

---

# TEXAS REGISTER

*Volume 34 Number 50*

*December 11, 2009*

*Pages 8903 - 9060*

---



*Kimberly Reyes*

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](mailto: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

## **GOVERNOR**

Appointments.....	8909
Appointments.....	8909
Proclamation 41-3231.....	8909

## **ATTORNEY GENERAL**

Request for Opinions.....	8911
Opinions.....	8911
Open Records Decision.....	8912

## **PROPOSED RULES**

### **TEXAS EDUCATION AGENCY**

#### STATE ADOPTION AND DISTRIBUTION OF INSTRUCTIONAL MATERIALS

19 TAC §§66.4, 66.7, 66.10.....	8914
19 TAC §§66.22, 66.24, 66.27, 66.28, 66.30, 66.33, 66.36, 66.42, 66.48, 66.54, 66.57, 66.60, 66.63, 66.66, 66.67, 66.73, 66.75.....	8915
19 TAC §§66.102, 66.104, 66.105.....	8922
19 TAC §66.110.....	8923
19 TAC §66.121.....	8924

#### CURRICULUM REQUIREMENTS

19 TAC §§74.51 - 74.54.....	8926
19 TAC §§74.61 - 74.64.....	8930

#### TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR ENGLISH LANGUAGE ARTS AND READING

19 TAC §§110.1 - 110.7.....	8938
19 TAC §110.10.....	8938
19 TAC §110.17.....	8938
19 TAC §§110.21 - 110.24.....	8939
19 TAC §110.30.....	8939
19 TAC §§110.41 - 110.45.....	8939

#### TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR SPANISH LANGUAGE ARTS AND READING AND ENGLISH AS A SECOND LANGUAGE

19 TAC §§128.1 - 128.7.....	8940
19 TAC §128.10.....	8941
19 TAC §128.17.....	8941
19 TAC §128.21, §128.22.....	8941
19 TAC §128.30.....	8942
19 TAC §§128.41 - 128.43.....	8942

#### STUDENT ATTENDANCE

19 TAC §129.21.....	8942
---------------------	------

### **STATE BOARD OF EXAMINERS FOR SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY**

### **SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS**

22 TAC §741.44.....	8945
22 TAC §741.64.....	8946
22 TAC §741.64.....	8946

### **CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS**

#### INSTITUTE STANDARDS ON ETHICS AND CONFLICTS, INCLUDING THE ACCEPTANCE OF GIFTS AND DONATIONS TO THE INSTITUTE

25 TAC §§702.3, 702.5, 702.7, 702.9, 702.11, 702.13, 702.15, 702.17, 702.19, 702.21.....	8949
--	------

#### INSTITUTE STANDARDS ON ETHICS AND CONFLICTS, INCLUDING RELATIONSHIPS BETWEEN THE INSTITUTE AND PRIVATE ORGANIZATIONS AND DONORS

25 TAC §702.13, §702.15.....	8956
------------------------------	------

### **COMPTROLLER OF PUBLIC ACCOUNTS**

#### STATE ENERGY CONSERVATION OFFICE

34 TAC §§19.42, 19.44, 19.45.....	8957
-----------------------------------	------

### **TEXAS JUVENILE PROBATION COMMISSION**

#### TEXAS JUVENILE PROBATION COMMISSION STANDARDS

37 TAC §341.60.....	8959
---------------------	------

#### JUVENILE JUSTICE PROFESSIONAL CODE OF ETHICS

37 TAC §345.100, §345.110.....	8960
37 TAC §345.200.....	8961
37 TAC §345.300, §345.310.....	8961

## **WITHDRAWN RULES**

### **TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS**

#### POWERS AND DUTIES OF THE BOARD

22 TAC §323.3.....	8963
--------------------	------

#### LICENSE RENEWAL

22 TAC §341.1.....	8963
22 TAC §341.2.....	8963
22 TAC §341.3.....	8963
22 TAC §341.5.....	8963
22 TAC §341.8.....	8963
22 TAC §341.9.....	8964
22 TAC §341.20.....	8964

## **ADOPTED RULES**

<b>TEXAS DEPARTMENT OF LICENSING AND REGULATION</b>	
ELEVATORS, ESCALATORS, AND RELATED EQUIPMENT	
16 TAC §74.50.....	8965
<b>TEXAS EDUCATION AGENCY</b>	
SCHOOL DISTRICTS	
19 TAC §61.1014.....	8965
STUDENT ATTENDANCE	
19 TAC §129.1027.....	8966
<b>TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS</b>	
LICENSING PROCEDURE	
22 TAC §329.5.....	8967
22 TAC §329.7.....	8967
REGISTRATION OF PHYSICAL THERAPY FACILITIES	
22 TAC §347.1.....	8967
<b>TEXAS JUVENILE PROBATION COMMISSION</b>	
MEMORANDUM OF UNDERSTANDING	
37 TAC §359.100.....	8968
<b>TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS</b>	
LICENSE RENEWAL	
40 TAC §370.2.....	8968
<b>TABLES AND GRAPHICS</b>	
.....	8971
<b>IN ADDITION</b>	
<b>Texas Department of Agriculture</b>	
Request for Proposals: Enology and Viticulture Education and Research Grant Program.....	8989
Request for Proposals: Enology Education and Research Grant Program.....	8991
<b>Comptroller of Public Accounts</b>	
Certification of the Average Taxable Price of Gas and Oil - October 2009.....	8992
List of States with Resident Bidder Preferences.....	8993
<b>Office of Consumer Credit Commissioner</b>	
Notice of Rate Ceilings.....	9014
Notice of Rate Ceilings.....	9014
<b>Texas Council for Developmental Disabilities</b>	
Request for Proposals.....	9015

<b>Texas Commission on Environmental Quality</b>	
Amended Notice of Receipt of Application and Intent to Obtain a Municipal Solid Waste Limited Scope Permit Amendment.....	9015
Enforcement Orders.....	9016
Notice of Meeting on January 21, 2010, at the Iowa City Hall, Located at 12003 County Road 65, Iowa Colony, Brazoria County, Texas, Concerning the Force Road Oil and Vacuum Truck Company Proposed State Superfund Site.....	9021
Notice of Water Quality Applications.....	9022
<b>Texas Ethics Commission</b>	
List of Late Filers.....	9023
<b>Texas Facilities Commission</b>	
Request for Proposals #303-0-10756.....	9024
<b>Texas Department of Insurance</b>	
Company Licensing.....	9024
Correction of Error.....	9024
Open Meeting Notice.....	9024
Third Party Administrator Applications.....	9025
<b>Texas Department of Licensing and Regulation</b>	
Public Notice - Updated Criminal Conviction Guidelines.....	9025
<b>Public Utility Commission of Texas</b>	
Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority.....	9025
Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority.....	9025
Notice of Application to Relinquish a Service Provider Certificate of Operating Authority.....	9026
Notice of Application to Relinquish a Service Provider Certificate of Operating Authority.....	9026
Public Notice of Request for Comment on Strawman Rule.....	9026
<b>Teacher Retirement System of Texas</b>	
Report of Fiscal Transactions, Accumulated Cash and Securities, and Rate of Return on Assets and Actuary's Certification of Actuarial Valuation and Actuarial Present Value of Future Benefits.....	9026
<b>Texas Department of Transportation</b>	
Aviation Division - Request for Proposal for Aviation Engineering Services.....	9048
Public Hearing Notice - Statewide Transportation Improvement Program.....	9049
Public Notice - Advertising in Texas Department of Transportation Travel Literature and <i>Texas Highways</i> Magazine.....	9050
Request for Information: Open-Road Electronic Toll Collection System.....	9055
<b>Texas State University System</b>	
Consultant Contract Award.....	9058

**The University of Texas System**

Notice of Intent to Amend Existing Consulting Contract.....9058

**Workforce Solutions Brazos Valley Board**

Request for Quotes for Store/Bank Credit/Debit Card Assistance Services .....9059

# Open Meetings

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

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

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

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

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

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

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

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

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

...

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

# THE GOVERNOR

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

## Appointments

### Appointments for November 5, 2009

Appointed to the Dental Hygiene Advisory Committee for a term to expire February 1, 2015, Regan Landreth of Round Rock (Ms. Landreth is being reappointed).

Appointed to the Dental Hygiene Advisory Committee for a term to expire February 1, 2015, Tracy L. McCready of Navasota (replacing Cheryl Burke of Spring whose term expired).

Appointed to the Environmental Flows Advisory Group for a term at the pleasure of the Governor, Carlos Rubinstein of Austin (replacing Bryan Shaw of Round Rock).

Appointed to the Texas Public Finance Authority for a term to expire February 1, 2011, Macedonio Villarreal of Missouri City (replacing Linda McKenna of Harlingen who resigned).

Rick Perry, Governor

TRD-200905489



## Appointments

### Appointments for November 30, 2009

Appointed to the Texas Racing Commission for a term to expire February 1, 2015, Alan Scott Haywood of Austin (replacing Thomas Latham of Sunnyvale who resigned).

Appointed as Judge of the 124th Judicial District Court, Gregg County, for a term until the next General Election and until his successor shall be duly elected and qualified, F. Alfonso Charles of Longview (replacing William Jennings who is deceased).

Appointed as the Canadian River Compact Commissioner, effective December 31, 2009, for a term to expire December 31, 2015, Richard McDonald of Amarillo. Dr. McDonald is being reappointed.

Appointing Ray Sullivan as designee to serve as an Ex-Officio/Non-Voting member of the Texas Economic Development Corporation for a term at the pleasure of the Governor. Mr. Sullivan replaces Phil Wilson.

Appointed to the Human Trafficking Task Force, pursuant to HB 4009, 81st Legislature, Regular Session, for a term at the pleasure of the Governor, Mary Anne Wiley of Austin.

Appointed to the Human Trafficking Task Force, pursuant to HB 4009, 81st Legislature, Regular Session, for a term at the pleasure of the Governor, Alternate Member, Josh Havens of Austin.

Rick Perry, Governor

TRD-200905532



## Proclamation 41-3231

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of Texas, did issue an Emergency Disaster Proclamation on October 13, 2009, certifying that a long-term statewide drought has caused extreme shortages of both forage and hay throughout the State of Texas. Although Texas has recently received rainfall, the statewide drought experienced over the last two years has severely affected the quantity and quality of forage and hay available to feed livestock. The shortage of forage and hay continues to create an imminent threat of a loss of livestock for the entire state.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in Texas based on the existence of such threat and direct that all necessary measures both public and private as authorized under Section 418.017 of the code be implemented to meet that threat.

As provided in Section 418.016 of the code, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the state of disaster.

The renewal of the Emergency Disaster Proclamation becomes effective on November 12, 2009, and shall remain in effect until December 11, 2009, unless renewed or terminated.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 10th day of November, 2009.

Rick Perry, Governor

Attested by: Esperanza "Hope" Andrade, Secretary of State

TRD-200905490



# THE ATTORNEY GENERAL

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

An index to the full text of these documents is available from  
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

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

Request for Opinions

**RQ-0839-GA**

**Requestor:**

The Honorable Rob Eissler

Chair, Committee on Public Education

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78768-2910

Re: Authority of an independent school district to set property tax rates under section 26.08, Tax Code (RQ-0839-GA)

**Briefs requested by December 24, 2009**

**RQ-0840-GA**

**Requestor:**

The Honorable Charlie Geren

Chair, Committee on House Administration

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78768-2910

Re: Application of Local Government Code section 143.014(c) to municipalities that have adopted chapter 174 of the Local Government Code, the Fire and Police Employee Relations Act: Reconsideration of Attorney General Opinion No. GA-0662 (2008) (RQ-0840-GA)

**Briefs requested by December 28, 2009**

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

TRD-200905530

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: December 1, 2009



Opinions

**Opinion No. GA-0746**

The Honorable Steve Ogden

Chair, Senate Finance Committee

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Validity of appropriation of a one-time payment to annuitants of the Teacher Retirement System and the Employees Retirement System (RQ-0801-GA)

## S U M M A R Y

The Legislature is authorized to arrange for one-time payments to eligible retirees. To accomplish such payments, the Legislature may appropriate funds directly to the Teacher Retirement System of Texas ("TRS") and the Employee Retirement System of Texas ("ERS") for distribution to retirees of the respective systems. In enacting section 17.13 of the General Appropriations Act, the Legislature chose not to pursue that path. The Legislature instead appropriated funds to the Comptroller for the purpose of providing payments to the recipients outside of the TRS and ERS trust funds. By utilizing this approach, the Legislature chose to bypass the trustees and therefore prevented the funds from becoming trust funds of the respective retirement systems. The path chosen by the Legislature calls into question a reliance on article XVI, section 67 of the Texas Constitution as authority for such payments and raises questions about whether the payments would violate article III, sections 44 and 53 of the Texas Constitution. Because the language of section 17.13 requires a "conclusive opinion that such one-time payments are constitutionally and statutorily permissible" and because the appropriation raises questions about compliance with article III, sections 44 and 53 of the Texas Constitution, the appropriation provision on its very face makes it impossible for us to conclusively opine that such payments "are constitutionally and statutorily permissible."

As a result, the Legislature has mandated that the relevant appropriated funds must be transferred to TRS and ERS in accordance with the directive of section 17.13. Such transfers will bring the trust funds closer to actuarial soundness and thus increase the long-term financial stability of the funds, a result that should benefit both current and future retirees. Moreover, when the funds are actuarially sound, the trustees of the respective systems are independently authorized to consider increases in the benefits paid to retirees.

**Opinion No. GA-0747**

Mr. Robert Scott

Commissioner of Education



Texas Education Agency  
1701 North Congress Avenue  
Austin, Texas 78701-1494

Re: Whether a school district may expend district funds to pay a civil penalty imposed by a municipality (RQ-0710-GA)

#### S U M M A R Y

If the College Station Independent School District is liable for a civil penalty imposed upon it pursuant to chapter 707 of the Texas Transportation Code and the City of College Station's Code of Ordinances, its payment of the penalty would not contravene article III, sections 51 and 52(a) of the Texas Constitution. However, if the District is not liable for a civil penalty, payment of that penalty by the District may violate article III, sections 51 and 52(a), unless the payment accomplishes a public purpose of the District, with a clear public benefit received in return, and there are adequate public controls in place to ensure that the public purpose is accomplished.

#### Opinion No. GA-0748

Mr. Douglas Oldmixon  
Administrator  
Texas Real Estate Commission  
Post Office Box 12188  
Austin, Texas 78711-2188

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

#### S U M M A R Y

The Texas Real Estate Commission does not have authority under section 1102.401(a), Occupations Code, to take disciplinary action against a person licensed under chapter 1102 if the person has not accepted employment to perform a real estate inspection for a buyer or seller of real property.

It is necessary to define the terms "buyer" and "seller" in the context of chapter 1102 in order to determine whether a person, in a particular factual context, constitutes a buyer or seller of real property for which a real estate inspector has accepted employment. As the agency charged with administering chapter 1102 and authorized to establish the standards of conduct and ethics for persons licensed under chapter 1102, the Commission must determine, in the first instance, the meaning of these terms.

#### Opinion No. GA-0749

Mr. Robert Scott  
Commissioner of Education  
Texas Education Agency  
1701 North Congress Avenue  
Austin, Texas 78701-1494

Re: Application of Education Code section 11.063 to former school district trustee placed in his district by a school staffing company (RQ-0806-GA)

#### S U M M A R Y

Section 11.063 of the Education Code bars a school district trustee from accepting employment with the school district until the first anniversary of the date his membership on the school board ends. If, after examining the relationship among the district, the third-party company and the trustee, a court were to find that a third-party company employed the former trustee and he was not employed by the school district, we believe that a court would likely conclude that his employment would not be barred by Education Code section 11.063, even though the private company assigned him to perform services for the school district.

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

TRD-200905531  
Stacey Napier  
Deputy Attorney General  
Office of the Attorney General  
Filed: December 2, 2009



#### Open Records Decision

#### ORD-683

Dewey E. Helmcamp, III, J.D.  
Executive Director  
Texas Board of Veterinary Medical Examiners  
333 Guadalupe Street, Suite 3-810  
Austin, Texas 78701-3942

Re: Whether information relating to a complaint filed against a licensed veterinarian is subject to disclosure to the licensee or the general public (ORQ-68).

#### S U M M A R Y

When requested by a member of the general public, both a complaint about a veterinarian filed with the Texas Board of Veterinary Medical Examiners (the "Board") and the licensee's response to the complaint are confidential under §801.207(b) of the Occupations Code and therefore excepted from required public disclosure under §552.101 of the Public Information Act. However, §801.207(b) does not prohibit the Board from sending a copy of either a complaint to the licensee about whom it concerns or a licensee's response to the complainant during the investigation of the complaint. The Board may also disclose the licensee's response to a consulting veterinarian who is acting on behalf of the Board. The presiding judge must decide whether a particular investigation record is admissible in a SOAH hearing. A Board order is not confidential under §801.207(b).

*For further information, please access the website at [www.oag.state.tx.us](http://www.oag.state.tx.us) or call the Open Government Hotline at (877) 673-6839.*

TRD-200905533  
Stacey Napier  
Deputy Attorney General  
Office of the Attorney General  
Filed: December 2, 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 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 66. STATE ADOPTION AND DISTRIBUTION OF INSTRUCTIONAL MATERIALS

The State Board of Education (SBOE) proposes amendments to §§66.4, 66.7, 66.10, 66.22, 66.24, 66.27, 66.28, 66.30, 66.33, 66.36, 66.42, 66.48, 66.54, 66.57, 66.60, 66.63, 66.66, 66.75, 66.104, and 66.121; new §§66.67, 66.73, 66.102, and 66.105; and the repeal of §66.110, concerning instructional materials. The sections address provisions relating to state adoption of instructional materials, local operations, and special instructional materials. The proposed revisions would implement changes to the instructional materials review and adoption process resulting from the 81st Texas Legislature, 2009.

House Bill (HB) 188, 80th Texas Legislature, 2007, made significant changes pertaining to the adoption and distribution of instructional materials. The SBOE approved amendments to Chapter 66 in November 2007. These amendments included adding §66.22, Midcycle Review and Adoption; revising §66.27, Proclamation, Public Notice, and Schedule for Adopting Instructional Materials, to require that proclamations be designated according to the school year in which the materials are intended to be made available in classrooms; and revising §66.36, State Review Panels: Duties and Conduct, to require the state review panel to evaluate all instructional materials to determine if the Texas Essential Knowledge and Skills (TEKS) are covered in the student version as well as in the teacher version of the materials.

HB 2488, 81st Texas Legislature, 2009, requires the SBOE to place an open-source textbook for a secondary-level course submitted for adoption by an eligible institution on the conforming or nonconforming list. HB 2488 also specifies that the SBOE may execute a contract for printing an open-source textbook listed on the conforming or nonconforming list. In addition, each school district and open-enrollment charter school is required to annually certify to the SBOE that each student will be provided with instructional materials that cover all elements of the TEKS.

HB 4294, 81st Texas Legislature, 2009, requires that the SBOE be given an opportunity to comment on the electronic textbook or instructional materials on the list adopted by the commissioner of education. Additionally, school districts and open-enrollment charter schools are required to purchase, at a minimum, a classroom set of textbooks adopted by the SBOE for each subject and grade level in the foundation and enrichment curriculum.

The proposed revisions to 19 TAC Chapter 66 would incorporate changes to the instructional materials review and adoption

process resulting from the 81st Texas Legislature, 2009. The proposed revisions would include amendments to existing rules relating to state adoption of instructional materials, including proclamations, review panel eligibility and appointment, samples, consideration and adoption of instructional materials by the SBOE, and requests for approval of updated editions of state-adopted instructional materials; selection of instructional materials by school districts; and special instructional materials. The proposed revisions would also include new rules for the adoption of open-source instructional materials, contracts for printing of open-source textbooks, textbook credits, and certification by school districts. In addition, the proposed revisions would repeal an outdated rule relating to a pilot project for certain students enrolled in courses for concurrent high school and college credit.

The proposed revisions would also make technical edits throughout the chapter for clarification and consistent use of terminology.

As a result of the proposed revisions, appropriate changes would need to be incorporated into the Educational Materials and Textbooks (EMAT) online system. The proposed amendments would have no new locally maintained paperwork requirements.

Anita Givens, associate commissioner for standards and programs, has determined that for the first five-year period the amendments, new sections, and repeal are in effect there will be no additional costs for state or local government as a result of enforcing or administering the amendments, new sections, and repeal. The proposed revisions to 19 TAC Chapter 66 would include options for school districts and open-enrollment charter schools when ordering instructional materials, which could generate textbook credits. Textbook credits can be used to purchase additional instructional materials, electronic materials, and technological equipment to access content.

Ms. Givens has determined that for each year of the first five years the amendments, new sections, and repeal are in effect the public benefit anticipated as a result of enforcing the amendments, new sections, and repeal would be the alignment of the textbook adoption and distribution process with statute. There is no anticipated economic cost to persons who are required to comply with the amendments, new sections, and repeal.

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

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendments, new

sections, and repeal 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*.

## SUBCHAPTER A. GENERAL PROVISIONS

### 19 TAC §§66.4, 66.7, 66.10

The amendments are proposed under the Texas Education Code, §7.102(c), which authorizes the SBOE to adopt rules required by the TEC, Chapter 31, and §31.003, which authorizes the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of textbooks.

The amendments implement the Texas Education Code, §7.102(c) and Chapter 31.

#### §66.4. *Requirement for Registers.*

(a) A register shall be kept by the commissioner of education and appropriate staff of the Texas Education Agency (TEA) to record[=] all personal contacts with publishers, their representatives, agents, authors, consultants, editors, depositories, or any other person who has received or expects to receive any money, thing of value, or financial benefit for an appearance; or contact regarding any instructional materials submitted and being considered for State Board of Education (SBOE) [SBOE] approval.

(b) Publishers shall file with the commissioner of education, on or before a date specified in the schedule of adoption procedures [for the adoption process], a register indicating all visits, meetings, or contacts with SBOE members, including the date, time, location, and purpose of the communication.

