Health and Human Services, Administration for Children and Families, for approval.

Under Section 407(b)(3) of the Social Security Act and Title 45 of the Code of Federal Regulations, Part 261, Subpart D, any State wishing to receive a TANF caseload reduction credit must complete and submit a caseload reduction report with an estimate of the state's caseload reduction credit and a description of the methodology used to calculate its estimate. The caseload reduction credit gives a State credit for reducing its TANF caseload between a base year and a comparison year. This credit reduces the work participation rate that a State is required to meet for a fiscal year. The State must provide the public with an opportunity to comment on the estimate and methodology. As the State agency that administers the TANF program, HHSC has developed the estimate and methodology and is providing the public with an opportunity for comment.

The methodology and the estimated caseload reduction credit will be posted on the HHSC website at <http://www.hhsc.state.tx.us/research> by December 4, 2009. Written or electronic copies of the methodology and estimate also can be obtained by contacting Ross McDonald, HHSC Texas Works Reporting Team Lead, by telephone at (512) 424-6843, by e-mail at Ross.McDonald@hhsc.state.tx.us.

The public comment period begins December 4, 2009, and ends December 18, 2009. Comments must be submitted in writing to Texas Health and Human Services Commission, Strategic Decision Support, Attention: Ross McDonald, MC 1950, P.O. Box 13247, Austin, Texas 78711-3247 or to Ross McDonald at ross.mcdonald@hhsc.state.tx.us.

TRD-200905294
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: November 16, 2009



Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by CITIZENS INSURANCE COMPANY OF AMERICA, a foreign fire and casualty company. The home office is in Howell, Michigan.

Application to change the name of AIG ADVANTAGE INSURANCE COMPANY to 21ST CENTURY ADVANTAGE INSURANCE COMPANY, a foreign fire and casualty company. The home office is in St. Paul, Minnesota.

Application to change the name of NEW HAMPSHIRE INDEMNITY COMPANY, INC. to 21ST CENTURY SECURITY INSURANCE

COMPANY, a foreign fire and casualty company. The home office is in Harrisburg, Pennsylvania.

Application to change the name of COMMERCIAL LOAN INSURANCE CORPORATION to PMI MORTGAGE ASSURANCE CO, a foreign fire and casualty company. The home office is in Madison, Wisconsin.

Application to change the name of AIG CENTENNIAL INSURANCE COMPANY to 21ST CENTURY CENTENNIAL INSURANCE COMPANY, a foreign fire and casualty company. The home office is in Harrisburg, Pennsylvania.

Application to change the name of AIG INDEMNITY INSURANCE COMPANY to 21ST CENTURY INDEMNITY INSURANCE COMPANY, a foreign fire and casualty company. The home office is in Harrisburg, Pennsylvania.

Application to change the name of AIG NATIONAL INSURANCE COMPANY, INC. to 21ST CENTURY NATIONAL INSURANCE COMPANY, a foreign fire and casualty company. The home office is in New York, New York.

Application to change the name of AIG PREFERRED INSURANCE COMPANY to 21ST CENTURY PREFERRED INSURANCE COMPANY, a foreign fire and casualty company. The home office is in Harrisburg, Pennsylvania.

Application to change the name of AIG PREMIER INSURANCE COMPANY to 21ST CENTURY PREMIER INSURANCE COMPANY, a foreign fire and casualty company. The home office is in Harrisburg, Pennsylvania.

Application to change the name of AMERICAN INTERNATIONAL INSURANCE COMPANY to 21ST CENTURY NORTH AMERICA COMPANY, a foreign fire and casualty company. The home office is in New York, New York.

Application to change the name of AMERICAN INTERNATIONAL INSURANCE COMPANY OF DELAWARE to 21ST CENTURY ASSURANCE COMPANY, a foreign fire and casualty company. The home office is in Wilmington, Delaware.

Application to change the name of FINANCIAL SECURITY ASSURANCE INC. to ASSURED GUARANTY MUNICIPAL CORP. a foreign fire and casualty company. The home office is in New York, New York.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200905314

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: November 18, 2009

◆ ◆ ◆
Legislative Budget Board

Request for Proposal

The Legislative Budget Board (LBB) announces the issuance of a Request for Proposal (LBB 2009 TSPR RFP 1001) to solicit proposals from qualified, independent consultants to assist the LBB in conducting an evaluation of Early Childhood Readiness demonstration projects, also referred to as the Texas Early Education Model (TEEM).

Questions: Concerning this RFP must be in writing and addressed to: Legislative Budget Board (512) 475-2902 (fax) or Email: contract.manager@lbb.state.tx.us.

Closing Date: Proposals must be received in the issuing office at the address specified above no later than 2:00 p.m. (CST) on December 11, 2009. Proposals received after this time and date will not be considered.

Proposal Evaluation and Approval Process: All proposals will be subject to evaluation by a committee based on the evaluation criteria set forth in the RFP. The LBB will make the final decision regarding all proposals. The LBB reserves the right to reject any or all submitted proposals.

The LBB is under no legal or other obligation to execute any contracts on the basis of this notice or the distribution of this RFP. The LBB shall not pay for any costs incurred by any respondent to this RFP.

The anticipated schedule of events:

November 10, 2009 - Issuance of RFP (after 10:00 a.m. CST)

November 23, 2009 - Deadline for Submission of Questions (2:00 p.m. CST)

November 24, 2009 - Release of Official Responses to Questions

(Or as soon thereafter as practical)

December 11, 2009 - Deadline for Submission of Proposals (2:00 p.m. CST)

(Late proposals will not be considered)

January 4 - 6, 2010 - Oral Presentations may occur

January 7, 2010 - Contract Execution (or as soon thereafter as practical)

January 11, 2010 - Commencement of Project Activities

TRD-200905209

Bill Parr

Assistant Director

Legislative Budget Board

Filed: November 10, 2009

◆ ◆ ◆
North Central Texas Council of Governments

Request for Qualifications to Provide Services for a Brownfield Qualified Environmental Professional (Revised)

CONSULTANT QUALIFICATION REQUEST

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

This notice specifies that the deadline for responding to the request for qualifications is being revised to January 8, 2010. The previous due date was posted as December 18, 2009.

Due Date

Qualifications must be received no later than 5 p.m., Central Daylight Time, on Friday, January 8, 2010, to Natalie Bettger, Senior Program Manager, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 or P.O. Box 5888, Arlington, Texas 76005-5888. For copies of the Request for Qualifications (RFQ), contact Therese Bergeon, at (817) 695-9267.

Contract Award Procedures

The firm or individual selected will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and

methodology consistent with the scope of services contained in the Request for Qualifications. The NCTCOG Executive Board will review the CSC's recommendations.

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 qualifications 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-200905317

R. Michael Eastland

Executive Director

North Central Texas Council of Governments

Filed: November 18, 2009



Texas Public Finance Authority

Texas Public Finance Authority Charter School Finance Corporation Request for Applications Concerning Texas Credit Enhancement Program

Filing Date. November 12, 2009

Filing Authority. Texas Public Finance Authority Charter School Finance Corporation.

Eligible Applicants. The Texas Public Finance Authority Charter School Finance Corporation (CSFC) is requesting applications from eligible entities to receive credit enhancement for eligible Texas open enrollment charter schools by funding a debt service reserve fund for bonds issued under Chapter 53 of the Texas Education Code. Eligible entities are open-enrollment charter schools that: (1) have earned an academic rating of acceptable or higher for two consecutive years, including 2009, (2) are fiscally sound as determined by a satisfactory rating under the 2009 Financial Integrity Rating System of Texas (FIRST) as adapted for charter schools; and (3) meet other criteria as outlined in the application.

Description. The Texas Credit Enhancement Program (TCEP) received a \$10 million grant from the U.S. Department of Education (USDOE) to establish a credit enhancement program for charter schools facilities funding. Approximately \$900,000 of the grant has not yet been awarded. TCEP originally was a consortium formed with the Resource Center for Charter Schools, the Texas Public Finance Authority Charter School Finance Corporation (TPFA CSFC), and the Texas Education Agency (TEA). The TPFA CSFC is a non-profit corporation created by the Board of Directors of the Texas Public Finance Authority (TPFA), a state agency, pursuant to §53.351 of the Texas Education Code. TPFA provides administrative and staff support for the CSFC. The CSFC is the entity responsible for awarding access to TCEP grant funds.