#### §66.7. *Manufacturing Standards and Specifications.*

(a) Instructional materials adopted by the State Board of Education (SBOE) shall comply with the standards in the latest edition of Manufacturing Standards and Specifications for Textbooks approved by the national Advisory Commission on Textbook Specifications. If it is determined that good cause exists, the commissioner of education may recommend that the SBOE grant an exception to this requirement.

(b) If no standards exist for a particular media submitted for adoption, the instructional material is eligible for adoption.

(c) A publisher shall file a statement certifying instructional materials submitted for consideration will meet minimum manufacturing standards if adopted. Each statement must be made on a form provided by the commissioner of education, signed by a company official, and filed on or before the deadline specified in the schedule of adoption procedures [for the adoption process].

(d) If, during the contract period, the commissioner of education determines that any adopted instructional materials have faulty manufacturing characteristics or are made of inferior materials, the materials shall be replaced by the publisher without cost to the state.

#### §66.10. *Procedures Governing Violations of Statutes--Administrative Penalties.*

(a) Complaints. An official complaint alleging a violation of the Texas Education Code, §31.151, must be filed with the commissioner of education. The commissioner may hold a formal or informal hearing in the case of an apparent violation of statute. Upon determining that a violation has occurred, the commissioner shall report his or her findings to the State Board of Education (SBOE).

(b) Administrative penalties. Under the Texas Education Code, §31.151(b), the SBOE may impose a reasonable administrative penalty against a publisher or manufacturer found in violation of a provision of §31.151(a). An administrative penalty shall be assessed

only after the SBOE has granted the publisher or manufacturer a hearing in accordance with the Texas Education Code, §31.151, and the Administrative Procedure Act.

(c) Penalties for failure to correct factual errors.

(1) A factual error shall be defined as a verified error of fact or any error that would interfere with student learning. The context, including the intended student audience and grade level appropriateness, shall be considered.

(2) A factual error repeated in a single item or contained in both the student and teacher components of instructional material shall be counted once for the purpose of determining penalties.

(3) A penalty may be assessed for failure to correct a factual error identified in the list of corrections submitted by a publisher under §66.54(h) [~~§66.54(g)~~] of this title (relating to Samples) or for failure to correct a factual error identified in the report of the commissioner of education under §66.63(d) of this title (relating to Report of the Commissioner of Education) and required by the SBOE. The publisher shall provide an errata sheet approved by the commissioner of education with each teacher component of an adopted title.

(4) A penalty not to exceed \$5,000 may be assessed for each factual error identified after the deadline established in the proclamation by which publishers must have submitted corrected samples of adopted instructional materials.

(d) Categories of factual errors.

(1) Category 1. A factual error in a student component that interferes with student learning.

(2) Category 2. A factual error in a teacher component only.

(3) Category 3. A factual error in either a student or teacher component that reviewers do not consider serious.

(e) First-year penalties. The base and per-book penalties shall be assessed as follows for failure to correct factual errors described in subsections (c) and (d) of this section.

(1) Category 1 error. \$25,000 base plus 1% of sales.

(2) Category 2 error. \$15,000 base plus 1% of sales.

(3) Category 3 error. \$5,000 base plus 1% of sales.

(f) Second-year penalties. The base and per-book penalties shall be assessed as follows if a publisher, after being penalized for failure to correct factual errors described in subsections (c)-(e) of this section, repeats the violation in the subsequent adoption.

(1) Category 1 error. \$30,000 base plus 1% of sales.

(2) Category 2 error. \$20,000 base plus 1% of sales.

(3) Category 3 error. \$10,000 base plus 1% of sales.

(g) Penalties for failure to deliver adopted instructional materials, including teacher components, in a timely manner or in the quantities the school district or open-enrollment charter school is eligible to receive as specified in the publisher's bid. The SBOE may assess penalties as allowed by law against publishers who fail to deliver adopted instructional materials, including teacher components specified by §66.51(a)(3) of this title (relating to Instructional Materials Purchased by the State), in accordance with provisions in the contracts.

(h) Penalties for selling textbooks with factual errors. The SBOE may assess administrative penalties in accordance with the Texas Education Code, §31.151, against a seller of textbooks who sells textbooks with factual errors.

(i) Penalties for failure to maintain websites in state-adopted products. The SBOE may assess administrative penalties against a publisher who fails to maintain a website or provide a suitable alternative for conveying the information in the website, or who otherwise fails to meet the requirements of this subsection. Where applicable, the publisher shall monitor, update, and maintain any in-house and third party electronic, web-based, or online products furnished as part of the instructional materials specified in State of Texas Official Publisher Contract for the period determined by the SBOE. If, at any time during the contract period, the commissioner of education determines in a hearing that electronic, web-based, or online instructional materials furnished and supplied under the terms of a contract have faulty manufacturing characteristics or display dated or inferior information, the instructional materials or information shall be replaced with complying materials or information by the publishers without cost to the state. The publisher further agrees that electronic, web-based or online instructional materials listed in a State of Texas Official Publishers Contract will not be altered in any way that would remove content from the curriculum, or that would change content in the curriculum without prior SBOE approval. The publisher will not allow advertising of any type to be placed in or associated with the materials. The publisher will not add any Internet links to the materials without the approval of the commissioner of education, will not redirect any user accessing the web-based or online instructional materials to other Internet or electronic sites, and will not collect any information about the user or computer accessing the materials that would allow determination of personal information, including email addresses. This section applies only to a website that is a component used to address Texas Essential Knowledge and Skills as part of a state-adopted product.

(j) State Board of Education discretion regarding penalties. The SBOE may, if circumstances warrant, waive or vary penalties contained in this section for first or subsequent violations based on the seriousness of the violation, any history of a previous violation or violations, the amount necessary to deter a future violation, any effort to correct the violation, and any other matter justice requires.

(k) Payment of fines. Each affected publisher shall issue credit to the Texas Education Agency (TEA) in the amount of any penalty imposed under the provisions of this section. When circumstances warrant it, TEA is authorized to require payment of penalties in cash within ten days. Each affected publisher who pays a fine for failure to deliver adopted instructional materials in a timely manner will not be subject to the liquidated damages provision in the publisher's contract for the same failure to deliver adopted instructional materials in a timely manner.

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 30, 2009.

TRD-200905491

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: January 10, 2010

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



## SUBCHAPTER B. STATE ADOPTION OF INSTRUCTIONAL MATERIALS

### **19 TAC §§66.22, 66.24, 66.27, 66.28, 66.30, 66.33, 66.36, 66.42, 66.48, 66.54, 66.57, 66.60, 66.63, 66.66, 66.67, 66.73, 66.75**

The amendments and new section are proposed under the Texas Education Code, §7.102(c), which authorizes the SBOE to adopt rules required by the TEC, Chapter 31, and §31.003, which authorizes the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of textbooks.

The amendments and new section implement the Texas Education Code, §7.102(c) and Chapter 31.

#### *§66.22. Midcycle Review and Adoption.*

(a) The State Board of Education (SBOE) shall adopt a midcycle review and adoption for textbooks for a subject for which textbooks are not currently under review by the SBOE under the Texas Education Code (TEC), §31.022.

(b) The SBOE shall establish a fee not to exceed \$10,000 for each textbook submitted for midcycle review.

(c) A publisher who intends to offer instructional materials for midcycle review shall submit a statement of intent to bid that includes a commitment from the publisher to provide the textbooks to school districts in the manner specified by the publisher, which may include:

(1) providing the textbook to any district in a regional education service center area identified by the publisher; or

(2) providing a certain maximum number of textbooks specified by the publisher.

(d) Instructional materials submitted for midcycle review shall be placed on the conforming list, non-conforming list, or rejected as specified in the TEC, §31.023 and §31.024.

(e) The publisher of a textbook submitted for midcycle review shall enter into a contract with the SBOE for a term that ends at the same time as any contract entered into by the SBOE for another textbook for the same subject and grade level.

(f) The publisher of a textbook submitted for midcycle review is not required to ship samples to education service centers or school districts as specified in the TEC, §31.027.

(g) The publisher of a textbook submitted for midcycle review shall make available up to three examination copies of each submitted textbook, including teacher editions and ancillaries, to each SBOE member upon that member's request, beginning on the date in the adoption schedule when publishers file their samples at the Texas Education Agency (TEA). SBOE members may request publishers through the TEA to ship these items directly to interested citizens. Publishers participating in the midcycle review process are responsible for all expenses incurred by their participation. The state does not guarantee return of these SBOE-requested materials.

(h) Publishers of Internet-based instructional content submitted for midcycle review shall provide the TEA, and SBOE members upon request, with appropriate information, such as locator and login information and passwords, required to ensure public access to their programs throughout the midcycle review period.

(i) The midcycle adoption process shall follow the same procedures as the regular adoption except to the extent specified in this chapter.

(j) The SBOE will implement this section only to the extent the commissioner of education determines that funds are appropriated for that purpose.

§66.24. *Review and Renewal of Contracts.*

(a) The commissioner of education shall review contracts for instructional materials and recommend which contracts should be renewed for terms not to exceed four years and which contracts should not be renewed.

(b) The State Board of Education (SBOE) shall decide to renew existing contracts upon determining that the renewal would be in the best interest of the state and after considering the following factors:

- (1) placement of subject areas in the foundation and enrichment review and adoption cycles;
- (2) availability of new instructional materials;
- (3) willingness of publishers to offer materials for readoption and renewal of contracts; and
- (4) cost of instructional materials under new contract.

(c) Publishers awarded new contracts shall be prepared to make the adopted instructional materials available for at least one extended contract period of not more than four years at prices the commissioner of education approves. The SBOE may consider refusing to award future contracts to a publisher who, after receiving written notice to do so, refuses to rebid instructional materials at least one time. Failure of a publisher to negotiate an acceptable price for an extended contract shall not be considered failure to rebid instructional materials.

(d) Contracts with publishers are limited to the Texas Education Code, Chapter 31.

§66.27. *Proclamation, Public Notice, and Schedule for Adopting Instructional Materials.*

(a) The State Board of Education (SBOE) shall issue a proclamation calling for new instructional materials according to the review and adoption cycles for foundation and enrichment subjects adopted by the SBOE. The proclamation shall serve as notice to all publishers and to the public that bids to furnish new materials to the state are being invited. The proclamation shall be issued at least 24 months before the scheduled adoption of the new instructional materials by the SBOE. The SBOE shall designate a request for the production of textbooks in a subject area and grade level by the school year in which the textbooks are intended to be made available in classrooms and not by the school year in which the SBOE makes the request for production. The SBOE shall amend a proclamation, as necessary, to conform to the textbook funding levels provided by the General Appropriations Act for the year of implementation.

(b) The proclamation shall contain the following:

- (1) specifications for essential knowledge and skills in each subject for which bids are being invited;
- (2) a maximum cost to the state for adopted instructional materials in each subject for which bids are being invited;
- (3) an estimated number of units to be purchased during the first contract year for each subject in the proclamation;
- (4) specifications for providing computerized files to produce braille versions of adopted instructional materials; and
- (5) a schedule of adoption procedures ~~[for the adoption process]~~.

(c) The proclamation shall require instructional materials to cover specific essential knowledge and skills a certain number of times in the student text narrative in addition to end-of-section review exercises, end-of-chapter activities, or unit tests.

(d) A draft copy of the proclamation shall be provided to each member of the SBOE and to ~~[designated]~~ representatives of the publishing industry to solicit input ~~[on maximum costs before the SBOE considers the proclamation. In addition, the Texas Education Agency (TEA) shall solicit input from the publishing industry]~~ regarding the draft proclamation, including maximum costs, prior to the scheduled adoption by the SBOE. The Texas Education Agency ~~[TEA]~~ may use the Internet to facilitate this process. Any revisions recommended as a result of input from publishers shall be presented to the SBOE along with the subsequent draft of the proclamation.

(e) Under extraordinary circumstances, the SBOE may adopt an emergency, supplementary, or revised proclamation without complying with the timelines and other requirements of this section.

(f) The SBOE may issue a proclamation for textbooks eligible for midcycle review. The midcycle proclamation shall contain the following:

- (1) specifications for essential knowledge and skills in each subject for which bids are being invited;
- (2) specifications for providing computerized files to produce braille versions of adopted instructional materials;
- (3) a fee not to exceed \$10,000 for each program, textbook, or system of instructional materials intended for a certain subject area and grade level submitted for midcycle review; and
- (4) a schedule of ~~[for the]~~ midcycle adoption procedures ~~[process]~~.

§66.28. *Adoption by Reference.*

(a) The sections titled "Content Requirements" in the *Proclamation 2004 of the State Board of Education Advertising for Bids on Instructional Materials* are adopted by this reference as the State Board of Education's official rule governing essential knowledge and skills that shall be used to evaluate instructional materials submitted for consideration under Proclamation 2004. A copy of the *Proclamation 2004 of the State Board of Education Advertising for Bids on Instructional Materials* is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. *Proclamation 2004 of the State Board of Education Advertising for Bids on Instructional Materials* can be accessed from the Texas Education Agency official website.

(b) The sections titled "Content Requirements" in the *Proclamation 2005 of the State Board of Education Advertising for Bids on Instructional Materials* are adopted by this reference as the State Board of Education's official rule governing essential knowledge and skills that shall be used to evaluate instructional materials submitted for consideration under Proclamation 2005. A copy of the *Proclamation 2005 of the State Board of Education Advertising for Bids on Instructional Materials* is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. *Proclamation 2005 of the State Board of Education Advertising for Bids on Instructional Materials* may be accessed from the Texas Education Agency official website.

(c) The sections titled "Content Requirements" in the *Proclamation 2010 of the State Board of Education Advertising for Bids on Instructional Materials* are adopted by this reference as the State Board of Education's official rule governing essential knowledge and skills that shall be used to evaluate instructional materials submitted for consideration under Proclamation 2010. A copy of the *Proclamation 2010 of the State Board of Education Advertising for Bids on Instructional Materials* is available for examination during regular office hours, 8:00

a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. Proclamation 2010 of the State Board of Education Advertising for Bids on Instructional Materials may be accessed from the Texas Education Agency official website.

(d) The sections titled "Content Requirements" in the Proclamation 2011 of the State Board of Education Advertising for Bids on Instructional Materials are adopted by this reference as the State Board of Education's official rule governing essential knowledge and skills that shall be used to evaluate instructional materials submitted for consideration under Proclamation 2011. A copy of the Proclamation 2011 of the State Board of Education Advertising for Bids on Instructional Materials is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. Proclamation 2011 of the State Board of Education Advertising for Bids on Instructional Materials may be accessed from the Texas Education Agency official website.

*§66.30. State Review Panels: Eligibility.*

(a) A person is not eligible to serve on a state review panel if, during the three years immediately preceding the appointment, the person:

(1) was employed by or received funds from any individual or entity in any way affiliated with a publishing company or participating in an [the] adoption under which the state or a state review panel will evaluate instructional materials; or

(2) owned or controlled, directly or indirectly, any interest in a publishing company or an entity receiving funds from a publishing company.

(b) For the purposes of this section, an eligible institution under §66.67 of this title (relating to Adoption of Open-Source Instructional Materials) that has submitted open-source materials for adoption is considered to be an entity participating in an adoption.

*§66.33. State Review Panels: Appointment.*

(a) The commissioner of education shall[:] determine the number of review panels needed to review instructional materials under consideration for adoption, determine the number of persons to serve on each panel, and determine the criteria for selecting panel members. Each appointment to a state review panel shall be made by the commissioner of education with the advice and consent of the State Board of Education (SBOE) member whose district is to be represented. The commissioner of education shall make appointments to state textbook review panels that ensure participation by academic experts in each subject area for which instructional materials are being considered. The appointments shall include educators, parents, business and industry representatives, and employers. [The term academic expert includes not only university professors but also public school teachers with a strong background in a particular discipline.]

(b) The commissioner of education shall solicit nominations [recommendations] for possible appointees to state review panels from the SBOE [State Board of Education (SBOE)], school districts, open-enrollment charter schools, and educational organizations in the state. Nominations [Recommendations] may be accepted from any Texas resident. Nominations shall not be made by or accepted from any publishers; hardware or software providers; authors; depositories; agents for publishers, hardware or software providers, authors, or depositories; or any person who holds any official position with a publisher, hardware or software providers, author, depository, or agent.

(c) The SBOE shall be notified of appointments made by the commissioner of education to state review panels.

(d) Members of a state review panel may be removed at the discretion of the commissioner of education.

*§66.36. State Review Panels: Duties and Conduct.*

(a) The duties of each member of a state review panel are to:

(1) evaluate all instructional materials submitted for adoption in each subject assigned to the panel to determine if essential knowledge and skills are covered in the student version of the textbook, as well as in the teacher version of the textbook. Nothing in this rule shall be construed to contravene the Texas Education Code (TEC), §28.004(e)(5), which makes coverage of contraception and condom use optional in both the student and teacher editions of health textbooks. Panel members will use State Board of Education-approved procedures for evaluating coverage of the essential knowledge and skills in the student text narrative in addition to end-of-section review exercises, end-of-chapter activities, or unit tests as required in the proclamation. The approved procedures include the following.

(A) State review panel members must participate in training to ensure clear and consistent guidelines for determining full Texas Essential Knowledge and Skills (TEKS) coverage within the instructional materials.

(B) State review panel members must participate in a team during the review and reach a consensus to determine if the TEKS have been covered sufficiently in the instructional materials.

(C) Instructional materials shall be evaluated for TEKS coverage at each grade level.

(D) One reference to a TEKS statement is not considered sufficient coverage. At least three examples of each student expectation must be evident in the instructional materials to ensure sufficient coverage.

(E) If a TEKS statement has multiple student expectations, at least three examples of each student expectation must be evident in the instructional materials to ensure sufficient coverage.

(F) TEKS statements are not considered covered if only included in side bars, captions, or one question at the end of a chapter.

(2) make recommendations to the commissioner of education that each submission assigned to be evaluated by the state review panel be placed on the conforming list, nonconforming list, or rejected;

(3) submit to the commissioner of education a list of any factual errors in instructional materials assigned to be evaluated by the state review panel; and

(4) as appropriate to a subject area and/or grade level, ascertain that instructional materials submitted for adoption do not contain content that clearly conflicts with the stated purpose of the TEC [Texas Education Code], §28.002(h).

(b) State review panel members shall not accept meals, entertainment, gifts, or gratuities in any form from publishers, authors, or depositories; agents for publishers, authors, or depositories; any person who holds any official position with publishers, authors, depositories, or agents; or any person or organization interested in influencing the selection of instructional materials.

(c) Before presenting recommendations to the commissioner of education, state review panel members shall be given an opportunity to request a meeting with a publisher to obtain responses to questions regarding instructional materials being evaluated by the state review panel. Questions shall be provided to publishers in advance of the meeting.

(d) State textbook review panel members shall be afforded the opportunity to collaborate with other panel members during the official meetings to discuss coverage of TEKS [Texas Essential Knowledge and Skills], errors, manufacturing specifications, or any other aspect of instructional materials being evaluated. A member of a state review panel shall have no contact with other members of the panel except during official meetings. State review panel members shall not discuss instructional materials being evaluated with any party having a direct or indirect interest in adoption of instructional materials.

(e) Members of each state review panel may be required to be present at the State Board of Education meeting at which instructional materials are adopted.

*§66.42. State Review Panels: Orientation.*

State review panel members shall receive an orientation including at least the following:

- (1) the responsibilities of a state review panel member;
- (2) statutes and rules pertaining to the state adoption process;
- (3) essential knowledge and skills specified for subjects included in the proclamation;
- (4) identifying factual errors;
- (5) the schedule of adoption procedures [for the adoption process];
- (6) training in technology appropriate to media submitted for adoption; and
- (7) regulatory requirements, including the Government Code, §572.051 (relating to Standards of Conduct), and the Texas Penal Code, §36.02 (relating to Bribery). Copies of the statutes mentioned in this section shall be supplied to each state review panel member.

*§66.48. Statement of Intent to Bid Instructional Materials.*

(a) Each publisher who intends to offer instructional materials for adoption shall submit a statement of intent to bid and preliminary price information on or before the date specified in the schedule of adoption procedures [for the adoption process]. The statement of intent with preliminary price information shall be accompanied by publisher's data submitted in a form approved by the commissioner of education.

(b) A publisher shall designate instructional materials submitted as appropriate for placement on the conforming list or nonconforming list.

(c) If a student or teacher component of a submission consists of more than one item, a publisher shall provide complete and correct titles of each item included in the student and/or teacher component at the time the statement of intent is filed.

(d) A publisher shall specify hardware or special equipment needed to review any item included in an instructional materials submission.

(e) Additions to a publisher's submission shall not be accepted after the deadline for filing statements of intent, except as allowed in the schedule of adoption procedures [activities] included in the proclamation. A publisher who wishes to withdraw an instructional materials submission after having filed a statement of intent to bid shall notify the commissioner of education in writing on or before the date specified in the schedule of adoption procedures [for the adoption process].

(f) A publisher who intends to offer instructional materials for midcycle review shall submit a statement of intent to bid and price

information on or before the date specified in the schedule of adoption procedures [for the adoption process] under midcycle review. The statement of intent to bid must:

(1) specify the manner in which textbooks will be provided to school districts, including:

(A) the regional education service center area(s) to be served; or

(B) the certain maximum number of textbooks to be provided under the contract; and

(2) include payment of the fee for review of instructional materials submitted for midcycle review.

*§66.54. Samples.*

(a) Samples of student and teacher components of instructional materials submitted for adoption shall be complete as to content and representative of finished format. Electronic textbooks submitted for adoption, including Internet-based products, must be representative of the final product and completely functional.

(b) The publisher of instructional materials submitted for adoption shall make available up to three examination copies of each submitted student and teacher component to each State Board of Education (SBOE) member upon that member's request, beginning on the date in the adoption schedule when publishers file their samples at the Texas Education Agency (TEA). SBOE members may request publishers through the TEA to ship these items directly to interested citizens. Publishers participating in the adoption process are responsible for all expenses incurred by their participation. The state does not guarantee return of these SBOE-requested materials.