Dates of Project. Applications will be due by January 15, 2010, at 5:00 p.m. into the TPFA office at 300 West 15th Street, Suite 411, Austin, Texas 78701.

Prior to submission the application, the charter schools should work with their financial advisors, bond counsel, and an underwriter to structure their bond issue and prepare preliminary bond documents. These services will not be provided by TCEP.

Project Amount. The TCEP has awarded approximately \$10.3 million in grant funds and approximately \$900,000 in grant funds remain to be awarded. The TCEP provides credit enhancement for charter school facilities to establish debt reserve funds for open-enrollment charter schools that are issuing municipal bonds to finance the acquisition, construction, repair, or renovation of Texas charter school facilities. Refinancing of facilities debt may be included if it falls within federal program guidelines.

These funds will not be provided directly to the approved charter schools for construction. The debt service reserve funds will be held in the state treasury solely to provide security for repayment of the bonds. The TCEP provides a written assurance during bond closing.

Selection Criteria: Applications will be reviewed by consortium staff and approved by the CSFC board. Approved charters will be notified in early 2010.

Requesting the Application. An electronic version of the application is available on the TPFA website (<http://www.tpfa.state.tx.us>).

Further Information. For additional information, contact: Dwight D. Burns at dwight.burns@tpfa.state.tx.us; Teresa Elliott at telliott@tx-charterschools.org; Rick Salvo at rick.salvo@tea.state.tx.us; and Mary Perry at mary.perry@tea.state.tx.us.

TRD-200905310

Susan K. Durso

General Counsel

Texas Public Finance Authority

Filed: November 18, 2009



Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on November 10, 2009, for 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; Add City of Dripping Springs, Holland, Lago Vista, Thorndale, and Thrall, Project Number 37660 before the Public Utility Commission of Texas.

The requested CFA service area includes the city limits of Dripping Springs, Holland, Lago Vista, Thorndale, and Thrall, 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 (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) at (800) 735-2989. All inquiries should reference Project Number 37660.

TRD-200905240

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: November 13, 2009



Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on November 13, 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 a State-Issued Certificate of Franchise Authority, Project Number 37667 before the Public Utility Commission of Texas.

The requested amendment is to expand the service area footprint to include the city limits of Hutchins, 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 use Relay Texas (toll free) 1-800-735-2989. All inquiries should reference Project Number 37667.

TRD-200905304

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: November 17, 2009



Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on November 12, 2009, for 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 Centrovision, Inc. for a State-Issued Certificate of Franchise Authority, Project Number 37662 before the Public Utility Commission of Texas.

The Applicant requests to be cable service provider. The requested CFA service area includes the City Limits of Moody, 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 (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 37662.

TRD-200905241

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: November 13, 2009



Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on November 12, 2009, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Niatel, LLC for a Service Provider Certificate of Operating Authority, Docket Number 37664.

Applicant intends to provide non-facilities-based data and resale-only telecommunications services.

Applicant's requested SPCOA geographic area includes the areas currently served by existing incumbent local exchange carriers in Texas.

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 December 8, 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 37664.

TRD-200905303

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: November 17, 2009



Texas Department of Transportation

Aviation Division - Request for Proposal for Aviation Engineering Services

Cherokee County, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

The following is a listing of proposed projects at the Cherokee County Airport during the course of the next five years through multiple grants.

Current Project: Cherokee County. TxDOT CSJ No. 0910JCKSN. Airport improvement project for clearing and grubbing along proposed fence and gate locations; Install 20 foot automatic security gate with controlled access; install game fencing and 5 access gates.

The DBE goal for the current scope is 11%. TxDOT Project Manager is Russell Deason.

Future scope work items for engineering/design services within the next five years may include but are not necessarily limited to the following:

1. Rehabilitate south portion of apron and apron stub TW
2. Expand auto parking by 10 spaces
3. Rehab and mark RW 14-32
4. Rehabilitate and mark all TWs, partial parallel TW, apron & hangar TW
5. Reconstruct hangar access TWs
6. Install TW CL reflectors

Cherokee County reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation the criteria, 5010 drawing, and most recent Airport Layout Plan are available online at

www.txdot.gov/avn/avninfo/notice/consult/index.htm

by selecting Cherokee County Airport. The proposal should address a technical approach for the current scope only. Firms shall use page 4,

Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at

<http://www.txdot.gov/business/projects/aviation.htm>.