(c) ~~Two~~ ~~Four~~ sample copies of the student and teacher components of each instructional materials submission shall be filed with each of the 20 regional education service centers (ESCs) on or before the date specified in the schedule of adoption procedures. The TEA may request additional samples if they are needed ~~[for the adoption process]~~. These samples shall be available for public review. Publishers of Internet-based instructional content submitted for review shall provide the ESCs with appropriate information, such as locator and login information and passwords, required to ensure public access to their programs throughout the review period. Samples to ESCs are not required for instructional materials submitted for midcycle review, as specified in §66.22(f) of this title (relating to Midcycle Review and Adoption).

(d) ~~(e)~~ If it is determined that good cause exists, the commissioner of education may extend the deadline for filing samples with ESCs or specify a lesser number of samples a publisher must provide. At its discretion, the SBOE [State Board of Education (SBOE)] may remove from consideration any materials proposed for adoption that were not properly deposited with the ESCs, the TEA [Texas Education Agency (TEA)], or members of the state review panel.

(e) ~~(d)~~ One ~~[Two]~~ official sample copy ~~[copies]~~ of each student and teacher component of an instructional materials submission shall be filed with the TEA on or before the date specified in the schedule of adoption procedures [for the adoption process]. The TEA may request additional samples if they are needed. In addition, the publisher shall provide a complete description of all items included in a student and teacher component of an instructional materials submission.

(f) ~~(e)~~ One sample copy of each student and teacher component of an instructional materials submission shall be filed with each member of the appropriate state review panel in accordance with instructions provided by the TEA. To ensure that the evaluations of state review panel members are limited to student and teacher components

submitted for adoption, publishers shall not provide ancillary materials or descriptions of ancillary materials to state review panel members. Texas Education Code, §31.002(3), defines a textbook as a book, a system of instructional materials, a combination of a book and supplementary instructional materials that conveys information to the student or otherwise contributes to the learning process, or an electronic textbook.

(g) ~~(f)~~ The TEA, ESCs, and affected publishing companies shall work together to ensure that hardware or special equipment necessary for review of any item included in a student and/or teacher component of an instructional materials submission is available in each ESC. Affected publishers may be required to loan such hardware or special equipment to any member of a state review panel who does not have access to the necessary hardware or special equipment.

(h) ~~(g)~~ A publisher shall provide a list of all corrections necessary to each student and teacher component of an instructional materials submission. The list must be in a format designated by the commissioner of education and filed on or before the deadline specified in the schedule of adoption procedures ~~[for the adoption process]~~. If no corrections are necessary, the publisher shall file a letter stating this on or before the deadline in the schedule for submitting the list of corrections. On or before the deadline for submitting lists of corrections, publishers shall submit certification that all instructional materials have been edited for accuracy, content, and compliance with requirements of the proclamation.

(i) ~~(h)~~ One ~~[Two]~~ complete sample copy ~~[copies]~~ of each student and teacher component of adopted instructional materials that incorporate all corrections required by the SBOE shall be filed with the commissioner of education on or before the date specified in the schedule of adoption procedures ~~[for the adoption process]~~. In addition, each publisher shall file an affidavit signed by an official of the company verifying that all corrections required by the commissioner of education and SBOE have been made. Corrected samples shall be identical to materials that will be provided to school districts after purchase.

(j) ~~(i)~~ Publishers participating in the adoption process are responsible for all expenses incurred by their participation. The state does not guarantee return of sample instructional materials.

*§66.57. Regional Education Service Centers: Procedures for Handling Samples; Public Access to Samples.*

(a) Handling procedures.

(1) Each regional education service center (ESC) executive director shall designate one person to supervise all shipments of instructional materials. The Texas Education Agency (TEA) shall provide to each designated person forms to be used in reporting receipt of sample shipments.

(2) On or before the date specified in the schedule of adoption procedures ~~[for the adoption process]~~, each ESC representative shall notify the commissioner of education of all irregularities in sample shipments. The appropriate publisher shall be notified of any sample shipment irregularities reported by the ESCs.

(b) Public access to samples.

(1) One sample of all instructional materials under consideration for adoption shall be retained in each ESC for review by interested persons until notification is received from the TEA. Any additional samples shall be made available to be checked out according to rules established by each ESC based on demand. Appropriate information, such as locator and login information and passwords, shall be made available by the ESCs to ensure public access to Internet-based instructional content throughout the review period.

(2) Regional ESCs shall ensure reasonable public access to sample instructional materials, including access outside of normal working hours that shall be scheduled by appointment.

(3) On or before the date specified in the schedule of adoption procedures ~~[for the adoption process]~~, each ESC shall issue a news release publicizing the date on which sample instructional materials will be available for review at the center and shall notify all school districts in the region of the schedule.

*§66.60. Public Comment on Instructional Materials.*

(a) Written comments.

(1) Any resident of Texas may submit written comments for, against, or about any instructional materials submitted for adoption.

(2) Written comments and lists of factual errors shall be submitted to the commissioner of education on or before the deadlines specified in the schedule of adoption procedures ~~[for the adoption process]~~.

(3) Copies of written comments and lists of factual errors shall be provided to the State Board of Education (SBOE), participating publishers, regional education service centers (ESCs), and persons who have filed written requests.

(b) Public hearing before the SBOE. On a date specified in the schedule of adoption procedures ~~[for the adoption process]~~, the SBOE shall hold a hearing on instructional materials submitted for adoption that may, at the discretion of the SBOE chair, be designated an official meeting of the SBOE.

(1) Testimony at the hearing shall be accepted from Texas residents and non-residents with priority given to Texas residents. Copies of testimony ~~[speeches]~~ made at the hearing may be distributed to SBOE members. No other written material may be distributed during the hearings. Persons who wish to testify must notify the commissioner of education on or before the date specified in the schedule of adoption procedures ~~[for the adoption process]~~. The notice must identify the subject areas and titles about which testimony will be presented. The SBOE may limit the time available for each person to testify.

(2) Oral responses to testimony at the hearing may be made by official representatives of publishing companies who have requested time to present responses on or before the date specified in the schedule of adoption procedures ~~[for the adoption process]~~.

(3) The commissioner of education shall have a complete record of the hearing ~~[made and transcribed]~~. The recorded hearing or transcript of the hearing shall be provided to the SBOE, ESCs, participating publishers, and persons who have filed written requests. The official record shall be held open for ten business ~~[14 calendar]~~ days after the close of the hearings. During this period, any person who participated in a hearing before the SBOE and any official representative of a publishing company may submit a written response to written comments and/or oral testimony presented at the hearing.

(4) Within ten business ~~[10]~~ days after the record is closed, the commissioner shall send copies of responses to written and/or oral testimony to members of the SBOE, ESCs, participating publishers, and persons who have filed written requests.

(c) Public comment on instructional materials not adopted on schedule. Public comment on instructional materials not adopted by the SBOE on the date specified in the schedule of adoption procedures ~~[for the adoption process]~~ shall be accepted according to the SBOE Operating Rules, §2.10 (relating to Public Testimony).

*§66.63. Report of the Commissioner of Education.*



(a) The commissioner of education shall review all instructional materials submitted for consideration for adoption. The commissioner's review shall include the following:

(1) evaluations of instructional materials prepared by state review panel members, including recommendations that instructional materials be placed on the conforming list, placed on the nonconforming list, or rejected (To be conforming, instructional materials must cover all essential knowledge and skills as required by the proclamation in the student text narrative in addition to end-of-section review exercises, end-of-chapter activities, or unit tests.);

(2) compliance with established manufacturing standards and specifications;

(3) recommended corrections of factual errors identified by state review panels;

(4) prices of instructional materials submitted for adoption; and

(5) whether instructional materials are offered by a publisher who refuses to rebid instructional materials according to §66.24 of this title (relating to Review and Renewal of Contracts).

(b) Based on the review specified in subsection (a) of this section, the commissioner of education shall prepare preliminary recommendations that instructional materials under consideration be placed on the conforming list, placed on the nonconforming list, or rejected. According to the schedule of adoption procedures [for the adoption process], a publisher shall be given an opportunity for a show-cause hearing if the publisher elects to protest the commissioner's preliminary recommendation.

(c) The commissioner of education shall submit to the State Board of Education (SBOE) final recommendations that instructional materials under consideration be placed on the conforming list, placed on the nonconforming list, or rejected.

(d) The commissioner of education shall submit for SBOE approval a report on corrections of factual errors that should be required in instructional materials submitted for consideration. The report on recommended corrections shall be sent to the SBOE, affected publishers, regional education service centers (ESCs), and other persons, such as braillists, needing immediate access to the information. The commissioner shall obtain written confirmation from publishers that they would be willing to make all identified corrections should they be required by the SBOE.

*§66.66. Consideration and Adoption of Instructional Materials by the State Board of Education.*

(a) Publishers shall file three copies of the official bid form with the commissioner of education according to the schedule of adoption procedures [for the adoption process].

(b) A committee of the State Board of Education (SBOE) shall be designated by the SBOE chair to review the commissioner's report concerning instructional materials recommended for state adoption. The committee shall report the results of its review to the SBOE.

(c) The SBOE shall adopt both a list of conforming and nonconforming instructional materials in accordance with the Texas Education Code (TEC), §31.023. Instructional materials may be adopted only if they:

(1) meet the requisite percentage of Texas Essential Knowledge and Skills (TEKS) required under the TEC, §31.023. In determining the percentage of elements of the TEKS covered by instructional materials, each student expectation shall count as an independent element of the TEKS of the subject;

(2) meet the established physical specifications adopted by the SBOE;

(3) are free from factual errors; and

(4) receive majority vote of the SBOE. However, no instructional material may be adopted that contains content that clearly conflicts with the stated purpose of the TEC, §28.002(h).

(d) Instructional materials submitted for placement on a conforming or nonconforming list may be rejected by majority vote of the SBOE in accordance with the TEC, §31.024.

(e) The SBOE shall either adopt or reject each submitted instructional material in accordance with the TEC, §31.024.

[(e) By a vote of a majority of the SBOE, the SBOE shall adopt a list of conforming instructional materials and a list of nonconforming instructional materials under the Texas Education Code, §31.023 and §31.024. Instructional materials may be rejected for:]

[(1) failure to meet essential knowledge and skills specified in the proclamation in the student text narrative in addition to end-of-section review exercises, end-of-chapter activities, or unit tests. In determining the percentage of elements of the essential knowledge and skill covered by instructional materials, each student expectation shall count as an independent element of the essential knowledge and skills of the subject;]

[(2) failure to meet established manufacturing standards and specifications recognized by the SBOE;]

[(3) failure to correct errors of fact; or]

[(4) content that clearly conflicts with the stated purpose of the Texas Education Code, §28.002(h).]

(f) [(d)] The SBOE may allow a publisher to withdraw from the adoption process after the date specified in the proclamation due to recommended placement on a conforming or nonconforming list, manufacturing specifications required as a condition of adoption by the SBOE that the publisher states cannot be met, or failure to agree to make corrections required by the SBOE.

*§66.67. Adoption of Open-Source Instructional Materials.*

(a) "Open-Source Materials" are defined by the Texas Education Code, (TEC) §31.002, as electronic textbooks that are available for downloading from the Internet at no charge to a student and without requiring the purchase of an unlock code, membership, or other access or use charge, except for a charge to order an optional printed copy of all or part of the textbook. The term includes a state-developed open-source textbook purchased under the TEC, Chapter 31, Subchapter B-1.

(b) The State Board of Education (SBOE) shall place an open-source textbook submitted for a secondary-level course on a conforming or nonconforming list if the textbook meets the criteria outlined in subsections (c) and (d) of this section.

(c) An open-source textbook must be:

(1) submitted by an eligible institution, defined as a public institution of higher education that is designated as a research university or emerging research university under the Texas Higher Education Coordinating Board's accountability system, or a private university located in Texas that is a member of the Association of American Universities, or a public technical institute, as defined by the TEC, §61.003;

(2) intended for a secondary-level course; and

(3) written, compiled, or edited primarily by faculty of an eligible institution who specialize in the subject area of the textbook.

(d) To submit an open-source textbook, an eligible institution must:

(1) certify by the board of regents or president of the university, or by an individual authorized by one of these entities, that the textbook qualifies for placement on a conforming or nonconforming list based on the extent to which the textbook covers the essential knowledge and skills identified under the TEC, §28.002;

(2) identify each contributing author;

(3) certify by the appropriate academic department of the submitting institution that the textbook is accurate; and

(4) certify that:

(A) for a textbook for a senior-level course, a student who successfully completes a course based on the textbook will be prepared, without remediation, for entry into the eligible institution's freshman-level course in that subject; or

(B) for a textbook for a junior-level and senior-level course, a student who successfully completes the junior-level course based on the textbook will be prepared for entry into the senior-level course.

(e) All submissions required by subsection (d) of this section shall be made in a format approved by the SBOE and the commissioner of education.

(f) Technology-based open-source textbooks shall be required to comply with the technical standards in the Rehabilitation Act, §508, as applicable.

(g) All university-developed open-source textbook submissions shall be reviewed independently by the same process used in §66.36 of this title (relating to State Review Panels: Duties and Conduct) to confirm the content meets the criteria for placement on the conforming or nonconforming list based on the extent to which the textbook covers the essential knowledge and skills. The SBOE shall notify the submitting institution of any discrepancy with alignment with essential knowledge and skills.

(h) With the exception of 1% of sales, all university-developed open-source textbook submissions shall be assessed fines as defined in §66.10(d)-(f) of this title (relating to Procedures Governing Violations of Statutes--Administrative Penalties).

§66.73. Contracts for Printing of Open-Source Textbooks.

(a) The State Board of Education (SBOE) may execute a contract for the printing of an open-source textbook listed on the conforming or nonconforming list.

(b) The contract shall allow a school district or an open-enrollment charter school to requisition printed copies of an open-source textbook as provided by the Texas Education Code, §31.103.

(c) The contract form shall be approved by, and shall not be changed or modified without approval of, the Texas Education Agency's (TEA) legal counsel.

(d) Contract forms shall be sent to the awarded vendor for signature. Signed contracts returned by the awarded vendor shall be signed by the chair of the SBOE and attested to by the commissioner of education. Properly signed and attested contracts shall be filed with the TEA.

§66.75. [Revisions,] Updates [, and Substitutions].

(a) A publisher may submit a request to the commissioner of education for approval to substitute [a revision,] an updated [update, or a later] edition of state-adopted instructional materials. A publisher

requesting an update [a substitution] shall provide the request in writing, along with two copies of the updated [revision, update, or later] edition, and one copy of the corresponding state-adopted instructional material. This section includes electronic textbooks and Internet products for which all users receive the same updates [or revisions].

(b) Requests for approval of the updated edition [substitutions] shall provide that there will be no additional cost to the state.

(c) Requests for approval of the [revisions,] updates [, or substitutions] shall not be approved during the first year of the original contract unless the commissioner of education determines that changes in technology, curriculum, or other reasons warrant the [revisions,] updates [, or substitutions].

(d) Publishers submitting requests for approval of the [revisions,] updates [, or substitutions] must certify in writing that the new material meets the applicable essential knowledge and skills and is free from factual errors.

(e) Responses from the commissioner of education to update [revisions, updates, or substitution] requests shall be provided within 30 days after receipt of the request.

(f) All requests for [revisions,] updates [, or substitutions] involving content in state-adopted instructional materials must be approved by the State Board of Education (SBOE) prior to their introduction into state-adopted instructional materials. The SBOE may assess penalties as allowed by law against publishers who fail to obtain approval for [revisions,] updates [, or substitutions] to content in state-adopted instructional materials prior to delivery of the materials to school districts.

(g) Publishers shall request approval from the commissioner of education for electronic design changes and/or updates that improve performance, design, and technology capabilities that enhance the operation and usage for students and teachers but do not include changes to Texas essential knowledge and skills coverage or new content.

(h) Publishers must agree to supply the previous version of state-adopted textbooks to school districts that choose to continue using the previous version during the duration of the original contract. This subsection does not apply to online instructional materials.

(i) A publisher of instructional materials may provide alternative formats for use by school districts if:

(1) the content is identical to SBOE-approved content;

(2) the alternative formats include the identical revisions and updates as the original product; and

(3) the cost to the state and school is equal to or less than the cost of the original product.

(j) Alternative formats may be developed and introduced at a time when the subject or grade level is not scheduled in the cycle to be considered for at least two years, in conformance with the procedures for adoption of other state-adopted materials.

(k) Publishers must notify the commissioner of education in writing if they are providing SBOE-approved products in alternative formats.

(l) Publishers are responsible for informing districts of the availability of the alternative formats and for accurate fulfillment of these orders.

(m) The commissioner of education may add alternative formats of SBOE-approved products to the list of available products disseminated to school districts.

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 30, 2009.

TRD-200905492

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: January 10, 2010

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



## SUBCHAPTER C. LOCAL OPERATIONS

### 19 TAC §§66.102, 66.104, 66.105

The new sections and amendment are proposed under the Texas Education Code, §7.102(c), which authorizes the SBOE to adopt rules required by the TEC, Chapter 31, and §31.003, which authorizes the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of textbooks.

The new sections and amendment implement the Texas Education Code, §7.102(c) and Chapter 31.

#### §66.102. Textbook Credits.

(a) A school district or an open-enrollment charter school is entitled to receive credit for textbooks purchased at a cost below the cost limit established under the Texas Education Code (TEC), §31.025(a).

(b) The credit is an amount equal to the difference between the price paid for a textbook and the cost limit established under the TEC, §31.025(a), for that textbook multiplied by the number of copies of that textbook the school district or open-enrollment charter school selects.

(c) A school district or an open-enrollment charter school that selects a state-developed open-source textbook or a State Board of Education (SBOE) open-source textbook placed on the list pursuant to the TEC, §31.0241, instead of another textbook adopted under TEC, §31.023, is entitled to the difference between the cost determined by the commissioner of education under the TEC, §31.073, and the maximum price for a textbook in the same subject area, as determined by the SBOE under the TEC, §31.023.

(d) Fifty percent of the total textbook credit of a school district or an open-enrollment charter school shall be credited to the state textbook fund, and 50% of the credit shall be credited to the school district or open-enrollment charter school. A school district or an open-enrollment charter school may apply textbook credits toward the purchase of:

(1) additional textbooks or electronic textbooks that are on the conforming or nonconforming list under the TEC, §31.023;

(2) components of such textbooks, including any electronic components;

(3) supplemental textbooks as provided by the TEC, §31.035; and

(4) technological equipment necessary to support the instruction of electronic textbooks or instructional materials included on the list adopted under the TEC, §31.0231, or any textbook or instructional materials included on the conforming or nonconforming list adopted by the SBOE.

(e) A school district or an open-enrollment charter school is entitled to receive credit for textbooks purchased at a cost below the cost limit established under the TEC, §31.025(a), only in the first year of implementation.

(f) A school district or an open-enrollment charter school must notify the Texas Education Agency (TEA) for the use of funds generated by textbook credits.

(g) A school district or an open-enrollment charter school must submit an itemized expenditure report to the TEA.

#### *§66.104. Selection of Instructional Materials by School Districts.*

(a) Each local board of trustees of a school district or governing body of an open-enrollment charter school shall adopt a policy for selecting instructional materials. Final selections must be recorded in the minutes of the board of trustees or governing body.

(b) If instructional materials priced above the maximum cost to the state established in the proclamation are selected by a school district or open-enrollment charter school, the school district or open-enrollment charter school is responsible for paying to the publisher the portion of the cost above the state maximum.

(c) If instructional materials for subjects in the enrichment curriculum that are not on the conforming or nonconforming lists adopted by the State Board of Education (SBOE) are selected by a school district or open-enrollment charter school, the state shall be responsible for paying the district an amount equal to the lesser of:

(1) 70% of the cost to the district of the instructional materials. The applicable quota for adopted materials in the subject shall be the basis for determining instructional materials needed by the district; or

(2) 70% of the maximum cost to the state established for the subject. The applicable quota for adopted materials in the subject shall be the basis for determining instructional materials needed by the district.

(d) A school district or open-enrollment charter school that selects non-adopted instructional materials for enrichment subjects is responsible for the portion of the cost of the materials not eligible for payment by the state under subsection (c) of this section. The minutes of the board of trustees or governing body meeting at which such a selection is ratified shall reflect the agreement of the school district or open-enrollment charter school to bear responsibility for the portion of the cost not eligible for payment by the state. A school district or open-enrollment charter school that selects non-adopted instructional materials for enrichment subjects also bears responsibility for providing braille and/or large type versions of the non-adopted instructional materials.

(e) Funds paid by the state under subsection (c) of this section shall be used only for purchasing the non-adopted instructional materials selected and ratified by the board of trustees or governing body.

(f) Non-adopted instructional materials selected and purchased under subsection (c) of this section shall be used by the school district or open-enrollment charter school during the contract period for conforming and nonconforming instructional materials adopted by the SBOE in the subject area.

(g) A report listing instructional materials selected for use in a school district or open-enrollment charter school shall be transmitted to the Texas Education Agency (TEA) no later than April 1 each year.

(h) Only instructional materials ratified by the board of trustees or governing body shall be furnished by the state for use in any school district or open-enrollment charter school. Selections

certified to the TEA shall be final and, therefore, shall not be subject to reconsideration during the original contract period or readoption contract periods covering the instructional materials selected.

(i) Except as otherwise provided by statute, requisitions submitted before the first day of school shall be approved based on the maximum number of students enrolled in the district or open-enrollment charter school during the previous school year and/or registered to attend the district during the next school year. Requisitions submitted after the first day of school shall be approved based on the actual number of students enrolled in the district when the requisition is submitted. If two or more titles are selected in a subject, requisitions may be made for a combined total of the selected titles.

(j) Instructional materials requisitioned by, and delivered to, a school district or an open-enrollment charter school shall be continued in use during the contract period or periods of the materials. A school district may not return copies of one title to secure copies of another title in the same subject.

(k) If a school district or open-enrollment charter school does not have a sufficient number of copies of a textbook used by the district or school for use during the following school year, and a sufficient number of additional copies will not be available from the publisher's depository or the publisher within ten business days prior to the opening day of school, the school district or school is entitled to be reimbursed from the state textbook fund at a rate not to exceed the actual cost of the used textbook, or the state maximum cost, whichever is less, for the purchase of a sufficient number of used adopted textbooks.

(l) In making a requisition, a school district or open-enrollment charter school may requisition textbooks on the conforming and nonconforming list for grades above the grade level in which the student is enrolled, except that the total quantity of textbooks requisitioned may not exceed a school district's eligibility quota for that subject.

(m) Adopted instructional materials shall be supplied to a pupil in special education classes as appropriate to the level of the pupil's ability and without regard to the grade for which the instructional material is adopted or the grade in which the pupil is enrolled.

(n) A school district or open-enrollment charter school may order replacements for textbooks that have been lost or damaged directly from the textbook depository or the textbook publisher or manufacturer if the textbook publisher or manufacturer does not have a designated textbook depository in this state, in accordance with §66.78(a) of this title (relating to Delivery of Adopted Instructional Materials).

(o) School districts or open-enrollment charter schools shall not be reimbursed from state funds for expenses incurred in local handling of textbooks.

(p) Selection and use of ancillary materials provided by publishers under §66.69 of this title (relating to Ancillary Materials) is at the discretion of each local board of trustees or governing body.

(q) The SBOE shall reduce the approved maximum cost for each nonconforming instructional material according to §66.51(a)(11) of this title (relating to Instructional Materials Purchased by the State). For nonconforming instructional materials, the state shall be responsible for payment to the publisher in an amount only equal to the reduced maximum cost. A school district or open-enrollment charter school ordering nonconforming instructional materials is responsible for the portion of the cost that exceeds the reduced state maximum cost.

(r) A school district or open-enrollment charter school that selects from the commissioner's list as specified in the TEC, §31.0231, must purchase a classroom set of textbooks adopted by the SBOE un-

der the TEC, §31.023 or §31.035, for each subject and grade level in the foundation curriculum.

(s) A classroom set shall be defined as the total count of SBOE adopted textbooks on the conforming or nonconforming list necessary to provide one copy to each student during the class period. For elementary grades, a district must order a minimum of 22 units per classroom for each content area and grade level based on student eligibility through the Public Education Information Management System (PEIMS). For secondary grades, a district must order a minimum of 32 units, with the exception of school districts with small enrollments, times the number of teachers for each content area or course. A classroom kit that includes materials for every student in the classroom is considered to be a classroom set.

#### §66.105. Certification by School Districts.

Prior to the beginning of each school year, each school district and open-enrollment charter school shall submit to the State Board of Education (SBOE) and commissioner of education certification that for each subject in the foundation and enrichment curriculum and each grade level, the district or charter school provides each student with textbooks, electronic textbooks, or instructional materials that cover all elements of the essential knowledge and skills adopted by the SBOE. The certification shall be submitted in a format approved by the commissioner of education.

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

Filed with the Office of the Secretary of State on November 30, 2009.

TRD-200905493

Cristina De La Fuente-Valadez  
Director, Policy Coordination  
Texas Education Agency

Earliest possible date of adoption: January 10, 2010

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



#### **19 TAC §66.110**

*(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 Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The repeal is proposed under the Texas Education Code, §7.102(c), which authorizes the SBOE to adopt rules required by the TEC, Chapter 31, and §31.003, which authorizes the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of textbooks.

The repeal implements the Texas Education Code, §7.102(c) and Chapter 31.

*§66.110. Pilot Project for Certain Students Enrolled in Courses for Concurrent High School and College Credit.*

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

Filed with the Office of the Secretary of State on November 30, 2009.

TRD-200905494

◆ ◆ ◆  
**SUBCHAPTER D. SPECIAL INSTRUCTIONAL MATERIALS**

**19 TAC §66.121**

The amendment is proposed under the Texas Education Code, §7.102(c), which authorizes the SBOE to adopt rules required by the TEC, Chapter 31, and §31.003, which authorizes the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of textbooks.

The amendment implements the Texas Education Code, §7.102(c) and Chapter 31.

*§66.121. Special Instructional Materials.*

(a) All laws and rules applying to instructional materials provided to sighted pupils that are not in conflict with the Texas Education Code, §31.028, or this section shall apply to the distribution and control of braille and large type instructional materials, including, but not limited to, the following.

(1) A requisition for special instructional materials shall be based on actual student enrollment to meet individual student need.

(2) Each school district or open-enrollment charter school shall conduct an annual physical inventory of all currently adopted instructional materials that have been requisitioned by, and delivered to, the district. The results of the inventory shall be recorded in the district's files.

(b) Reimbursement and/or replacement shall be made for all volumes of braille and large type instructional materials determined to be lost.

(c) ~~(b)~~ Publishers shall grant permission to the state to have adopted instructional materials transcribed into braille, large type, and audiotape without penalty or royalty.

(d) ~~(e)~~ On or before the deadline specified in the schedule of adoption procedures ~~for the adoption process~~, each publisher of newly adopted instructional materials shall provide computerized files as specified in the proclamation to be used for producing braille or other versions of materials to be used by students with disabilities. All information contained in adopted instructional materials shall be included on the computerized files. Computerized files may be copied and distributed to a school district, upon request, for instructional use with a student with disabilities who requires the use of computerized instructional materials, pursuant to an individualized plan developed for the student under the Rehabilitation Act, §504; the Americans with Disabilities Act; or the Individuals with Disabilities Education Act.

(e) ~~(d)~~ The state shall make suitable student instructional materials available in large type. The commissioner of education shall develop specifications for large type instructional materials and notify publishers of student instructional materials suitable for production in large type. The publisher may elect to supply the large type materials, or the commissioner of education may enter into contracts for producing large type materials.

(f) ~~(e)~~ Gifts of instructional materials for educating students who are blind or visually impaired tendered by individuals, groups, or

school district officials may be accepted by the State Board of Education and shall become state property and subject to the same regulations as similar items purchased with state funds. Gift materials may be shipped by Free Matter for the Blind and Visually Handicapped to the Special Textbook Redistribution Center or other location designated by the Texas Education Agency (TEA).

(g) ~~(f)~~ Copies of adopted instructional materials in braille and large type needed by a person who is blind or visually impaired to carry out the duties of a teacher in the public schools of this state shall be furnished without cost. The materials are to be loaned to the public school districts as long as needed and are to be returned to the state when they are no longer needed. Materials in the medium needed by the teacher may be requisitioned by a textbook coordinator after the superintendent of schools has certified to the commissioner of education:

- (1) the name of the teacher;
- (2) the grade or subject taught; and
- (3) the fact of the teacher's visual impairment.

(h) ~~(g)~~ Large type instructional materials shall meet or exceed the specifications in §66.7 of this title (relating to Manufacturing Standards and Specifications) and any additional specifications that may be prescribed.

(i) ~~(h)~~ Copies of adopted instructional materials in braille, large type, or in an electronic file that are requested by a parent who is blind or visually impaired shall be furnished without cost by the state. Materials in the medium needed by the parent may be requisitioned by a textbook coordinator. Requests for electronic files will be filled by the TEA after the parent signs and the TEA receives a statement, through the appropriate school district, promising that the parent will safeguard the security of the files and observe all current copyright laws including those that forbid reproduction of the files and their transfer to other parties. All braille and large type textbooks and electronic files with educational content that have been provided to parents who are blind or visually impaired must be returned to the local school district at the end of the school year for reuse.

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 30, 2009.

TRD-200905495  
Cristina De La Fuente-Valadez  
Director, Policy Coordination  
Texas Education Agency  
Earliest possible date of adoption: January 10, 2010  
For further information, please call: (512) 475-1497

◆ ◆ ◆  
**CHAPTER 74. CURRICULUM REQUIREMENTS**

The State Board of Education (SBOE) proposes amendments to §§74.51 - 74.54 and §§74.61 - 74.64, concerning curriculum requirements. The sections establish graduation requirements for the minimum, required, and distinguished achievement programs in 19 TAC Chapter 74, Subchapter E, Graduation Requirements, Beginning with School Year 2004-2005, and Subchapter F, Graduation Requirements, Beginning with

School Year 2007-2008. The proposed amendments would add additional courses for the fourth mathematics and science credit and amend requirements for the minimum and distinguished achievement high school programs to align with the recommended high school program, including adjustments to requirements for physical education credit and substitutions, health, and technology applications.

The amendments to 19 TAC Chapter 74, Subchapter F, adopted by the SBOE in November 2006, included changes to reflect the four years of mathematics and science graduation requirements of House Bill (HB) 1, 79th Texas Legislature, Third Called Session, 2006. These changes only applied to the recommended high school and distinguished achievement programs found in 19 TAC §74.63 and 19 TAC §74.64. The amendment to 19 TAC §74.61, adopted by the SBOE in November 2007, established in rule a grandfather clause for students who took Integrated Physics and Chemistry (IPC) in Grade 8 during the 2006-2007 school year that would allow IPC to count as one of the four years of science for students who took IPC in 2006-2007 prior to entering Grade 9 in 2007-2008.

The 80th Texas Legislature, 2007, passed HB 3485, adding the Texas Education Code (TEC), §28.0022, requiring the Texas Education Agency (TEA) to establish a panel to review and recommend revisions to the career and technical (CTE) curriculum. HB 3485 further requires the SBOE to allow a student to comply with the curriculum requirements for a mathematics course taken after the successful completion of an Algebra II course or for a science course taken after the successful completion of a physics course by successfully completing an advanced career and technical course designated by the SBOE as containing substantively similar and rigorous academic content. A student may use this option for not more than two courses. New 19 TAC Chapter 130, Texas Essential Knowledge and Skills for Career and Technical Education, was approved for second reading and final adoption at the July 2009 meeting.

At the January 2009 meeting the SBOE was presented with options for awarding credit toward graduation for athletics that included: (1) allowing students to earn four credits toward graduation for athletics, but the final two credits would have to be earned for the extracurricular activity offered outside the regular school day; (2) expanding the number of physical education credits allowed toward graduation to four; (3) allowing districts to submit an innovative course application for the third and fourth credits of athletics; (4) establishing Texas Essential Knowledge and Skills (TEKS) for athletics courses; and (5) maintaining the current two equivalency credits for athletics. Explanations and implications for each option were provided to the board during the January meeting. After some discussion the SBOE voted to postpone action until March 2009. At the March 2009 meeting the SBOE voted to approve Option 2: expand the number of physical education credits allowed toward graduation to four.

The 81st Texas Legislature, 2009, passed HB 3, amending the TEC, §28.025, to increase flexibility in graduation requirements for students. While HB 3 removes SBOE authority to designate a specific course or a specific number of credits in the enrichment curriculum as requirements for the recommended high school program, the SBOE retains authority in the foundation and enrichment curriculum for the minimum high school program and the distinguished achievement program.

The proposed amendments to 19 TAC Chapter 74, Subchapters E and F, would incorporate changes to high school graduation

programs in light of new graduation requirements in the TEC, as follows.

The proposed amendments would remove the one-half credit health graduation requirement and the one credit technology applications requirement from all three graduation programs. The proposed amendments would decrease the physical education requirement by one-half credit and would eliminate the requirement that students take the Foundations of Personal Fitness course in all three graduation programs. The proposed amendments would also allow students to earn physical education credit for certain activities related to specific physical education courses rather than allowing substitutions for the general physical education graduation credit.

The proposed amendments would allow three CTE courses to count for the fourth mathematics credit under the recommended high school and two CTE courses to count for the fourth mathematics credit under the distinguished achievement programs. Proposed amendments would also allow five CTE courses to count for the fourth science credit under the recommended high school and distinguished achievement programs. Proposed amendments would allow the Professional Communication course to satisfy the speech graduation requirement and the Principles and Elements of Floral Design course to satisfy the fine arts graduation credit.

The proposal would also include a provision to ensure that credit earned prior to the 2010-2011 school year would count toward graduation in the manner established at the time the credit was earned.

The proposed amendments would also make technical edits to further clarify the graduation requirements in 19 TAC Chapter 74, Subchapters E and F.

The proposed amendments would have no new procedural and reporting requirements. The proposed amendments would have no new locally maintained paperwork requirements.

Anita Givens, associate commissioner for standards and programs, has determined that for the first five-year period the amendments are in effect there will be no additional costs for the state as a result of enforcing or administering the amendments. Fiscal implications are anticipated for local school districts to hire teachers with additional certifications to teach courses they may not currently be teaching. There might also be fiscal implications for school districts to acquire materials to support the teaching of courses they may not currently be teaching. Some school districts might experience changes in enrollment for certain courses, which might require adjustments in staffing. As staffing decisions and decisions regarding instructional methodology are made by each individual school district, it is difficult to estimate the amount of impact on any given district.

Ms. Givens has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments would include added flexibility for students regardless of the graduation program they select and stronger alignment of requirements in all three graduation programs. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

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

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028. A request for a public hearing on the proposed amendments 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*.

## SUBCHAPTER E. GRADUATION REQUIREMENTS, BEGINNING WITH SCHOOL YEAR 2004-2005

### 19 TAC §§74.51 - 74.54

The amendments are proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to by rule designate subjects constituting a well-balanced curriculum and to require each district to provide instruction in the essential knowledge and skills at appropriate grade levels; and §28.025, which authorizes the SBOE to by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with §28.002.

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

#### §74.51. High School Graduation Requirements.

(a) Graduates of each high school are awarded the same type of diploma. The academic achievement record or transcript [~~transcript~~], rather than the diploma, records individual accomplishments, achievements, and courses completed and displays appropriate graduation seals.

(b) All credit for graduation must be earned no later than Grade 12.

(c) A student entering Grade 9 in the 2004-2005 school year and thereafter shall enroll in the courses necessary to complete the curriculum requirements for the recommended high school program specified in §74.53 of this title (relating to Recommended High School Program) or the advanced program specified in §74.54 of this title (relating to Distinguished Achievement High School Program--Advanced High School Program) unless the student, the student's parent or other persons standing in parental relation to the student, and a school counselor or school administrator agree that the student should be permitted to take courses under the minimum high school program specified in §74.52 of this title (relating to Minimum High School Program).

(d) To receive a high school diploma, a student entering Grade 9 in the 2004-2005 school year and thereafter must complete the following:

(1) in accordance with subsection (c) of this section, requirements of the minimum high school program specified in §74.52 of this title, the recommended high school program specified in §74.53 of this title, or the advanced program specified in §74.54 of this title; and

(2) testing requirements for graduation as specified in Chapter 101 of this title (relating to Assessment).

(e) A maximum of three credits of reading (selected from Reading I, II, or III) may be offered by districts for state graduation elective credit for identified students under the following conditions.

(1) The school district board of trustees shall adopt policies to identify students in need of additional reading instruction.

(2) District procedures shall include assessment of individual student needs, ongoing evaluation of each student's progress, and monitoring of instructional activities to ensure that student needs are addressed.

(f) An out-of-state or out-of-country transfer student (including foreign exchange students) or a transfer student from a Texas non-public school is eligible to receive a Texas diploma, but must complete all requirements of this section to satisfy state graduation requirements. Any course credit required in this section that is not completed by the student before he or she enrolls in a Texas school district may be satisfied through the provisions of §74.23 of this title (relating to Correspondence Courses and Distance Learning) and §74.24 of this title (relating to Credit by Examination) or by completing the course or courses according to the provisions of §74.26 of this title (relating to Award of Credit).

(g) Elective credits in all three graduation programs may be selected from the following:

(1) the list of courses approved by the State Board of Education (SBOE) for Grades 9-12 as specified in §74.1 of this title (relating to Essential Knowledge and Skills);

(2) state-approved innovative courses as specified in §74.27 of this title [chapter] (relating to Innovative Courses and Programs);

(3) Junior Reserve Officer Training Corps (JROTC)--one to four credits; or

(4) Driver Education--one-half credit.

(h) College Board advanced placement and International Baccalaureate courses may be substituted for courses required in appropriate areas in all three high school graduation programs. College Board advanced placement and International Baccalaureate courses may be used as electives in all three high school graduation programs.

(i) Courses offered for dual credit in the core curriculum of an institution of higher education that cover all of the essential knowledge and skills for a course required for graduation may be substituted for courses required in the foundation curriculum and for languages other than English in all three high school graduation programs.

#### §74.52. Minimum High School Program.

(a) Credits. A student must earn at least 22 credits to complete the Minimum High School Program.

(b) Core Courses. A student must demonstrate proficiency in the following.

(1) English language arts--four credits. The credits must consist of:

(A) English I, II, and III (English I for Speakers of Other Languages and English II for Speakers of Other Languages may be substituted for English I and II only for immigrant students with limited English proficiency); and

(B) Fourth credit of English, which may be satisfied by English IV, Research/Technical Writing, Creative/Imaginative Writing, Practical Writing Skills, Literary Genres, Business Communication, Journalism, or concurrent enrollment in a college English course.

(2) Mathematics--three credits to include Algebra I and Geometry.

(3) Science--two credits. The credits must consist of Biology and Integrated Physics and Chemistry (IPC). A student may substitute Chemistry or Physics for IPC and then must use the second of these two courses as the academic elective credit identified in subsection (b)(6) of this section.

(4) Social studies--two and one-half credits. The credits must consist of World History Studies (one credit) or World Geography Studies (one credit), United States History Studies Since Reconstruction (one credit), and United States Government (one-half credit).

(5) Economics, with emphasis on the free enterprise system and its benefits--one-half credit. The credit must consist of Economics with Emphasis on the Free Enterprise System and Its Benefits.

(6) Academic elective--one credit. The credit must be selected from World History Studies, World Geography Studies, or any science course approved by the State Board of Education (SBOE) for science credit as found in Chapter 112 of this title (relating to Texas Essential Knowledge and Skills for Science). If a student elects to replace IPC with either Chemistry or Physics as described in subsection (b)(3) of this section, the academic elective must be the other of these two science courses.

(7) Physical education--one credit [and one-half credits to include Foundations of Personal Fitness (one-half credit)].

(A) The credit may be selected from a combination of two of the following one-half credit courses:

(i) Foundations of Personal Fitness, including JROTC, Dance I-IV, Drill Team, Cheerleading, Marching Band, and private or commercially-sponsored physical activity programs conducted on or off campus;

(ii) Adventure/Outdoor Education, including private or commercially-sponsored physical activity programs conducted on or off campus; and

(iii) Aerobic Activities, including JROTC, Dance I-IV, Drill Team, Cheerleading, Marching Band, and private or commercially-sponsored physical activity programs conducted on or off campus.

(B) The credit may be selected from Athletics I-IV.

{(A) A student may not earn more than two credits in physical education toward state graduation requirements.}

{(B) The school district board of trustees may allow a student to substitute certain physical activities for the required credits in physical education, including the Foundations of Personal Fitness. The substitutions must be based on the physical activity involved in drill team, marching band, and cheerleading during the fall semester; Junior Reserve Officer Training Corps (JROTC); athletics; Dance I-IV; two- or three-credit career and technology work-based training courses; and off-campus physical education.}

(C) In accordance with local district policy, a school district may award credit [up to two credits] for physical education for appropriate private or commercially-sponsored physical activity programs conducted on or off campus. The district must apply to the commissioner of education for approval of such programs [which may be substituted for state graduation credit in physical education]. Such approval may be granted under the following conditions:

(i) Olympic-level participation and/or competition includes a minimum of 15 hours per week of highly intensive, professional, supervised training. The training facility, instructors, and the activities involved in the program must be certified by the superintendent to be of exceptional quality. Students qualifying and

participating at this level may be dismissed from school one hour per day. Students dismissed may not miss any class other than physical education.

(ii) Private or commercially-sponsored physical activities include those certified by the superintendent to be of high quality and well supervised by appropriately trained instructors. Student participation of at least five hours per week must be required. Students certified to participate at this level may not be dismissed from any part of the regular school day.

{(8) Health education--one-half credit, which may be satisfied by Health I or Advanced Health, or Health Science Technology--one credit, which may be satisfied by Introduction to Health Science Technology, Health Science Technology I, or Health Science Technology II.}

(8) [(9)] Speech--one-half credit. The credit must consist of Communication Applications.

{(10) Technology applications--one credit, which may be satisfied by:}

{(A) the following courses in Chapter 126 of this title (relating to Texas Essential Knowledge and Skills for Technology Applications): Computer Science I, Computer Science II, Desktop Publishing, Digital Graphics/Animation, Multimedia, Video Technology, Web Mastering, or Independent Study in Technology Applications;}

{(B) the following courses in Chapter 120 of this title (relating to the Texas Essential Knowledge and Skills for Business Education): Business Computer Information Systems I or II, Business Computer Programming, Telecommunications and Networking, or Business Image Management and Multimedia; or}

{(C) the following courses in Chapter 123 of this title (relating to the Texas Essential Knowledge and Skills for Technology Education/Industrial Technology Education): Computer Applications, Technology Systems (modular computer laboratory-based), Communications Graphics (modular computer laboratory-based), or Computer Multimedia and Animation Technology.}

(c) Elective Courses--seven [five] and one-half credits. The credits must be selected from the list of courses specified in §74.51(g) of this title (relating to High School Graduation Requirements).

§74.53. *Recommended High School Program.*

(a) Credits. A student must earn at least 24 credits to complete the Recommended High School Program.

(b) Core Courses. A student must demonstrate proficiency in the following:

(1) English language arts--four credits. The credits must consist of English I, II, III, and IV (English I for Speakers of Other Languages and English II for Speakers of Other Languages may be substituted for English I and II only for immigrant students with limited English proficiency).

(2) Mathematics--three credits. The credits must consist of Algebra I, Algebra II, and Geometry.

(3) Science--three credits. One credit must be a biology credit (Biology, Advanced Placement (AP) Biology, or International Baccalaureate (IB) Biology). Students must choose the remaining two credits from the following areas. Not more than one credit may be chosen from each of the areas to satisfy this requirement. Students on the Recommended High School Program are encouraged to take courses in biology, chemistry, and physics to complete the science requirements.

(A) Integrated Physics and Chemistry (IPC);



(B) Chemistry, AP Chemistry, or IB Chemistry; and

(C) Physics, Principles of Technology I, AP Physics, or IB Physics.

(4) Social studies--three and one-half credits. The credits must consist of World History Studies (one credit), World Geography Studies (one credit), United States History Studies Since Reconstruction (one credit), and United States Government (one-half credit).