The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. A prime provider may only submit one proposal. If a prime provider submits more than one proposal, that provider will be disqualified. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

Five completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than December 22, 2009, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Amy Slaughter.

The consultant selection committee will be composed of Aviation Division staff members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluation of engineering proposals can be found at

<http://www.txdot.gov/business/projects/aviation.htm>.

All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Amy Slaughter, Grant Manager. For technical questions, please contact Russell Deason, Project Manager.

TRD-200905295

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: November 16, 2009



Port Authority Advisory Committee Meeting

The following meeting was posted to the open meetings site on November 13, 2009:

December 15, 2009 - 10:00 a.m. (local time)

Teleconference

118 East Riverside

Transportation Planning and Programming Conference Room A

Room 2D-01, Austin, Texas

Agenda

1. Convene
2. Approval of minutes from the September 4, 2009 meeting (action item)
3. Discussion and adoption of Texas Ports 2010/2011 Capital Program (action item)
4. Discussion of general matters relating to port authorities and issues for future consideration
5. Adjourn

TRD-200905251

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: November 13, 2009



University of Houston System

Request for Proposal for PeopleSoft IT Security Review

PURPOSE. Pursuant to Texas Government Code Chapter 2254, the University of Houston System (University) solicits proposals (Proposals) from qualified consultants to provide advice and consultation in relation to University's PeopleSoft IT Security Review project as described below. Offers must be received by University no later than by 3:00 p.m. Central Standard Time, January 4, 2010 (Deadline).

CEO FINDING OF FACT. Pursuant to Texas Government Code, §2254.028(c), University's Chancellor/President made a finding that the consulting services contemplated by this RFP are necessary. While University has a substantial need for the consulting services, University does not currently have staff with expertise or experience with the consulting services and University cannot obtain such consulting services through a contract with another state governmental entity.

SCOPE OF WORK. The selected consultant will advise and assist University related to its PeopleSoft IT Security Review. The selected consultant will be expected to review and analyze the security business practices, policies and technical controls implemented in the existing University PeopleSoft environment and recommend best practice modifications. All recommendations should be consistent with COBIT and Texas DIR standards. Consultants are encouraged to propose contractual arrangements offering the maximum benefit to University in terms of assessing, evaluating and documenting the adequacy of the security measures and configurations that have been implemented in the University PeopleSoft environment. University seeks a holistic assessment of its PeopleSoft environment designed to provide the information necessary to insure that it has implemented a secure ongoing business program encompassing appropriate business practices, policies and technical controls. The PeopleSoft environment encompasses all aspects of University's PeopleSoft implementation and includes the following databases: Production, Developer, Reporting, Conversion, Sandbox, Test and Training in support of the Student Administration, Financial and HR applications. The assessment should include the following elements: (i) PeopleSoft Security Assessment - Analyze the existing PeopleSoft Security configuration and recommend best practice modifications in the following areas: (a) Roles - Identify the users that are associated to each role and begin the process of determining if the users

should be in those roles; (b) Permission Lists - Identify the permission lists and make recommendations based on best practices. Specifically review the guidelines that determine which users are granted correction mode; review permission list to determine whether users granted correction mode meet established criteria. identify the permission lists that grant correction mode and determine if further restrictions need to be implemented to reduce risks. (c) Query Security - Evaluate query security to identify potential risks and make recommendations for changes to increase security posture. (ii) Security Business Processes - Review existing business processes for adding, changing and deleting users and user permissions and identify potential risks and recommend improvements. (iii) PeopleSoft Critical Data Audit - Identify strategy for identifying the critical tables that should be audited because of the impact to the system if changes are made.

CONTRACT TERM. The University anticipates entering into a contract with the selected consultant with a term beginning on or about January 18, 2010, and ending July 18, 2010.

GENERAL INSTRUCTIONS. Submit one (1) original and six (6) copies of your Proposal in a sealed envelope to: Director of Purchasing, University of Houston, 5000 Gulf Freeway, Bldg. 3, Suite 169, Houston, Texas 77004-5015 on or before the Deadline. The original must be prepared on a word processor and formatted in at least 10-point-font. The original and all copies must be clearly legible. Proposals must be specific and responsive to the criteria set forth in this RFP. Further technical information can be obtained from Alan Phillips at (713) 743-5666.

COMPLIANCE WITH RFP REQUIREMENTS. By submitting a Proposal, consultant agrees to be bound by the requirements set forth in this RFP. University may in its sole discretion disqualify a Proposal from consideration if University determines such Proposal is non-responsive and/or non-compliant with such requirements.

REQUIRED INFORMATION. Consultants responding to this RFP must provide the following information, at a minimum: (1) description of the consultant's qualifications for performing the services; (2) names, experience, technical expertise and licenses currently held by each staff person who may be assigned to work on such matters, and the availability of the lead person and others assigned to the project; (3) demonstration of specialization in the marketplace; (4) listing of recent, relevant project names/locations, project sizes and references (with contact information); (5) a sample management report demonstrating the format that will be utilized, containing sample results, findings, values, etc. (6) hourly billing rates for staff who would be assigned to perform services, flat fees or other fee arrangements directly related to the achievement of specific goals, and billable expenses; (7) confirmation of willingness to comply with: (i) University's policies, directives and guidelines; and (ii) all federal and Texas state laws; (8) State of Texas corporate filings, DBA name (if applicable), registration and tax identification number; (9) sufficient description of the proposed methodology and tasks the consultant will utilize to achieve the goals of the project set forth in the RFP; and (10) certification that neither consultant nor any professionals employed by consultant are currently: (i) a defendant in any criminal proceedings, (ii) under criminal investigation, (iii) subject of any administrative action, including state and/or federal regulatory agency proceeding, which could result in censure, suspension or revocation of any licenses (if unable to make this certification - please include a detailed explanation).

REQUESTS FOR CLARIFICATION. University may request clarification of any information contained in or related to a Proposal.

CONSULTANT CERTIFICATION. The Proposal must be signed and dated by a representative of consultant who is authorized to bind consultant to the terms and conditions contained in this RFP and to

compliance with the information submitted in the Proposal. By submitting a Proposal, consultant certifies to both: (i) the completeness, veracity and accuracy of the information provided in the Proposal; and (ii) the authority of the individual whose signature appears on the Proposal to bind consultant to the terms and conditions set for in this RFP. Proposals submitted without the required signature will be disqualified.

PROPOSAL OWNERSHIP. All Proposals become the property of University upon receipt.

USE/DISCLOSURE OF INFORMATION. Consultant acknowledges that University is an agency of the State of Texas and is required to comply with the Texas Public Information Act. If a Proposal includes proprietary data, trade secrets or information the consultant wishes to except from public disclosure, then consultant must specifically label such data, secrets or information as follows: "PRIVILEGED AND CONFIDENTIAL--PROPRIETARY INFORMATION." To the extent permitted by law, information labeled as such will be used by University only for purposes related to or arising out of the (i) evaluation of Proposals, (ii) selection of a consultant pursuant to the RFP process, and (iii) negotiation and execution of a contract with the selected consultant.

TERMINATION OF RFP. This RFP does not obligate University to purchase any services related to this RFP unless confirmed by a definitive written contract signed by University and a selected consultant. University may terminate the RFP process without penalty or obligation at any time and for any reason prior to signing such definitive contract.

RESCISSION OF PROPOSAL. Consultant may withdraw its Proposal from consideration at any time prior to the Deadline by providing a written notification to Director of Purchasing, University of Houston, 5000 Gulf Freeway, Bldg. 3, Suite 169, Houston, Texas 77004-5015.

HUB PARTICIPATION. It is the University's policy to make a good faith effort to include participation of Historically Underutilized Businesses (HUB) certified firms in its contracts.