(5) Economics, with emphasis on the free enterprise system and its benefits--one-half credit. The credit must consist of Economics with Emphasis on the Free Enterprise System and Its Benefits.

(6) Languages other than English--two credits. The credits [earned] must be for any two levels in the same language.

(7) Physical education--one credit [and one-half credits to include Foundations of Personal Fitness (one-half credit)].

(A) The credit may be selected from a combination of two of the following one-half credit courses:

(i) Foundations of Personal Fitness, including JROTC, Dance I-IV, Drill Team, Cheerleading, Marching Band, and private or commercially-sponsored physical activity programs conducted on or off campus;

(ii) Adventure/Outdoor Education, including private or commercially-sponsored physical activity programs conducted on or off campus; and

(iii) Aerobic Activities, including JROTC, Dance I-IV, Drill Team, Cheerleading, Marching Band, and private or commercially-sponsored physical activity programs conducted on or off campus.

(B) The credit may be selected from Athletics I-IV.

~~[(A) A student may not earn more than two credits in physical education toward state graduation requirements.]~~

~~[(B) The school district board of trustees may allow a student to substitute certain physical activities for the required credits in physical education, including the Foundations of Personal Fitness. The substitutions must be based on the physical activity involved in drill team, marching band, and cheerleading during the fall semester; Junior Reserve Officer Training Corps (JROTC); athletics; Dance I-IV; and two- or three-credit career and technology work-based training courses.]~~

(C) In accordance with local district policy, a school district may award credit [up to two credits] for physical education for appropriate private or commercially-sponsored physical activity programs conducted on or off campus. The district must apply to the commissioner of education for approval of such programs [; which may be substituted for state graduation credit in physical education]. Such approval may be granted under the following conditions:

(i) Olympic-level participation and/or competition includes a minimum of 15 hours per week of highly intensive, professional, supervised training. The training facility, instructors, and the activities involved in the program must be certified by the superintendent to be of exceptional quality. Students qualifying and participating at this level may be dismissed from school one hour per day. Students dismissed may not miss any class other than physical education.

(ii) Private or commercially-sponsored physical activities include those certified by the superintendent to be of high quality and well supervised by appropriately trained instructors. Student participation of at least five hours per week must be required. Students

certified to participate at this level may not be dismissed from any part of the regular school day.

~~[(8) Health education--one-half credit, which may be satisfied by Health I or Advanced Health, or Health Science Technology--one credit, which may be satisfied by Introduction to Health Science Technology, Health Science Technology I, or Health Science Technology II.]~~

~~(8) [(9)] Speech--one-half credit. The credit must consist of Communication Applications.~~

~~[(10) Technology applications--one credit, which may be satisfied by:]~~

~~[(A) the following courses in Chapter 126 of this title (relating to Texas Essential Knowledge and Skills for Technology Applications): Computer Science I, Computer Science II, Desktop Publishing, Digital Graphics/Animation, Multimedia, Video Technology, Web Mastering, or Independent Study in Technology Applications, or state-approved technology applications innovative courses;]~~

~~[(B) the following courses in Chapter 120 of this title (relating to the Texas Essential Knowledge and Skills for Business Education): Business Computer Information Systems I or II, Business Computer Programming, Telecommunications and Networking, or Business Image Management and Multimedia;]~~

~~[(C) the following courses in Chapter 123 of this title (relating to the Texas Essential Knowledge and Skills for Technology Education/Industrial Technology Education): Computer Applications, Technology Systems (modular computer laboratory-based), Communications Graphics (modular computer laboratory-based), or Computer Multimedia and Animation Technology; or]~~

~~[(D) the completion of three credits (for students participating in a coherent sequence of career and technology courses or who are enrolled in a Tech Prep high school plan of study) consisting of two or more state-approved career and technology courses in Chapters 119-125 and 127 of this title. Districts shall ensure that career and technology courses, including innovative courses, in a coherent sequence used to meet the technology applications credit are appropriate to collectively teach the knowledge and skills found in any of the approved courses listed in subparagraphs (A), (B), and (C) of this paragraph. Students pursuing the technology applications option described in this subparagraph must demonstrate proficiency in technology applications prior to the beginning of Grade 11.]~~

~~(9) [(11)] Fine arts--one credit, which may be satisfied by any course in Chapter 117, Subchapter C, of this title (relating to Texas Essential Knowledge and Skills for Fine Arts).~~

(c) Elective Courses--five [three] and one-half credits. The credits may be selected from the list of courses specified in §74.51(g) of this title (relating to High School Graduation Requirements). All students who wish to complete the Recommended High School Program are encouraged to study each of the four foundation curriculum areas (English language arts, mathematics, science, and social studies) every year in high school.

(d) Substitutions. No substitutions are allowed in the Recommended High School Program, except as specified in this chapter.

§74.54. *Distinguished Achievement High School Program--Advanced High School Program.*

(a) Credits. A student must earn at least 24 credits to complete the Distinguished Achievement High School Program.

(b) Core Courses. A student must demonstrate proficiency in the following:

(1) English language arts--four credits. The credits must consist of English I, II, III, and IV (English I for Speakers of Other Languages and English II for Speakers of Other Languages may be substituted for English I and II only for immigrant students with limited English proficiency).

(2) Mathematics--three credits. The credits must consist of Algebra I, Algebra II, and Geometry.

(3) Science--three credits. One credit must be a biology credit (Biology, Advanced Placement (AP) Biology, or International Baccalaureate (IB) Biology). Students must choose the remaining two credits from the following areas. Not more than one credit may be chosen from each of the areas to satisfy this requirement. Students on the Distinguished Achievement High School Program are encouraged to take courses in biology, chemistry, and physics to complete the science requirements.

(A) Integrated Physics and Chemistry (IPC);

(B) Chemistry, AP Chemistry, or IB Chemistry; and

(C) Physics, Principles of Technology I, AP Physics, or IB Physics.

(4) Social studies--three and one-half credits. The credits must consist of World History Studies (one credit), World Geography Studies (one credit), United States History Studies Since Reconstruction (one credit), and United States Government (one-half credit).

(5) Economics, with emphasis on the free enterprise system and its benefits--one-half credit. The credit must consist of Economics with Emphasis on the Free Enterprise System and Its Benefits.

(6) Languages other than English--three credits. The credits [earned] must be for any three levels in the same language.

(7) Physical education--one credit [and one-half credits to include Foundations of Personal Fitness (one-half credit)].

(A) The credit may be selected from a combination of two of the following one-half credit courses:

(i) Foundations of Personal Fitness, including JROTC, Dance I-IV, Drill Team, Cheerleading, Marching Band, and private or commercially-sponsored physical activity programs conducted on or off campus;

(ii) Adventure/Outdoor Education, including private or commercially-sponsored physical activity programs conducted on or off campus; and

(iii) Aerobic Activities, including JROTC, Dance I-IV, Drill Team, Cheerleading, Marching Band, and private or commercially-sponsored physical activity programs conducted on or off campus.

(B) The credit may be selected from Athletics I-IV.

{(A) A student may not earn more than two credits in physical education toward state graduation requirements.}

{(B) The school district board of trustees may allow a student to substitute certain physical activities for the required credits in physical education, including the Foundations of Personal Fitness. The substitutions must be based on the physical activity involved in drill team, marching band, and cheerleading during the fall semester; Junior Reserve Officer Training Corps (JROTC); athletics; Dance I-IV; and two- or three-credit career and technology work-based training courses.}

(C) In accordance with local district policy, a school district may award credit [up to two credits] for physical education for

appropriate private or commercially-sponsored physical activity programs conducted on or off campus. The district must apply to the commissioner of education for approval of such programs [; which may be substituted for state graduation credit in physical education]. Such approval may be granted under the following conditions:

(i) Olympic-level participation and/or competition includes a minimum of 15 hours per week of highly intensive, professional, supervised training. The training facility, instructors, and the activities involved in the program must be certified by the superintendent to be of exceptional quality. Students qualifying and participating at this level may be dismissed from school one hour per day. Students dismissed may not miss any class other than physical education.

(ii) Private or commercially-sponsored physical activities include those certified by the superintendent to be of high quality and well supervised by appropriately trained instructors. Student participation of at least five hours per week must be required. Students certified to participate at this level may not be dismissed from any part of the regular school day.

~~{(8) Health education--one-half credit, which may be satisfied by Health I or Advanced Health, or Health Science Technology--one credit, which may be satisfied by Introduction to Health Science Technology, Health Science Technology I, or Health Science Technology II.}~~

(8) [(9)] Speech--one-half credit. The credit must consist of Communication Applications.

~~{(10) Technology applications--one credit, which may be satisfied by:}~~

~~{(A) the following courses in Chapter 126 of this title (relating to Texas Essential Knowledge and Skills for Technology Applications): Computer Science I, Computer Science II, Desktop Publishing, Digital Graphics/Animation, Multimedia, Video Technology, Web Mastering, or Independent Study in Technology Applications, or state-approved technology applications innovative courses;}~~

~~{(B) the following courses in Chapter 120 of this title (relating to the Texas Essential Knowledge and Skills for Business Education): Business Computer Information Systems I or II, Business Computer Programming, Telecommunications and Networking, or Business Image Management and Multimedia;}~~

~~{(C) the following courses in Chapter 123 of this title (relating to the Texas Essential Knowledge and Skills for Technology Education/Industrial Technology Education): Computer Applications, Technology Systems (modular computer laboratory-based), Communications Graphics (modular computer laboratory-based), or Computer Multimedia and Animation Technology; or}~~

{(D) the completion of three credits (for students participating in a coherent sequence of career and technology courses or who are enrolled in a Tech Prep high school plan of study) consisting of two or more state-approved career and technology courses in Chapters 119-125 and 127 of this title. Districts shall ensure that career and technology courses, including innovative courses, in a coherent sequence used to meet the technology applications credit are appropriate to collectively teach the knowledge and skills found in any of the approved courses listed in subparagraphs (A), (B), and (C) of this paragraph. Students pursuing the technology applications option described in this subparagraph must demonstrate proficiency in technology applications prior to the beginning of Grade 11.}

(9) [(44)] Fine arts--one credit, which may be satisfied by any course in Chapter 117, Subchapter C, of this title (relating to Texas Essential Knowledge and Skills for Fine Arts).

(c) Elective Courses--four [two] and one-half credits. The credits may be selected from the list of courses specified in §74.51(g) of this title (relating to High School Graduation Requirements). All students who wish to complete the Distinguished Achievement High School Program are encouraged to study each of the four foundation curriculum areas (English language arts, mathematics, science, and social studies) every year in high school.

(d) Advanced measures. A student also must achieve any combination of four of the following advanced measures. Original research/projects may not be used for more than two of the four advanced measures. The measures must focus on demonstrated student performance at the college or professional level. Student performance on advanced measures must be assessed through an external review process. The student may choose from the following options:

(1) original research/project that is:

(A) judged by a panel of professionals in the field that is the focus of the project; or

(B) conducted under the direction of mentor(s) and reported to an appropriate audience; and

(C) related to the required curriculum set forth in §74.1 of this title (relating to Essential Knowledge and Skills);

(2) test data where a student receives:

(A) a score of three or above on the College Board advanced placement examination;

(B) a score of four or above on an International Baccalaureate examination; or

(C) a score on the Preliminary SAT/National Merit Scholarship Qualifying Test (PSAT/NMSQT) [Scholastic Assessment Test (PSAT)] that qualifies the student for recognition as a commended scholar or higher by the College Board and National Merit Scholarship Corporation, as part of the National Hispanic Recognition [Scholar] Program (NHRP) of the College Board or as part of the National Achievement Scholarship Program [for Outstanding Negro Students] of the National Merit Scholarship Corporation. The PSAT/NMSQT [PSAT] score shall count as only one advanced measure regardless of the number of honors received by the student; or

(3) college academic courses, including those taken for dual credit, and advanced technical credit courses, including locally articulated courses, [and dual credit courses] with a grade of 3.0 or higher.

(e) Substitutions. No substitutions are allowed in the Distinguished Achievement High School Program, except as specified in this chapter.

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 30, 2009.

TRD-200905496

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: January 10, 2010

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

◆ ◆ ◆  
SUBCHAPTER F. GRADUATION  
REQUIREMENTS, BEGINNING WITH  
SCHOOL YEAR 2007-2008

**19 TAC §§74.61 - 74.64**

The amendments are proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to by rule designate subjects constituting a well-balanced curriculum and to require each district to provide instruction in the essential knowledge and skills at appropriate grade levels; and §28.025, which authorizes the SBOE to by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with §28.002.

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

§74.61. *High School Graduation Requirements.*

(a) Graduates of each high school are awarded the same type of diploma. The transcript or academic achievement record (AAR) [~~transcript~~], rather than the diploma, records individual accomplishments, achievements, and courses completed and displays appropriate graduation seals.

(b) All credit for graduation must be earned no later than Grade 12.

(c) Except as provided in subsections (d) and (e) of this section, a [A] student entering Grade 9 in the 2007-2008 school year and thereafter shall enroll in the courses necessary to complete the curriculum requirements for the recommended high school program specified in §74.63 of this title (relating to Recommended High School Program) or the advanced program specified in §74.64 of this title (relating to Distinguished Achievement High School Program--Advanced High School Program) unless the student, the student's parent or other person [persons] standing in parental relation to the student, and a school counselor or school administrator agree in writing signed by each party that the student should be permitted to take courses under the minimum high school program specified in §74.62 of this title (relating to Minimum High School Program) and the student: [- High school courses successfully completed prior to Grade 9 and the 2007-2008 school year shall count toward graduation in the manner established in this chapter for credit in the year the course is successfully completed.]

(1) is at least 16 years of age;

(2) has completed two credits required for graduation in each subject of the foundation curriculum under the Texas Education Code, §28.002(a)(1); or

(3) has failed to be promoted to Grade 10 one or more times as determined by the school district.

(d) A student who was permitted to take courses under the minimum high school program prior to the 2009-2010 school year may remain in the minimum high school program.

(e) If an admission, review, and dismissal committee makes decisions that place a student with a disability on a modified curriculum in a subject area, the student will be automatically placed in the minimum high school program.

(f) High school courses successfully completed prior to Grade 9 and the 2007-2008 school year shall count toward graduation in the manner established in this chapter for credit in the year the course is successfully completed.

(g) ~~[(d)]~~ To receive a high school diploma, a student entering Grade 9 in the 2007-2008 school year and thereafter must complete the following:

(1) in accordance with subsection (c) of this section, requirements of the minimum high school program specified in §74.62 of this title, the recommended high school program specified in §74.63 of this title, or the distinguished achievement high school [advanced] program specified in §74.64 of this title; and

(2) testing requirements for graduation as specified in Chapter 101 of this title (relating to Assessment).

(h) ~~[(e)]~~ A maximum of three credits of reading (selected from Reading I, II, or III) may be offered by districts for state graduation elective credit for identified students under the following conditions.

(1) The school district board of trustees shall adopt policies to identify students in need of additional reading instruction.

(2) District procedures shall include assessment of individual student needs, ongoing evaluation of each student's progress, and monitoring of instructional activities to ensure that student needs are addressed.

(i) ~~[(f)]~~ An out-of-state or out-of-country transfer student (including foreign exchange students) or a transfer student from a Texas nonpublic school is eligible to receive a Texas diploma, but must complete all requirements of this section to satisfy state graduation requirements. Any course credit required in this section that is not completed by the student before he or she enrolls in a Texas school district may be satisfied through the provisions of §74.23 of this title (relating to Correspondence Courses and Distance Learning) and §74.24 of this title (relating to Credit by Examination) or by completing the course or courses according to the provisions of §74.26 of this title (relating to Award of Credit).

(j) ~~[(g)]~~ Elective credits in all three graduation programs may be selected from the following:

(1) high school courses not required for graduation that are listed in the following chapters of this title:

(A) Chapter 110 of this title (relating to Texas Essential Knowledge and Skills for English Language Arts and Reading);

(B) Chapter 111 of this title (relating to Texas Essential Knowledge and Skills for Mathematics);

(C) Chapter 112 of this title (relating to Texas Essential Knowledge and Skills for Science);

(D) Chapter 113 of this title (relating to Texas Essential Knowledge and Skills for Social Studies);

(E) Chapter 114 of this title (relating to Texas Essential Knowledge and Skills for Languages Other Than English);

(F) Chapter 115 of this title (relating to Texas Essential Knowledge and Skills for Health Education);

(G) Chapter 116 of this title (relating to Texas Essential Knowledge and Skills for Physical Education);

(H) Chapter 117 of this title (relating to Texas Essential Knowledge and Skills for Fine Arts);

(I) Chapter 126 of this title (relating to Texas Essential Knowledge and Skills for Technology Applications);

(J) Chapter 127 of this title (relating to Texas Essential Knowledge and Skills for Career Development); and

(K) Chapter 130 of this title (relating to Texas Essential Knowledge and Skills for Career and Technical Education);

~~[(1) the list of courses approved by the State Board of Education (SBOE) for Grades 9-12 as specified in §74.1 of this title (relating to Essential Knowledge and Skills);]~~

(2) state-approved innovative courses as specified in §74.27 of this title [chapter] (relating to Innovative Courses and Programs);

(3) Junior Reserve Officer Training Corps (JROTC)--one to four credits; or

(4) Driver Education--one-half credit.

(k) ~~[(h)]~~ College Board advanced placement and International Baccalaureate courses may be substituted for courses required in appropriate areas in all three high school graduation programs. College Board advanced placement and International Baccalaureate courses may be used as electives in all three high school graduation programs.

(l) Courses offered for dual credit in the core curriculum of an institution of higher education that cover all of the essential knowledge and skills for a course required for graduation may be substituted for courses required in the foundation curriculum and for languages other than English in all three high school graduation programs.

(m) High school graduation requirements successfully completed prior to the 2010-2011 school year shall count toward graduation in the manner established at the time the credit was earned.

§74.62. *Minimum High School Program.*

(a) Credits. A student must earn at least 22 credits to complete the Minimum High School Program.

(b) Core Courses. A student must demonstrate proficiency in the following.

(1) English language arts--four credits. Three of the ~~[(The)]~~ credits must consist of English I, II, and III (Students with limited English proficiency who are at the beginning or intermediate level of English language proficiency, as defined by §74.4(d) of this title (relating to English Language Proficiency Standards), may satisfy the English I and English II graduation requirements by successfully completing English I for Speakers of Other Languages and English II for Speakers of Other Languages). The final credit may be selected from the following courses:

~~[(A) English I, II, and III (English I for Speakers of Other Languages and English II for Speakers of Other Languages may be substituted for English I and II only for immigrant students with limited English proficiency); and]~~

(A) ~~[(B)]~~ [Fourth credit of English, which may be satisfied by] English IV<sub>2</sub> [, Research/Technical Writing, Creative/Imaginative Writing, Practical Writing Skills, Literary Genres, Business Communication, Journalism, or concurrent enrollment in a college English course.]

(B) Research/Technical Writing;

(C) Creative/Imaginative Writing;

(D) Practical Writing Skills;

(E) Literary Genres;

(F) Business English;

(G) Journalism;

(H) Advanced Placement (AP) English Language and Composition; and

(I) AP English Literature and Composition.

(2) Mathematics--three credits . Two of the credits must consist of [to include] Algebra I and Geometry. The final credit may be selected from the following courses:

(A) Algebra II;

(B) Precalculus;

(C) Mathematical Models with Applications;

(D) Independent Study in Mathematics;

(E) AP Statistics;

(F) AP Calculus AB;

(G) AP Calculus BC;

(H) AP Computer Science;

(I) International Baccalaureate (IB) Mathematical Studies Standard Level;

(J) IB Mathematics Standard Level;

(K) IB Mathematics Higher Level;

(L) IB Further Mathematics Standard Level;

(M) Mathematical Applications in Agriculture, Food, and Natural Resources;

(N) Engineering Mathematics; and

(O) Statistics and Risk Management.

(3) Science--two credits. The credits must consist of Biology and Integrated Physics and Chemistry (IPC). A student may substitute Chemistry or Physics for IPC and then must use the second of these two courses as the academic elective credit identified in subsection (b)(6) of this section.

(4) Social studies--two and one-half credits. One and one-half of the credits must consist of [The credits must consist of World History Studies (one credit) or World Geography Studies (one credit);] United States History Studies Since Reconstruction (one credit) [;] and United States Government (one-half credit). The final credit may be selected from the following courses:

(A) World History Studies; and

(B) World Geography Studies.

(5) Economics, with emphasis on the free enterprise system and its benefits--one-half credit. The credit must consist of Economics with Emphasis on the Free Enterprise System and Its Benefits.

(6) Academic elective--one credit. The credit must be selected from World History Studies, World Geography Studies, or any science course approved by the State Board of Education (SBOE) for science credit as found in Chapter 112 of this title (relating to Texas Essential Knowledge and Skills for Science). If a student elects to replace IPC with either Chemistry or Physics as described in subsection (b)(3) of this section, the academic elective must be the other of these two science courses.

(7) Physical education--one credit [and one-half credits to include Foundations of Personal Fitness (one-half credit)].

(A) The credit may be selected from a combination of two of the following one-half credit courses:

(i) Foundations of Personal Fitness, including JROTC, Dance I-IV, Drill Team, Cheerleading, Marching Band, and private or commercially-sponsored physical activity programs conducted on or off campus;

(ii) Adventure/Outdoor Education, including private or commercially-sponsored physical activity programs conducted on or off campus; and

(iii) Aerobic Activities, including JROTC, Dance I-IV, Drill Team, Cheerleading, Marching Band, and private or commercially-sponsored physical activity programs conducted on or off campus.

(B) The credit may be selected from Athletics I-IV.

~~[(A) A student may not earn more than two credits in physical education toward state graduation requirements.]~~

~~[(B) The school district board of trustees may allow a student to substitute certain physical activities for the required credits in physical education, including the Foundations of Personal Fitness. The substitutions must be based on the physical activity involved in drill team, marching band, and cheerleading during the fall semester; Junior Reserve Officer Training Corps (JROTC); athletics; Dance I-IV; two- or three-credit career and technology work-based training courses; and off-campus physical education.]~~

(C) In accordance with local district policy, a school district may award credit [up to two credits] for physical education for appropriate private or commercially-sponsored physical activity programs conducted on or off campus. The district must apply to the commissioner of education for approval of such programs [; which may be substituted for state graduation credit in physical education]. Such approval may be granted under the following conditions:

(i) Olympic-level participation and/or competition includes a minimum of 15 hours per week of highly intensive, professional, supervised training. The training facility, instructors, and the activities involved in the program must be certified by the superintendent to be of exceptional quality. Students qualifying and participating at this level may be dismissed from school one hour per day. Students dismissed may not miss any class other than physical education.

(ii) Private or commercially-sponsored physical activities include those certified by the superintendent to be of high quality and well supervised by appropriately trained instructors. Student participation of at least five hours per week must be required. Students certified to participate at this level may not be dismissed from any part of the regular school day.

~~[(8) Health education--one-half credit, which may be satisfied by Health I or Advanced Health, or Health Science Technology--one credit, which may be satisfied by Introduction to Health Science Technology, Health Science Technology I, or Health Science Technology II.]~~

(8) ~~[(9)]~~ Speech--one-half credit. The credit may be selected from the following courses: [must consist of Communication Applications.]

(A) Communication Applications; and

(B) Professional Communications.

(9) Fine arts--one credit, beginning with school year 2010-2011. A student entering Grade 9 beginning with the 2010-2011 school year must complete one credit in fine arts. The credit may be selected from the following courses:

- (A) Art, Level I, II, III, or IV;
- (B) Dance, Level I, II, III, or IV;
- (C) Music, Level I, II, III, or IV;
- (D) Theatre, Level I, II, III, or IV; and
- (E) Principles and Elements of Floral Design.

~~[(10) Technology applications--one credit, which may be satisfied by:]~~

~~[(A) the following courses in Chapter 126 of this title (relating to Texas Essential Knowledge and Skills for Technology Applications): Computer Science I, Computer Science II, Desktop Publishing, Digital Graphics/Animation, Multimedia, Video Technology, Web Mastering, or Independent Study in Technology Applications;]~~

~~[(B) the following courses in Chapter 120 of this title (relating to the Texas Essential Knowledge and Skills for Business Education): Business Computer Information Systems I or II, Business Computer Programming, Telecommunications and Networking, or Business Image Management and Multimedia; or]~~

~~[(C) the following courses in Chapter 123 of this title (relating to the Texas Essential Knowledge and Skills for Technology Education/Industrial Technology Education): Computer Applications, Technology Systems (modular computer laboratory-based), Communications Graphics (modular computer laboratory-based), or Computer Multimedia and Animation Technology.]~~

(c) Elective Courses--seven [five] and one-half credits. The credits must be selected from the list of courses specified in §74.61(j) [§74.61(g)] of this title (relating to High School Graduation Requirements).

(d) Elective courses, beginning with school year 2010-2011. A student entering Grade 9 beginning with the 2010-2011 school year must complete six and one-half credits of electives in addition to one credit in fine arts. The credits must be selected from the list of courses specified in §74.61(j) of this title.

*§74.63. Recommended High School Program.*

(a) Credits. A student must earn at least 26 credits to complete the Recommended High School Program.

(b) Core Courses. A student must demonstrate proficiency in the following:

(1) English language arts--four credits. The credits must consist of English I, II, III, and IV (Students with limited English proficiency who are at the beginning or intermediate level of English language proficiency, as defined by §74.4(d) of this title (relating to English Language Proficiency Standards), may satisfy the English I and English II graduation requirements by successfully completing English I for Speakers of Other Languages and English II for Speakers of Other Languages [may be substituted for English I and II only for immigrant students with limited English proficiency]).

(2) Mathematics--four credits. Three of the credits must consist of Algebra I, Algebra II, and Geometry.

(A) The additional credit may be selected from the following courses and must be successfully completed prior to Algebra II:

- (i) Mathematical Models with Applications; and

(ii) Mathematical Applications in Agriculture, Food, and Natural Resources.

(B) [(A)] The fourth credit may be selected from the following courses after [credits must consist of Algebra I, Algebra II, and Geometry. After] successful completion of Algebra I, Geometry, and Algebra II [; a student may select the fourth required credit from any of the following courses, except as provided in subparagraph (B) of this paragraph]:

- (i) Precalculus;
- (ii) Independent Study in Mathematics;
- (iii) Advanced Placement (AP) Statistics;
- (iv) AP Calculus AB;
- (v) AP Calculus BC;
- (vi) AP Computer Science;
- (vii) International Baccalaureate (IB) Mathematical Studies Standard [Subsidiary] Level;
- (viii) IB Mathematics Standard [Mathematical Methods Subsidiary] Level;
- (ix) IB Mathematics Higher Level;
- (x) IB Further [Advanced] Mathematics Standard [Subsidiary] Level;
- (xi) Engineering Mathematics;
- (xii) Statistics and Risk Management; and

(xiii) pursuant to the Texas Education Code (TEC), §28.025(b-5), a mathematics course endorsed by an institution of higher education as a course for which the institution would award course credit or as a prerequisite for a course for which the institution would award course credit. The Texas Education Agency shall maintain a current list of courses approved under this clause.

~~[(xi) concurrent enrollment in college mathematics courses; and]~~

~~[(xii) Mathematical Models with Applications.]~~

~~[(B) If selected, Mathematical Models with Applications must be taken prior to Algebra II.]~~

~~[(C) The SBOE may designate additional courses that meet the requirements of this paragraph.]~~

(3) Science--four credits.

(A) One credit must be a biology credit (Biology, AP [Advanced Placement (AP)] Biology, or IB [International Baccalaureate (IB)] Biology). The next two credits must be selected [Students must choose two credits] from the following areas. Not more than one credit may be chosen from each of the areas to satisfy this requirement.

- (i) Integrated Physics and Chemistry (IPC);
- (ii) Chemistry, AP Chemistry, or IB Chemistry; and
- (iii) Physics, Principles of Technology [I], AP Physics, or IB Physics.

(B) IPC cannot be taken as the final or fourth year of science, but must be taken before the senior year of high school. [The fourth year of science may be selected from the laboratory-based courses listed in Chapter 112 of this title (relating to Texas Essential Knowledge and Skills for Science), with the addition of Engineering and Earth and Space Science.]

(C) A student entering Grade 9 beginning with the 2012-2013 school year must take three science credits, at least one from each category, from the following areas:

- (i) Biology, AP Biology, or IB Biology;
- (ii) Chemistry, AP Chemistry, or IB Chemistry; and
- (iii) Physics, Principles of Technology I, AP Physics, or IB Physics.

(D) The fourth credit may be selected from the following laboratory-based courses:

- (i) Aquatic Science;
- (ii) Astronomy;
- (iii) Earth and Space Science;
- (iv) Environmental Systems;
- (v) AP Biology;
- (vi) AP Chemistry;
- (vii) AP Physics B;
- (viii) AP Physics C;
- (ix) AP Environmental Science;
- (x) IB Biology;
- (xi) IB Chemistry;
- (xii) IB Physics;
- (xiii) IB Environmental Systems;
- (xiv) Scientific Research and Design;
- (xv) Anatomy and Physiology;
- (xvi) Engineering Design and Problem Solving;
- (xvii) Medical Microbiology;
- (xviii) Pathophysiology;
- (xix) Advanced Animal Science;
- (xx) Advanced Biotechnology;
- (xxi) Advanced Plant and Soil Science;
- (xxii) Food Science;
- (xxiii) Forensic Science; and

(xxiv) pursuant to the TEC, §28.025(b-5), a science course endorsed by an institution of higher education as a course for which the institution would award course credit or as a prerequisite for a course for which the institution would award course credit. The Texas Education Agency shall maintain a current list of courses approved under this clause.

~~[(D) The fourth year of science may be selected from the laboratory-based courses listed in Chapter 112 of this title (relating to Texas Essential Knowledge and Skills for Science), with the addition of Engineering and Earth and Space Science.]~~

~~[(E) The SBOE may designate additional courses that meet the requirements of this paragraph.]~~

(4) Social studies--three and one-half credits. The credits must consist of World History Studies (one credit), World Geography Studies (one credit), United States History Studies Since Reconstruction (one credit), and United States Government (one-half credit).

(5) Economics, with emphasis on the free enterprise system and its benefits--one-half credit. The credit must consist of Economics with Emphasis on the Free Enterprise System and Its Benefits.

(6) Languages other than English--two credits. The credits [earned] must consist of [be for] any two levels in the same language.

(7) Physical education--one credit [and one-half credits to include Foundations of Personal Fitness (one-half credit)].

(A) The credit may be selected from a combination of two of the following one-half credit courses:

(i) Foundations of Personal Fitness, including JROTC, Dance I-IV, Drill Team, Cheerleading, Marching Band, and private or commercially-sponsored physical activity programs conducted on or off campus;

(ii) Adventure/Outdoor Education, including private or commercially-sponsored physical activity programs conducted on or off campus; and

(iii) Aerobic Activities, including JROTC, Dance I-IV, Drill Team, Cheerleading, Marching Band, and private or commercially-sponsored physical activity programs conducted on or off campus.

(B) The credit may be selected from Athletics I-IV.

~~[(A) A student may not earn more than two credits in physical education toward state graduation requirements.]~~

~~[(B) The school district board of trustees may allow a student to substitute certain physical activities for the required credits in physical education, including the Foundations of Personal Fitness. The substitutions must be based on the physical activity involved in drill team, marching band, and cheerleading during the fall semester; Junior Reserve Officer Training Corps (JROTC); athletics; Dance I-IV; and two- or three-credit career and technology work-based training courses.]~~

(C) In accordance with local district policy, a school district may award credit [up to two credits] for physical education for appropriate private or commercially-sponsored physical activity programs conducted on or off campus. The district must apply to the commissioner of education for approval of such programs [; which may be substituted for state graduation credit in physical education]. Such approval may be granted under the following conditions.

(i) Olympic-level participation and/or competition includes a minimum of 15 hours per week of highly intensive, professional, supervised training. The training facility, instructors, and the activities involved in the program must be certified by the superintendent to be of exceptional quality. Students qualifying and participating at this level may be dismissed from school one hour per day. Students dismissed may not miss any class other than physical education.

(ii) Private or commercially-sponsored physical activities include those certified by the superintendent to be of high quality and well supervised by appropriately trained instructors. Student participation of at least five hours per week must be required. Students certified to participate at this level may not be dismissed from any part of the regular school day.

~~[(8) Health education--one-half credit, which may be satisfied by Health I or Advanced Health, or Health Science Technology--one credit, which may be satisfied by Introduction to Health Science Technology, Health Science Technology I, or Health Science Technology II.]~~

(8) ~~[(9)]~~ Speech--one-half credit. The credit may be selected from the following courses: ~~[must consist of Communication Applications.]~~

~~(A) Communication Applications; and~~

~~(B) Professional Communications.~~

~~[(10) Technology applications--one credit, which may be satisfied by:]~~

~~[(A) the following courses in Chapter 126 of this title (relating to Texas Essential Knowledge and Skills for Technology Applications): Computer Science I, Computer Science II, Desktop Publishing, Digital Graphics/Animation, Multimedia, Video Technology, Web Mastering, or Independent Study in Technology Applications, or state-approved technology applications innovative courses;]~~

~~[(B) the following courses in Chapter 120 of this title (relating to the Texas Essential Knowledge and Skills for Business Education): Business Computer Information Systems I or II, Business Computer Programming, Telecommunications and Networking, or Business Image Management and Multimedia;]~~

~~[(C) the following courses in Chapter 123 of this title (relating to the Texas Essential Knowledge and Skills for Technology Education/Industrial Technology Education): Computer Applications, Technology Systems (modular computer laboratory-based), Communications Graphics (modular computer laboratory-based), or Computer Multimedia and Animation Technology; or]~~

~~[(D) the completion of three credits (for students participating in a coherent sequence of career and technology courses or who are enrolled in a Tech Prep high school plan of study) consisting of two or more state-approved career and technology courses in Chapters 119-125 and 127 of this title. Districts shall ensure that career and technology courses, including innovative courses, in a coherent sequence used to meet the technology applications credit are appropriate to collectively teach the knowledge and skills found in any of the approved courses listed in subparagraphs (A), (B), and (C) of this paragraph. Students pursuing the technology applications option described in this subparagraph must demonstrate proficiency in technology applications prior to the beginning of Grade 11.]~~

(9) ~~[(14)]~~ Fine arts--one credit. The credit may be selected from the following courses: ~~]; which may be satisfied by any course in Chapter 117, Subchapter C, of this title (relating to Texas Essential Knowledge and Skills for Fine Arts).]~~

~~(A) Art, Level I, II, III, or IV;~~

~~(B) Dance, Level I, II, III, or IV;~~

~~(C) Music, Level I, II, III, or IV;~~

~~(D) Theatre, Level I, II, III, or IV; and~~

~~(E) Principles and Elements of Floral Design.~~

(c) Elective Courses--~~five~~ ~~[three]~~ and one-half credits. The credits may be selected from the list of courses specified in ~~§74.61(j)~~ ~~[\$74.61(g)]~~ of this title (relating to High School Graduation Requirements). All students who wish to complete the Recommended High School Program are encouraged to study each of the four foundation curriculum areas (English language arts, mathematics, science, and social studies) every year in high school.

(d) Substitutions. No substitutions are allowed in the Recommended High School Program, except as specified in this chapter.

*§74.64. Distinguished Achievement High School Program--Advanced High School Program.*

(a) Credits. A student must earn at least 26 credits to complete the Distinguished Achievement High School Program.

(b) Core Courses. A student must demonstrate proficiency in the following:

(1) English language arts--four credits. The credits must consist of English I, II, III, and IV (Students with limited English proficiency who are at the beginning or intermediate level of English language proficiency, as defined by §74.4(d) of this title (relating to English Language Proficiency Standards), may satisfy the English I and English II graduation requirements by successfully completing English I for Speakers of Other Languages and English II for Speakers of Other Languages [may be substituted for English I and II only for immigrant students with limited English proficiency]).

(2) Mathematics--four credits. Three of the ~~[The]~~ credits must consist of Algebra I, Algebra II, and Geometry. The fourth credit may be selected from the following courses after successful completion of Algebra I, Algebra II, and Geometry: ~~[and an additional SBOE-approved mathematics course for which Algebra II is a prerequisite.]~~

~~(A) Precalculus;~~

~~(B) Independent Study in Mathematics;~~

~~(C) Advanced Placement (AP) Statistics;~~

~~(D) AP Calculus AB;~~

~~(E) AP Calculus BC;~~

~~(F) AP Computer Science;~~

~~(G) International Baccalaureate (IB) Mathematical Studies Standard Level;~~

~~(H) IB Mathematics Standard Level;~~

~~(I) IB Mathematics Higher Level;~~

~~(J) IB Further Mathematics Standard Level;~~

~~(K) Engineering Mathematics;~~

~~(L) Statistics and Risk Management; and~~

~~(M) pursuant to the Texas Education Code (TEC), §28.025(b-5), a mathematics course endorsed by an institution of higher education as a course for which the institution would award course credit or as a prerequisite for a course for which the institution would award course credit. The Texas Education Agency shall maintain a current list of courses approved under this subparagraph.~~

(3) Science--four credits. Three of the ~~[The]~~ credits must consist of a biology credit (Biology, ~~AP~~ ~~[Advanced Placement (AP)]~~ Biology, or IB ~~[International Baccalaureate (IB)]~~ Biology), a chemistry credit (Chemistry, AP Chemistry, or IB Chemistry), a physics credit (Physics, AP Physics, or IB Physics), and an additional approved laboratory-based science course. After successful completion of a biology course, a chemistry course, and a physics course, the fourth ~~[a student may select the fourth required] credit may be selected from [any of]~~ the following laboratory-based courses:

~~(A) Aquatic Science;~~

~~(B) Astronomy;~~

~~(C) ~~[(A)]~~ Earth and Space Science;~~

~~(D) ~~[(B)]~~ Environmental Systems;~~

~~[(C) Aquatic Science;]~~

~~[(D) Astronomy;]~~



- ~~[(E) Anatomy and Physiology of Human Systems;]~~
- ~~(E) [(F)] AP Biology;~~
- ~~(F) AP Chemistry;~~
- ~~(G) AP Physics B;~~
- ~~(H) AP Physics C;~~
- ~~(I) AP Environmental Science;~~
- ~~(J) [(G)] IB Biology;~~
- ~~[(H) AP Chemistry;]~~
- ~~(K) [(H)] IB Chemistry;~~
- ~~[(J) AP Physics;]~~
- ~~(L) [(K)] IB Physics;~~
- ~~[(L) AP Environmental Science;]~~
- ~~(M) IB Environmental Systems;~~
- ~~(N) Scientific Research and Design; [and]~~
- ~~(O) Anatomy and Physiology;~~
- ~~(P) [(O)] Engineering Design and Problem Solving; [-]~~
- ~~(Q) Medical Microbiology;~~
- ~~(R) Pathophysiology;~~
- ~~(S) Advanced Animal Science;~~
- ~~(T) Advanced Biotechnology;~~
- ~~(U) Advanced Plant and Soil Science;~~
- ~~(V) Food Science;~~
- ~~(W) Forensic Science; and~~
- ~~(X) pursuant to the TEC, §28.025(b-5), a science course endorsed by an institution of higher education as a course for which the institution would award course credit or as a prerequisite for a course for which the institution would award course credit. The Texas Education Agency shall maintain a current list of courses approved under this subparagraph.~~

(4) Social studies--three and one-half credits. The credits must consist of World History Studies (one credit), World Geography Studies (one credit), United States History Studies Since Reconstruction (one credit), and United States Government (one-half credit).

(5) Economics, with emphasis on the free enterprise system and its benefits--one-half credit. The credit must consist of Economics with Emphasis on the Free Enterprise System and Its Benefits.

(6) Languages other than English--three credits. The credits [earned] must consist of [be for] any three levels in the same language.

(7) Physical education--one credit [and one-half credits to include Foundations of Personal Fitness (one-half credit)].

(A) The credit may be selected from a combination of two of the following one-half credit courses:

(i) Foundations of Personal Fitness, including JROTC, Dance I-IV, Drill Team, Cheerleading, Marching Band, and private or commercially-sponsored physical activity programs conducted on or off campus;

(ii) Adventure/Outdoor Education, including private or commercially-sponsored physical activity programs conducted on or off campus; and

(iii) Aerobic Activities, including JROTC, Dance I-IV, Drill Team, Cheerleading, Marching Band, and private or commercially-sponsored physical activity programs conducted on or off campus.

(B) The credit may be selected from Athletics I-IV.

~~[(A) A student may not earn more than two credits in physical education toward state graduation requirements.]~~

~~[(B) The school district board of trustees may allow a student to substitute certain physical activities for the required credits in physical education, including the Foundations of Personal Fitness. The substitutions must be based on the physical activity involved in drill team, marching band, and cheerleading during the fall semester; Junior Reserve Officer Training Corps (JROTC); athletics; Dance I-IV; and two- or three-credit career and technology work-based training courses.]~~

(C) In accordance with local district policy, a school district may award credit [up to two credits] for physical education for appropriate private or commercially-sponsored physical activity programs conducted on or off campus. The district must apply to the commissioner of education for approval of such programs [- which may be substituted for state graduation credit in physical education]. Such approval may be granted under the following conditions:

(i) Olympic-level participation and/or competition includes a minimum of 15 hours per week of highly intensive, professional, supervised training. The training facility, instructors, and the activities involved in the program must be certified by the superintendent to be of exceptional quality. Students qualifying and participating at this level may be dismissed from school one hour per day. Students dismissed may not miss any class other than physical education.

(ii) Private or commercially-sponsored physical activities include those certified by the superintendent to be of high quality and well supervised by appropriately trained instructors. Student participation of at least five hours per week must be required. Students certified to participate at this level may not be dismissed from any part of the regular school day.

~~[(8) Health education--one-half credit, which may be satisfied by Health I or Advanced Health, or Health Science Technology--one credit, which may be satisfied by Introduction to Health Science Technology, Health Science Technology I, or Health Science Technology II.]~~

~~(8) [(9)] Speech--one-half credit. The credit may be selected from the following courses: [must consist of Communication Applications.]~~

(A) Communication Applications; and

(B) Professional Communications.

~~[(10) Technology applications--one credit, which may be satisfied by:]~~

~~[(A) the following courses in Chapter 126 of this title (relating to Texas Essential Knowledge and Skills for Technology Applications): Computer Science I, Computer Science II, Desktop Publishing, Digital Graphics/Animation, Multimedia, Video Technology, Web Mastering, or Independent Study in Technology Applications; or state-approved technology applications innovative courses;]~~

~~{(B) the following courses in Chapter 120 of this title (relating to the Texas Essential Knowledge and Skills for Business Education): Business Computer Information Systems I or II, Business Computer Programming, Telecommunications and Networking, or Business Image Management and Multimedia;}~~

~~{(C) the following courses in Chapter 123 of this title (relating to the Texas Essential Knowledge and Skills for Technology Education/Industrial Technology Education): Computer Applications, Technology Systems (modular computer laboratory-based), Communications Graphics (modular computer laboratory-based), or Computer Multimedia and Animation Technology; or}~~

~~{(D) the completion of three credits (for students participating in a coherent sequence of career and technology courses or who are enrolled in a Tech Prep high school plan of study) consisting of two or more state-approved career and technology courses in Chapters 119-125 and 127 of this title. Districts shall ensure that career and technology courses, including innovative courses, in a coherent sequence used to meet the technology applications credit are appropriate to collectively teach the knowledge and skills found in any of the approved courses listed in subparagraphs (A), (B), and (C) of this paragraph. Students pursuing the technology applications option described in this subparagraph must demonstrate proficiency in technology applications prior to the beginning of Grade 11.}~~

~~(9) [(14)] Fine arts--one credit. The credit may be selected from the following courses: [; which may be satisfied by any course in Chapter 117, Subchapter C, of this title (relating to Texas Essential Knowledge and Skills for Fine Arts)-]~~

- ~~(A) Art, Level I, II, III, or IV;~~
- ~~(B) Dance, Level I, II, III, or IV;~~
- ~~(C) Music, Level I, II, III, or IV;~~
- ~~(D) Theatre, Level I, II, III, or IV; and~~
- ~~(E) Principles and Elements of Floral Design.~~

(c) Elective Courses--~~four [two]~~ and one-half credits. The credits may be selected from the list of courses specified in ~~§74.61(j) [§74.61(g)]~~ of this title (relating to High School Graduation Requirements). All students who wish to complete the Distinguished Achievement High School Program are encouraged to study each of the four foundation curriculum areas (English language arts, mathematics, science, and social studies) every year in high school.