COMMUNICATIONS WITH UNIVERSITY PERSONNEL. Except as provided in this RFP and as is otherwise necessary for the conduct of ongoing University business operations, consultants are prohibited from communicating with University personnel who are involved with: (i) reviewing and/or evaluating Proposals; (ii) selecting a consultant; and/or (iii) negotiating or formalizing a contract based on this RFP. If consultant engages in conduct or communications that University determines is contrary to the instructions set forth in this RFP, University may, in its sole discretion, disqualify the consultant and withdraw the consultant's Proposal from consideration.

EVALUATION OF PROPOSALS. The Proposals will be reviewed in accordance with the criteria set forth in this RFP. Proposals that are: (i) incomplete; (ii) not properly certified and signed; (iii) not in the required format; or (iv) otherwise non-compliant with any of the requirements set forth in this RFP may be disqualified by University.

DISCUSSIONS WITH CONSULTANTS. University may conduct discussions and/or negotiations with any consultant that appears to be eligible for award (Eligible Consultant) pursuant to the selection criteria set forth in this RFP. In conducting discussions and/or negotiations, University will not disclose to third parties information derived from Proposals submitted by competing consultants, except as required by law.

MODIFICATION OF PROPOSALS. All Eligible Consultants will be afforded the opportunity to submit best and final Proposals if: (i) negotiations with any other consultant result in a material alteration to the RFP; and (ii) such material alteration has a cost consequence that could alter the consultant's quoted pricing.

SELECTION OF CONSULTANT. University will select the Proposal that provides best value and is most advantageous to University according to the evaluation criteria set forth in this RFP. Consultant acknowledges that University is not bound to accept the lowest-priced Proposal.

EVALUATION OF PROPOSALS. By submitting a Proposal, consultant: (i) accepts the evaluation process and other terms and conditions set forth in this RFP; and (ii) acknowledges that University will make subjective judgments in the Proposal evaluation process.

EVALUATION CRITERIA. Evaluation of Proposals and award to the selected consultant will be based on the following factors and weights: (i) Experience and reliability of consultant's organization, including experience with multi-business unit organizations, and qualifications of the personnel who would perform requirements of the RFP (25%); (ii) Background and skills of the firm's assigned team, including knowledge and experience related to PeopleSoft Security Assessment processes (25%); (iii) Consultant's written plan, which demonstrates the method or manner in which the consultant will satisfy requirements of the RFP (25%); (iv) Fee schedule and total cost (25%). Consideration may also be given to any additional information and comments that increase the benefits to the University. Upon completion of the initial review and evaluation of the Proposals submitted, selected consultants may be invited to participate in oral presentations.

CONSIDERATION OF ADDITIONAL INFORMATION. The University reserves the right to request and consider any additional information it deems relevant related to this RFP and any Proposals.

COSTS INCURRED BY CONSULTANT. Consultant will be solely responsible for the costs it incurs related to this RFP.

INFORMATION ABOUT THE SYSTEM. The University comprises the largest Texas state institution system of higher education located in an urban, metropolitan environment. The University offers undergraduate and graduate degree programs in a variety of disciplines; courses are conducted throughout most of the calendar year. The student population of the main campus in Houston, TX is comprised of approximately 35,000 students who commute to the campus and 2,100 students who reside on campus. The main campus employs approximately 4,200 individuals who serve in faculty or staff positions. The component campuses, in surrounding areas, consist of the following statistics: The Clear Lake campus, located in the far southeast Houston-area, has a student population of approximately 7700 students, 700 full-time and 450 part-time employees; The Downtown campus, located in downtown Houston, has a student population of approximately 11,000 students, 573 full-time and 238 part-time employees. The UH campus at Victoria (near-southeast Texas) has a student population of approximately 2411 students, 239 full-time and 50 part-time employees. The two multi-institutional teaching centers, one UHS at Sugar Land with a population of 1800 students and 35 staff positions and one at Cinco Ranch with a population of 1,000 students and 16 staff positions.

TRD-200905318

Chris R. Hobza

Associate General Counsel/Executive Director

University of Houston System

Filed: November 18, 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 34 (2009) is cited as follows: 34 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 "34 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 34 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 *Index of Rules*. The *Index of Rules* 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 the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION

Part 4. Office of the Secretary of State

Chapter 91. Texas Register

40 TAC §3.704.....950 (P)

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).