(d) Advanced measures. A student also must achieve any combination of four of the following advanced measures. Original research/projects may not be used for more than two of the four advanced measures. The measures must focus on demonstrated student performance at the college or professional level. Student performance on advanced measures must be assessed through an external review process. The student may choose from the following options:

- (1) original research/project that is:
  - (A) judged by a panel of professionals in the field that is the focus of the project; or
  - (B) conducted under the direction of mentor(s) and reported to an appropriate audience; and
  - (C) related to the required curriculum set forth in §74.1 of this title (relating to Essential Knowledge and Skills);
- (2) test data where a student receives:
  - (A) a score of three or above on the College Board advanced placement examination;

(B) a score of four or above on an International Baccalaureate examination; or

(C) a score on the Preliminary SAT/National Merit Scholarship Qualifying Test (PSAT/NMSQT) [~~Scholastic Assessment Test (PSAT)~~] that qualifies the student for recognition as a commended scholar or higher by the College Board and National Merit Scholarship Corporation, as part of the National Hispanic Recognition [~~Scholar~~] Program (NHRP) of the College Board or as part of the National Achievement Scholarship Program [~~for Outstanding Negro Students~~] of the National Merit Scholarship Corporation. The PSAT/NMSQT [~~PSAT~~] score shall count as only one advanced measure regardless of the number of honors received by the student; or

(3) college academic courses, including those taken for dual credit, and advanced technical credit courses, [~~and dual credit courses;~~] including locally articulated courses, [~~local articulation;~~] with a grade of 3.0 or higher.

(e) Substitutions. No substitutions are allowed in the Distinguished Achievement High School Program, except as specified in this chapter.

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 30, 2009.

TRD-200905497  
Cristina De La Fuente-Valadez  
Director, Policy Coordination  
Texas Education Agency  
Earliest possible date of adoption: January 10, 2010  
For further information, please call: (512) 475-1497



## CHAPTER 110. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR ENGLISH LANGUAGE ARTS AND READING

The State Board of Education (SBOE) proposes the repeal of §§110.1 - 110.7, 110.21 - 110.24, and 110.41 - 110.45 and amendments to §§110.10, 110.17, and 110.30, concerning Texas essential knowledge and skills (TEKS) for English language arts and reading. The sections establish the TEKS for English language arts and reading courses in elementary, middle school, and high school. The proposed repeals would remove the TEKS adopted to be effective in 1998 for Kindergarten-Grade 8 and English I-IV and related implementation language. The proposed amendments would remove references to rules that would be repealed.

In May 2008, the SBOE adopted proposed revisions to the English language arts and reading TEKS for Kindergarten-Grade 8 and for English I-IV with an implementation date of the 2009-2010 school year. These revisions were to supersede the original TEKS at the time of implementation. The original TEKS were still to be implemented for the 2008-2009 school year and needed to remain in the Texas Administrative Code for that period of time. With the implementation of the new TEKS for Kindergarten-Grade 8 and for English I-IV in 2009-2010, the original TEKS are no longer needed and may now be repealed.

Existing rules must also be amended to remove references to rules that would be repealed.

The proposed rule actions would have no new procedural and reporting requirements. The proposed rule actions would have no new locally maintained paperwork requirements.

Anita Givens, associate commissioner for standards and programs, has determined that for the first five-year period the repeals and amendments are in effect there will be no additional costs for state or local government as a result of enforcing or administering the repeals and amendments.

Ms. Givens has determined that for each year of the first five years the repeals and amendments are in effect the public benefit anticipated as a result of enforcing the repeals and amendments would include better alignment of the TEKS and coordination of the standards with the adoption of instructional materials. There is no anticipated economic cost to persons who are required to comply with the proposed repeals and amendments.

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

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028. A request for a public hearing on the proposed repeals and amendments 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*.

## SUBCHAPTER A. ELEMENTARY

### 19 TAC §§110.1 - 110.7

*(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 Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The repeals are proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to by rule designate subjects constituting a well-balanced curriculum and to require each district to provide instruction in the essential knowledge and skills at appropriate grade levels; and §28.025, which authorizes the SBOE to by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with §28.002.

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

§110.1. *Implementation of Texas Essential Knowledge and Skills for English Language Arts and Reading, Elementary.*

§110.2. *English Language Arts and Reading, Kindergarten.*

§110.3. *English Language Arts and Reading, Grade 1.*

§110.4. *English Language Arts and Reading, Grade 2.*

§110.5. *English Language Arts and Reading, Grade 3.*

§110.6. *English Language Arts and Reading, Grade 4.*

§110.7. *English Language Arts and Reading, Grade 5.*

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 30, 2009.

TRD-200905498

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: January 10, 2010

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



### 19 TAC §110.10

The amendment is proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to by rule designate subjects constituting a well-balanced curriculum and to require each district to provide instruction in the essential knowledge and skills at appropriate grade levels; and §28.025, which authorizes the SBOE to by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with §28.002.

The amendment implements the Texas Education Code, §§7.102(c)(4), 28.002, and 28.025.

§110.10. *Implementation of Texas Essential Knowledge and Skills for English Language Arts and Reading, Elementary, Beginning with School Year 2009-2010.*

(a) The provisions of §§110.11 - 110.16 of this subchapter shall be implemented by school districts beginning with the 2009-2010 school year [and at that time shall supersede §§110.2 - 110.7 of this subchapter].

(b) Students must develop the ability to comprehend and process material from a wide range of texts. Student expectations for Reading/Comprehension Skills as provided in this subsection are described for the appropriate grade level.

Figure: 19 TAC §110.10(b) (No change.)

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

Filed with the Office of the Secretary of State on November 30, 2009.

TRD-200905499

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: January 10, 2010

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



## SUBCHAPTER B. MIDDLE SCHOOL

### 19 TAC §110.17

The amendment is proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the

SBOE to by rule designate subjects constituting a well-balanced curriculum and to require each district to provide instruction in the essential knowledge and skills at appropriate grade levels; and §28.025, which authorizes the SBOE to by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with §28.002.

The amendment implements the Texas Education Code, §§7.102(c)(4), 28.002, and 28.025.

§110.17. *Implementation of Texas Essential Knowledge and Skills for English Language Arts and Reading, Middle School, Beginning with School Year 2009-2010.*

(a) The provisions of §§110.18 - 110.20 of this subchapter shall be implemented by school districts beginning with the 2009-2010 school year [and at that time shall supersede §§110.22 - 110.24 of this subchapter].

(b) Students must develop the ability to comprehend and process material from a wide range of texts. Student expectations for Reading/Comprehension Skills as provided in this subsection are described for the appropriate grade level.

Figure: 19 TAC §110.17(b) (No change.)

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

Filed with the Office of the Secretary of State on November 30, 2009.

TRD-200905500

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: January 10, 2010

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



### 19 TAC §§110.21 - 110.24

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

The repeals are proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to by rule designate subjects constituting a well-balanced curriculum and to require each district to provide instruction in the essential knowledge and skills at appropriate grade levels; and §28.025, which authorizes the SBOE to by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with §28.002.

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

§110.21. *Implementation of Texas Essential Knowledge and Skills for English Language Arts and Reading, Middle School.*

§110.22. *English Language Arts and Reading, Grade 6.*

§110.23. *English Language Arts and Reading, Grade 7.*

§110.24. *English Language Arts and Reading, Grade 8.*

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 30, 2009.

TRD-200905501

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: January 10, 2010

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



### SUBCHAPTER C. HIGH SCHOOL

#### 19 TAC §110.30

The amendment is proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to by rule designate subjects constituting a well-balanced curriculum and to require each district to provide instruction in the essential knowledge and skills at appropriate grade levels; and §28.025, which authorizes the SBOE to by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with §28.002.

The amendment implements the Texas Education Code, §§7.102(c)(4), 28.002, and 28.025.

§110.30. *Implementation of Texas Essential Knowledge and Skills for English Language Arts and Reading, High School, Beginning with School Year 2009-2010.*

(a) The provisions of §§110.31 - 110.34 of this subchapter shall be implemented by school districts beginning with the 2009-2010 school year [and at that time shall supersede §§110.42 - 110.45 of this subchapter].

(b) Students must develop the ability to comprehend and process material from a wide range of texts. Student expectations for Reading/Comprehension Skills as provided in this subsection are described for the appropriate grade level.

Figure: 19 TAC §110.30(b) (No change.)

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

Filed with the Office of the Secretary of State on November 30, 2009.

TRD-200905502

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: January 10, 2010

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



#### 19 TAC §§110.41 - 110.45

*(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 Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The repeals are proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the

SBOE to by rule designate subjects constituting a well-balanced curriculum and to require each district to provide instruction in the essential knowledge and skills at appropriate grade levels; and §28.025, which authorizes the SBOE to by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with §28.002.

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

§110.41. *Implementation of Texas Essential Knowledge and Skills for English Language Arts and Reading, High School.*

§110.42. *English I (One Credit).*

§110.43. *English II (One Credit).*

§110.44. *English III (One Credit).*

§110.45. *English IV (One Credit).*

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

Filed with the Office of the Secretary of State on November 30, 2009.

TRD-200905503

Cristina De La Fuente-Valadez  
Director, Policy Coordination  
Texas Education Agency

Earliest possible date of adoption: January 10, 2010

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



## CHAPTER 128. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR SPANISH LANGUAGE ARTS AND READING AND ENGLISH AS A SECOND LANGUAGE

The State Board of Education (SBOE) proposes the repeal of §§128.1 - 128.7, 128.21, 128.22, and 128.41 - 128.43 and amendments to §§128.10, 128.17, and 128.30, concerning Texas essential knowledge and skills (TEKS) for Spanish language arts and reading and English as a second language. The sections establish the TEKS for Spanish language arts and reading and English as a second language courses in elementary, middle school, and high school. The proposed repeals would remove the TEKS adopted to be effective in 1998 for Kindergarten-Grade 6 and English for Speakers of Other Languages (ESOL) I and II and related implementation language. The proposed amendments would remove references to rules that would be repealed.

In September 2008, the SBOE adopted proposed revisions to the Spanish language arts and reading TEKS for Kindergarten-Grade 6 and for ESOL I and II with an implementation date of the 2009-2010 school year. These revisions were to supersede the original TEKS at the time of implementation. The original TEKS were still to be implemented for the 2008-2009 school year and needed to remain in the Texas Administrative Code for that period of time. With the implementation of the new TEKS for Kindergarten-Grade 6 and ESOL I and II in 2009-2010, the original TEKS are no longer needed and may now be repealed. Existing rules must also be amended to remove references to rules that would be repealed.

The proposed rule actions would have no new procedural and reporting requirements. The proposed rule actions would have no new locally maintained paperwork requirements.

Anita Givens, associate commissioner for standards and programs, has determined that for the first five-year period the repeals and amendments are in effect there will be no additional costs for state or local government as a result of enforcing or administering the repeals and amendments.

Ms. Givens has determined that for each year of the first five years the repeals and amendments are in effect the public benefit anticipated as a result of enforcing the repeals and amendments would include better alignment of the TEKS and coordination of the standards with the adoption of instructional materials. There is no anticipated economic cost to persons who are required to comply with the proposed repeals and amendments.

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

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028. A request for a public hearing on the proposed repeals and amendments 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*.

### SUBCHAPTER A. ELEMENTARY

#### 19 TAC §§128.1 - 128.7

*(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 Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The repeals are proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to by rule designate subjects constituting a well-balanced curriculum and to require each district to provide instruction in the essential knowledge and skills at appropriate grade levels; and §28.025, which authorizes the SBOE to by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with §28.002.

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

§128.1. *Implementation of Texas Essential Knowledge and Skills for Spanish Language Arts (SLA) and English as a Second Language (ESL), Elementary.*

§128.2. *Spanish Language Arts (SLA) and English as a Second Language (ESL), Kindergarten.*

§128.3. *Spanish Language Arts (SLA) and English as a Second Language (ESL), Grade 1.*

§128.4. *Spanish Language Arts (SLA) and English as a Second Language (ESL), Grade 2.*

§128.5. *Spanish Language Arts (SLA) and English as a Second Language (ESL), Grade 3.*

§128.6. *Spanish Language Arts (SLA) and English as a Second Language (ESL), Grade 4.*

§128.7. *Spanish Language Arts (SLA) and English as a Second Language (ESL), Grade 5.*

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 30, 2009.

TRD-200905504

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: January 10, 2010

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



### 19 TAC §128.10

The amendment is proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to by rule designate subjects constituting a well-balanced curriculum and to require each district to provide instruction in the essential knowledge and skills at appropriate grade levels; and §28.025, which authorizes the SBOE to by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with §28.002.

The amendment implements the Texas Education Code, §§7.102(c)(4), 28.002, and 28.025.

§128.10. *Implementation of Texas Essential Knowledge and Skills for Spanish Language Arts and Reading, Elementary, Beginning with School Year 2009-2010.*

(a) The provisions of §§128.11 - 128.16 of this subchapter shall be implemented by school districts beginning with the 2009-2010 school year [~~and at that time shall supersede §§128.2 - 128.7 of this subchapter~~].

(b) Students must develop the ability to comprehend and process material from a wide range of texts. Student expectations for Reading/Comprehension Skills as provided in this subsection are described for the appropriate grade level.

Figure: 19 TAC §128.10(b) (No change.)

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

Filed with the Office of the Secretary of State on November 30, 2009.

TRD-200905505

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: January 10, 2010

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



## SUBCHAPTER B. MIDDLE SCHOOL

### 19 TAC §128.17

The amendment is proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to by rule designate subjects constituting a well-balanced curriculum and to require each district to provide instruction in the essential knowledge and skills at appropriate grade levels; and §28.025, which authorizes the SBOE to by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with §28.002.

The amendment implements the Texas Education Code, §§7.102(c)(4), 28.002, and 28.025.

§128.17. *Implementation of Texas Essential Knowledge and Skills for Spanish Language Arts and Reading, Middle School, Beginning with School Year 2009-2010.*

(a) The provisions of §128.18 of this subchapter shall be implemented by school districts beginning with the 2009-2010 school year [~~and at that time shall supersede §128.22 of this subchapter~~].

(b) Students must develop the ability to comprehend and process material from a wide range of texts. Student expectations for Reading/Comprehension Skills as provided in this subsection are described for the appropriate grade level.

Figure: 19 TAC §128.17(b) (No change.)

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

Filed with the Office of the Secretary of State on November 30, 2009.

TRD-200905506

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: January 10, 2010

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



### 19 TAC §128.21, §128.22

*(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 Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The repeals are proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to by rule designate subjects constituting a well-balanced curriculum and to require each district to provide instruction in the essential knowledge and skills at appropriate grade levels; and §28.025, which authorizes the SBOE to by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with §28.002.

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

§128.21. *Implementation of Texas Essential Knowledge and Skills for English as a Second Language, Middle School.*

§128.22. *Spanish Language Arts (SLA) and English as a Second Language (ESL), Grade 6.*

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

Filed with the Office of the Secretary of State on November 30, 2009.

TRD-200905507

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: January 10, 2010

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



## SUBCHAPTER C. HIGH SCHOOL

### 19 TAC §128.30

The amendment is proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to by rule designate subjects constituting a well-balanced curriculum and to require each district to provide instruction in the essential knowledge and skills at appropriate grade levels; and §28.025, which authorizes the SBOE to by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with §28.002.

The amendment implements the Texas Education Code, §§7.102(c)(4), 28.002, and 28.025.

§128.30. *Implementation of Texas Essential Knowledge and Skills for English as a Second Language, High School, Beginning with School Year 2009-2010.*

(a) The provisions of §128.31 and §128.32 of this subchapter shall be implemented by school districts beginning with the 2009-2010 school year [and at that time shall supersede §128.42 and §128.43 of this subchapter].

(b) Students must develop the ability to comprehend and process material from a wide range of texts. Student expectations for Reading/Comprehension Skills as provided in this subsection are described for the appropriate grade level.

Figure: 19 TAC §128.30(b) (No change.)

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

Filed with the Office of the Secretary of State on November 30, 2009.

TRD-200905508

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: January 10, 2010

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



### 19 TAC §§128.41 - 128.43

*(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 Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The repeals are proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to by rule designate subjects constituting a well-balanced curriculum and to require each district to provide instruction in the essential knowledge and skills at appropriate grade levels; and §28.025, which authorizes the SBOE to by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with §28.002.

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

§128.41. *Implementation of Texas Essential Knowledge and Skills for English as a Second Language, High School.*

§128.42. *English I for Speakers of Other Languages (One Credit).*

§128.43. *English II for Speakers of Other Languages (One Credit).*

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

Filed with the Office of the Secretary of State on November 30, 2009.

TRD-200905509

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: January 10, 2010

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



## CHAPTER 129. STUDENT ATTENDANCE SUBCHAPTER B. STUDENT ATTENDANCE ACCOUNTING

### 19 TAC §129.21

The State Board of Education (SBOE) proposes an amendment to §129.21, concerning student attendance accounting. The section provides requirements for student attendance accounting for state funding purposes. The proposed amendment would update the current rule to reflect statutory changes resulting from the 81st Texas Legislature, 2009, and add clarifying language.

Section 129.21 provides the student attendance accounting requirements school districts must follow and describes the manner in which student attendance is earned. The rule also provides a list of conditions under which a student who is not actually on campus at the time attendance is taken may be considered in attendance. The proposed amendment would update the current rule to reflect statutory changes to the Texas Education Code (TEC), §25.087, resulting from Senate Bill 1134, House Bill (HB) 192, and HB 2542, 81st Texas Legislature, 2009. Specifically, the proposed amendment would modify the rule as follows.

Subsection (h) would be amended to clarify that enrollment is based on hours of instruction.

Subsection (k)(4), which addresses student absences to observe holy days or attend a required court appearance, would

be amended to address only absences related to observing holy days. New subsection (k)(5) would be added to address absences related to attending a required court appearance.

New subsection (k)(6) would be added to address student absences to serve as an election clerk.

New subsection (k)(7) would be added to address student absences to appear at a governmental office to complete paperwork required in connection with a student's application for United States citizenship.

New subsection (k)(8) would be added to address student absences to take part in a United States naturalization oath ceremony.

New subsection (k)(9) would be added to address absences of high school students who are juniors or seniors to visit an institution of higher education for the purpose of determining interest in attending the institution.

Subsection (k)(5), to be renumbered as subsection (k)(10), would be amended to specify that students excused to sound "Taps" at a military honors funeral held in Texas for a deceased veteran must be in Grades 6-12.

Subsection (k)(6), to be renumbered as subsection (k)(11), which excuses certain student absences for documented appointments with health care professionals, would be amended to specify that such appointments include an appointment of a student diagnosed with autism spectrum disorder with a health care practitioner to receive a generally recognized service for persons with that disorder.

Other minor corrections in word usage would be made throughout subsection (k).

The proposed amendment would have no new procedural and reporting implications.

The proposed amendment would require school districts to maintain documentation related to the new excused absences.

Lisa Dawn-Fisher, deputy associate commissioner for school finance, has determined that for the first five-year period the amendment is in effect there will be no additional costs for state or local government as a result of enforcing or administering the amendment.

Ms. Dawn-Fisher has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment would be updating the current rule to reflect statutory changes and add clarifying language. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

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

Comments on the proposal may be submitted to Cristina De La Fuente- Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028. A request for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days

after notice of the proposal has been published in the *Texas Register*.

The amendment is proposed under the TEC, §42.004, which authorizes the commissioner of education, in accordance with the rules of the State Board of Education, to take such action and require such reports consistent with TEC, Chapter 42, as may be necessary to implement and administer the Foundation School Program.

The amendment implements the Texas Education Code, §42.004 and §25.087.

§129.21. *Requirements for Student Attendance Accounting for State Funding Purposes.*

(a) All public schools in Texas must maintain records to reflect the average daily attendance (ADA) for the allocation of Foundation School Program (FSP) funds and other funds allocated by the Texas Education Agency (TEA). Superintendents, principals, and teachers are responsible to their school boards and to the state to maintain accurate, current attendance records.

(b) The commissioner of education is responsible for providing guidelines for attendance accounting in accordance with state law.

(c) The commissioner of education is responsible for providing all the necessary records and procedures required of school districts in preparation of a daily attendance register.

(d) Districts must maintain records and make reports concerning student attendance and participation in special programs as required by the commissioner of education. Effective January 1, 2001, before a district or charter school may count a student in attendance under this section or in attendance when the student was allowed to leave campus during any part of the school day, the district or charter must adopt a policy addressing parental consent for a student to leave campus and distribute the policy to staff and to all parents of students in the district or charter school.

(e) If a school district chooses to use a locally developed record or automated system, the record or automated system must contain the minimum information required by the commissioner of education.

(f) The commissioner of education must provide for special circumstances regarding attendance accounting in accord with the provisions of law.

(g) When classroom instruction is organized on a departmentalized basis, a central attendance accounting system must be used.

(h) A student must be enrolled for at least two hours of instruction to be considered in membership for one half day, and for at least four hours of instruction to be considered in membership for one full day.

(i) Attendance for all grades must be determined by the absences recorded in the second or fifth period of the day, unless permission has been obtained from the TEA for an alternate period to record absences, unless the local school board adopts a district policy for recording absences in an alternate period or hour, or unless the students for which attendance is being taken are enrolled in and participating in an alternative attendance accounting program approved by the commissioner of education.

(1) Students enrolled on a half-day basis may earn only one half day of attendance each school day. Attendance is determined for these pupils by recording absences in a period during the half day that they are scheduled to be present. Students enrolled on a full-day basis may earn one full day of attendance each school day.



(2) Students who are enrolled in and participating in an alternative attendance accounting program approved by the commissioner of education will earn attendance according to the statutory and rule provisions applicable to that program.

(3) The established period in which absences are recorded may not be changed during the school year.

(4) Students absent at the time the attendance roll is taken, during the daily period selected, are counted absent for the entire day, unless the students are enrolled in and participating in an alternative attendance accounting program approved by the commissioner of education. Students present at the time the attendance roll is taken, during the daily period selected, are counted present for the entire day, unless the students are enrolled in and participating in an alternative attendance accounting program approved by the commissioner of education.

(j) A student who is not actually in school at the time attendance is taken must not be counted in attendance for FSP funding purposes, unless the student is participating in an activity that meets the conditions set out in subsection (k) of this section, or unless the student is enrolled in and participating in an alternative attendance accounting program approved by the commissioner of education.

(k) A student not actually on campus at the time attendance is taken may be considered in attendance for FSP funding purposes under the following conditions.

(1) The student is participating in an activity that is approved by the local board of school trustees and is under the direction of a member of the professional staff of the school district, or an adjunct staff member who:

(A) has a minimum of a bachelor's degree; and

(B) is eligible for participation in the Teacher Retirement System of Texas.

(2) The student is participating in a mentorship approved by district personnel to serve as one or more of the advanced measures needed to complete the Distinguished Achievement Program outlined in Chapter 74 of this title (relating to Curriculum Requirements).

(3) The student is a Medicaid-eligible child participating in the Early and Periodic Screening, Diagnosis, and Treatment Program implemented by the Texas Health and Human Services Commission. Such students may be excused for up to one day at any time without loss of ADA.

(4) The student is observing holy days [~~or attending a required court appearance~~] as provided [~~described~~] in the Texas Education Code (TEC), §25.087. A student who is observing holy days [~~or attending a required court appearance~~] is allowed up to one day of excused travel for traveling to the site where the student will observe the holy days [~~or attend the required court appearance~~] and up to one day of excused travel for traveling from that site.

(5) The student is attending a required court appearance as provided in the TEC, §25.087. A student who is attending a required court appearance is allowed up to one day of excused travel for traveling to the site where the student will attend the required court appearance and up to one day of excused travel for traveling from that site.

(6) The student is serving as an election clerk as provided in the TEC, §25.087. A student who is serving as an election clerk is allowed up to one day of excused travel for traveling to the site where the student will serve as an election clerk and up to one day of excused travel for traveling from that site.

(7) The student is appearing at a governmental office to complete paperwork required in connection with the student's appli-

cation for United States citizenship as provided in the TEC, §25.087. A student who is appearing at a governmental office to complete such paperwork is allowed up to one day of excused travel for traveling to the site where the student will complete the paperwork and up to one day of excused travel for traveling from that site.

(8) The student is taking part in a United States naturalization oath ceremony as provided in the TEC, §25.087. A student who is taking part in such a ceremony is allowed up to one day of excused travel for traveling to the site where the student will take part in the ceremony and up to one day of excused travel for traveling from that site.

(9) The student is visiting an institution of higher education accredited by a generally recognized accrediting organization during the student's junior or senior year of high school for the purpose of determining the student's interest in attending the institution as provided in the TEC, §25.087, provided that the school district in which the student attends school has adopted a policy to determine when an absence will be excused for this purpose and has adopted a procedure to verify a student's visit at the institution of higher education. A district may not excuse for this purpose more than two days during a student's junior year and two days during a student's senior year.

(10) [~~{5}~~] The student is in any of Grades 6-12 and is sounding "Taps" at a military honors funeral held in Texas for a deceased veteran as provided [~~described~~] in the TEC, §25.087.

(11) [~~{6}~~] The student has a documented appointment with a health care professional during regular school hours, if the student begins classes or returns to school on the same day of the appointment, as provided [~~described~~] in the TEC, §25.087. The appointment should be supported by a document such as a note from the health care professional. An appointment with a health care professional includes an appointment of a student diagnosed with autism spectrum disorder with a health care practitioner, as described by the Texas Insurance Code, §1355.015(b), to receive a generally recognized service for persons with that disorder, including applied behavioral analysis, speech therapy, and occupational therapy.

(l) In accordance with the TEC, §25.087, students may be excused for medical, dental, and psychological appointments; for special education assessment procedures; and for special education related services.

(m) The superintendent of schools is responsible for the safekeeping of all attendance records and reports. The superintendent of schools may determine whether the properly certified attendance records or reports for the school year are to be filed in the central office or properly stored on the respective school campuses of the district. Regardless of where such records are filed or stored, they must be readily available for audit by the TEA division responsible for performing audits.

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 30, 2009.

TRD-200905510

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: January 10, 2010

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

◆   ◆   ◆

## TITLE 22. EXAMINING BOARDS

### PART 32. STATE BOARD OF EXAMINERS FOR SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

#### CHAPTER 741. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

The State Board of Examiners for Speech-Language Pathology and Audiology (board) proposes an amendment to §741.44, the repeal of §741.64, and new §741.64, concerning the regulation and licensure of speech-language pathologists and audiologists.

##### BACKGROUND AND PURPOSE

The proposed rules are intended to update the rules so that they reflect the board's current operational procedures in processing and approving licensure applications and to provide clarification of the rules, so that the intent is not ambiguous for license holders and the public.

##### SECTION-BY-SECTION SUMMARY

The amendment to §741.44(b)(3) is proposed to correctly identify the form to be used for supervision.

The repeal of existing §741.64 and new §741.64 are proposed to clarify the responsibilities of a licensed assistant and a licensed speech-language pathologist supervisor.

##### FISCAL NOTE

Joyce Parsons, Executive Director, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the sections as proposed.

##### SMALL AND MICRO-BUSINESS ECONOMIC IMPACT ANALYSIS

Ms. Parsons has also determined that there will be no adverse economic impact to small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. The sections do not impose additional fees. There is no anticipated impact on local employment.

##### PUBLIC BENEFIT

Ms. Parsons has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the sections will be to ensure the effective regulation of speech-language pathologists and audiologists in Texas, which will protect and promote public health, safety, and welfare.

##### REGULATORY ANALYSIS

The board 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 board has determined that the proposed 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 Joyce Parsons, Executive Director, State Board of Examiners for Speech-Language Pathology and Audiology, MC-1982, P.O. Box 149347, Austin, Texas 78714-9347. Comments may also be sent through e-mail to [speech@dshs.state.tx.us](mailto:speech@dshs.state.tx.us). Please write "Comments on Proposed Rules" in the subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

#### SUBCHAPTER D. CODE OF ETHICS; DUTIES AND RESPONSIBILITIES OF LICENSE HOLDERS

##### 22 TAC §741.44

##### STATUTORY AUTHORITY

The amendment is proposed under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

The amendment affects Texas Occupations Code, Chapter 401.

*§741.44. Requirements, Duties, and Responsibilities of Supervisors.*

(a) (No change.)

(b) A supervisor of an intern or assistant shall:

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

(3) provide appropriate supervision after the board office approves the supervisory agreement [arrangement]; and

(4) (No change.)

(c) - (e) (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 30, 2009.

TRD-200905518

Kerry Ormson, Ed.D., Au.D.

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Earliest possible date of adoption: January 10, 2010

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

◆   ◆   ◆

## SUBCHAPTER E. REQUIREMENTS FOR LICENSURE OF SPEECH-LANGUAGE PATHOLOGISTS

### 22 TAC §741.64

*(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 State Board of Examiners for Speech-Language Pathology and Audiology or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The repeal is proposed under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

The repeal affects Texas Occupations Code, Chapter 401.

§741.64. Requirements for an Assistant in Speech-Language Pathology 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 30, 2009.

TRD-200905519

Kerry Ormson, Ed.D., Au.D.

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Earliest possible date of adoption: January 10, 2010

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



### 22 TAC §741.64

The new rule is proposed under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

The new rule affects Texas Occupations Code, Chapter 401.

§741.64. Requirements for an Assistant in Speech-Language Pathology License.

(a) An applicant for an assistant in speech-language pathology license shall meet the requirements set out in the Act, and this section. The applicant for the assistant license must:

(1) possess a baccalaureate degree with an emphasis in communicative sciences and disorders;

(2) have acquired the following:

(A) at least 24 semester hours in speech-language pathology and/or audiology;

(B) and at least 18 semester hours of the 24 hours must be in speech-language pathology;

(C) at least three semester hours in language disorders;

(D) at least three semester hours in speech disorders;

and

(E) excludes clinical experience and course work such as special education, deaf education, or sign language; and

(3) have earned no fewer than 25 hours of clinical observation in the area of speech-language pathology and 25 hours of clinical assisting experience in the area of speech-language pathology obtained within an educational institution or in one of its cooperating programs or under the direct supervision at their place of employment.

(b) The baccalaureate degree shall be completed at a college or university which has a program accredited by the American Speech-Language-Hearing Association Council on Academic Accreditation or holds accreditation or candidacy status from a recognized regional accrediting agency.

(1) Original or certified copy of the transcripts showing the conferred degree shall be submitted and reviewed as follows:

(A) only course work earned within the past 10 years with a grade of "C" or above is acceptable;

(B) a quarter hour of academic credit shall be considered as two-thirds of a semester credit hour; and

(C) academic courses, the titles of which are not self-explanatory, shall be substantiated through course descriptions in official school catalogs or bulletins or by other official means.

(2) In the event the course work and clinical experience set out in subsection (a) of this section were earned more than 10 years before the date of application for the assistant license, the applicant shall submit proof of current knowledge of the practice of speech-language pathology to be evaluated by the board's designee. Within 15 working days of receipt, the board's designee shall evaluate the documentation and shall either approve the application, request additional documentation, or require that additional coursework or continuing professional education be earned. If necessary, the applicant may reapply for the license when the requirements of this section are met.

(c) An applicant who possesses a baccalaureate degree with a major that is not in communicative sciences and disorders may qualify for the assistant license. The board's designee shall evaluate transcripts on a case-by-case basis to ensure equivalent academic preparation, and shall determine if the applicant satisfactorily completed 24 semester credit hours in communicative sciences or disorders, which may include some leveling hours. Within 15 working days of receipt, the board's designee shall approve the application, request additional documentation, or require that additional coursework or continuing professional education be earned. If necessary, the applicant may reapply for the license when the requirements of this section are met.

(d) Degrees and/or course work received at foreign universities shall be acceptable only if such course work and clinical practicum hours may be verified as meeting the requirements of subsection (a) of this section. The applicant must bear all expenses incurred during the procedure. The board's designee shall evaluate the documentation within 15 working days of receipt of all documentation, which shall include an original transcript and an original report from a credential evaluation services agency acceptable to the board.

(e) An applicant who has not acquired the 25 hours of clinical observation and 25 hours of clinical experience referenced in subsection (a)(3) of this section shall not meet the minimum qualifications for the assistant license. These hours must be obtained through an accredited college or university, or through a Clinical Deficiency Plan. In order to acquire these hours, the applicant shall first obtain the assistant license by submitting the forms, fees, and documentation referenced in §741.112(d) of this title (relating to Required Application Materials)

and include the prescribed Clinical Deficiency Plan to acquire the clinical observation and clinical assisting experience hours lacking.

(1) The licensed speech-language pathologist who will provide the licensed assistant with the training to acquire these hours shall submit:

- (A) the supervisory responsibility statement form; and
- (B) the prescribed Clinical Deficiency Plan.

(2) The board office shall evaluate the documentation and fees submitted to determine if the assistant license shall be issued. Additional information or revisions may be required before approval is granted.

(3) The Clinical Deficiency Plan shall be completed within 60 days of the issue date of the assistant's license or the licensed assistant shall be considered to have voluntarily surrendered the license.

(4) Immediately upon completion of the Clinical Deficiency Plan, the licensed speech-language pathologist identified in the plan shall submit:

(A) a supervision log that verifies the specific times and dates in which the hours were acquired with a brief description of the training conducted during each session;

(B) a rating scale of the licensed assistant's performance; and

(C) a signed statement that the licensed assistant successfully completed the clinical observation and clinical assisting experience under his or her 100% direct, face-to-face supervision of the licensed assistant. This statement shall specify the number of hours completed and verify completion of the training identified in the Clinical Deficiency Plan.

(5) Board staff shall evaluate the documentation required in paragraph (4) of this subsection and inform the licensed assistant and licensed speech-language pathologist who provided the licensed assistant with the training if acceptable.

(6) A licensed assistant may continue to practice under 100% face-to-face supervision of the licensed speech-language pathologist who provided the licensed assistant with the training while the board office evaluates the documentation identified in paragraph (4) of this subsection.

(7) In the event another licensed speech-language pathologist shall supervise the licensed assistant after completion of the Clinical Deficiency Plan, a supervisory responsibility statement form shall be submitted to the board office seeking approval for the change in supervision. If the documentation required by paragraph (4) of this subsection has not been received and approved by the board office, approval for the change in supervision shall not be granted.

(f) A supervisory responsibility statement form shall be completed and signed by both the applicant and the licensed speech-language pathologist who agrees to assume responsibility for all services provided by the licensed assistant. The licensed speech-language pathology supervisor shall have practiced for at least three years and shall submit a signed statement verifying he or she has met this requirement. If the supervisor does not have the required experience, the supervisor shall submit the board prescribed Exception Request to Supervise with less than Three Years Experience form. The board's designee shall evaluate the request and approve or not approve the request within 15 working days of receipt by the board.

(1) Approval from the board office shall be required prior to practice by the licensed assistant. The supervisor responsibility statement shall be submitted upon:

- (A) application for an assistant license;
- (B) license renewal when there is a change in supervisor;
- (C) other changes in supervision; and
- (D) the addition of other supervisors.

(2) In the event more than one licensed speech-language pathologist agrees to supervise the licensed assistant, each licensed speech-language pathology supervisor shall be identified on the supervisor responsibility statement, and meet the minimum requirement of supervision as referenced in subsection (g)(4) of this section. The licensed assistant shall only provide services for the supervising speech-language pathologist's caseload.

(3) A licensed assistant may renew the license if there is a change in supervision, but may not practice until a new supervisory responsibility statement form is approved.

(4) In the event the licensed speech-language pathology supervisor ceases supervision of the licensed assistant, the licensed speech-language pathology supervisor shall notify the board, in writing, and shall inform the licensed assistant to stop practicing immediately. The board shall hold the licensed speech-language pathology supervisor responsible for the practice of the licensed assistant until written notification has been received in the board office.

(5) Should the licensed assistant practice without approval from the board office, disciplinary action may be initiated against the licensed assistant. If the licensed speech-language pathology supervisor had knowledge of this violation, disciplinary action against the licensed speech-language pathology supervisor may also be initiated.

(g) A licensed speech-language pathology supervisor shall assign duties and provide appropriate supervision to the licensed assistant.

(1) Initial diagnostic contacts directly with the client shall be conducted by the supervising speech-language pathologist.

(2) Following the initial diagnostic contact, the supervising speech-language pathologist shall determine whether the licensed assistant has the competence to perform specific duties before delegating tasks.

(3) Indirect methods of supervision may include audio and/or video tape recording, report review, telephone or electronic communication, or other means of reporting.

(4) The supervising speech-language pathologist shall provide a minimum of two hours per week of supervision, at least one hour of which is face-to-face supervision where the licensed assistant is providing the therapy. This applies whether the licensed assistant's practice is full or part-time.

(5) An exception to paragraph (3) of this subsection may be requested. The supervising speech-language pathologist shall submit the prescribed alternate supervision request plan form for review by the board's designee. Within 15 working days of receipt of the request, the board's designee shall approve or not approve the plan. The plan shall be for not more than one year's duration and shall include:

- (A) the name of the licensed assistant;
- (B) the name and signature of the supervising speech-language pathologist;

- (C) the proposed plan of supervision;
- (D) the exact time frame for the proposed plan;
- (E) the length of time the license assistant has been practicing under the requestor's supervision; and
- (F) the reason the request is necessary.

(6) If the exception referenced in paragraph (5) of this subsection is approved and the reason continues to exist, the licensed supervising speech-language pathologist shall annually resubmit a request to be evaluated by the board's designee. Within 15 working days of receipt of the request, the board's designee shall approve or not approve the plan.

(7) Supervisory records shall be maintained for a period of three years by the licensed speech-language pathologist that verify regularly scheduled monitoring, assessment, and evaluation of the licensed assistant's and client's performance. Such documentation may be requested by the board.

(A) A licensed assistant may not conduct an evaluation which includes diagnostic testing and observation, test interpretation, diagnosis, decision making, statement of severity or implication, case selection or case load decisions.

(B) A licensed assistant may conduct assessments which includes data collection, clinical observation and routine test administration if the licensed assistant has been appropriately trained and the assessments are conducted under the direction of the licensed speech-language pathology supervisor. A licensed assistant may not conduct a test if the test developer has specified that a graduate degreed examiner should conduct the test.

(h) Although the licensed supervising speech-language pathologist may delegate specific clinical tasks to a licensed assistant, the responsibility to the client for all services provided cannot be delegated. The licensed speech-language pathologist shall ensure that all services provided are in compliance with this chapter.

(1) The licensed supervising speech-language pathologist need not be present when the licensed assistant is completing the assigned tasks; however, the licensed speech-language pathologist shall document all services provided and the supervision of the licensed assistant.

(2) The licensed supervising speech-language pathologist shall keep job descriptions and performance records of the licensed assistant. Records shall be current and made available to the board within 30 days of the date of the board's request for such records.

(3) The licensed speech-language pathology supervisor of the licensed assistant shall:

(A) in writing, determine the skills and assigned tasks the licensed assistant is able to carry out within the licensed assistant's scope of practice. This document must be agreed upon by the licensed assistant and the supervising speech-language pathologist;

(B) notify the client or client's legal guardian(s) that services will be provided by a licensed assistant;

(C) develop the client's treatment program in all settings and review them with the licensed assistant who will provide the service; and

(D) maintain responsibility for the services provided by the licensed assistant.

(4) The licensed assistant may execute specific components of the clinical speech, language, and/or hearing program if the

licensed speech-language pathology supervisor determines that the licensed assistant has received the training and has the skill to accomplish that task, and the licensed speech-language pathology supervisor provides sufficient supervision to ensure appropriate completion of the task assigned to the licensed assistant.

(5) Examples of duties which a licensed assistant may be assigned by the speech-language pathology supervisor who agreed to accept responsibility for the services provided by the licensed assistant, provided appropriate training has been received, are to:

(A) conduct or participate in speech, language, and/or hearing screening;

(B) implement the treatment program or the individual education plan (IEP) designed by the licensed speech-language pathology supervisor;

(C) provide carry-over activities which are the therapeutically designed transfer of a newly acquired communication ability to other contexts and situations;

(D) collect data;

(E) administer routine tests if the test developer does not specify a graduate degreed examiner and the supervisor has determined the licensed assistant is competent to perform the test;

(F) maintain clinical records;

(G) prepare clinical materials;

(H) participate with the licensed speech-language pathology supervisors' research projects, staff development, public relations programs, or similar activities as designated and supervised by the licensed speech-language pathologist;

(I) may write lesson plans based on the therapy program developed by the supervising speech-language pathologist. The lesson plans shall be reviewed and approved by the supervising speech-language pathologist; and

(J) must only work with assigned cases of the supervising speech-language pathologist's caseload.

(i) The licensed assistant shall not:

(1) conduct evaluations, even under supervision, since this is a diagnostic and decision making activity;

(2) interpret results of routine tests;

(3) interpret observations or data into diagnostic statements, clinical management strategies, or procedures;

(4) represent speech-language pathology at staff meetings or at an admission, review and dismissal (ARD), except as specified in this section;

(5) attend staffing meeting or ARD without the licensed assistant's supervising speech-language pathology supervisor being present except as specified in this section;

(6) design or alter a treatment program or individual education plan (IEP);

(7) determine case selection;

(8) present written or oral reports of client information, except as provided by this section;

(9) refer a client to other professionals or other agencies;

(10) use any title which connotes the competency of a licensed speech-language pathologist;

(11) practice as an assistant in speech-language pathology without a valid supervisory responsibility statement on file in the board office;

(12) perform invasive procedures;

(13) screen or diagnose clients for feeding and swallowing disorders;

(14) use a checklist or tabulated results of feeding or swallowing evaluations;

(15) demonstrate swallowing strategies or precautions to clients, family, or staff;

(16) provide client or family counseling; or

(17) write or sign any formal document relating to the reimbursement for or the provision of speech-language pathology services.

(j) The licensed, board approved supervisor of the licensed assistant, prior to the ARD, shall:

(1) notify the parents of students with speech impairments that services will be provided by a licensed assistant and that the licensed assistant will represent Speech Pathology at the ARD;

(2) develop the student's new IEP goals and objective and review them with the licensed assistant; and

(3) maintain undiminished responsibility for the services provided and the actions of the licensed assistant.

(k) A licensed assistant may represent special education and speech pathology at the ARD meetings with the following stipulations.

(1) The licensed assistant shall have written documentation of approval from the licensed, board approved speech-language pathologist supervisor.

(2) The licensed assistant shall have three years experience as a licensed assistant in the school setting.

(3) The licensed assistant may attend, with written approval of the supervising speech-language pathologist, a student's annual review ARD meeting if the meeting involves a student for whom the licensed assistant provides services. If a licensed assistant attends a meeting as provided by this rule, the supervising speech-language pathologist is not required to attend the meeting. A supervising speech-language pathologist must attend an ARD meeting if the purpose of the meeting is to develop a student's initial IEP or if the meeting is to consider the student's dismissal, unless the supervising speech-language pathologist has submitted their recommendation in writing on or before the date of the meeting.

(4) The licensed assistant shall present IEP goals and objectives that have been developed by the supervising speech-language pathologist and reviewed with the parent by the speech-language pathologist.

(5) The licensed assistant shall discontinue participation in the ARD meeting, and contact the supervising speech-language pathologist, when questions or changes arise regarding the IEP document.

(l) In any professional context the licensee must indicate the licensee status as a licensed speech-language pathology assistant.

(m) The board may audit a random sampling of licensed assistants for compliance with this section and §741.44 of this title (relating to Requirements, Duties, and Responsibilities of Supervisors).

(1) The board shall notify a licensed assistant and licensed speech-language pathology supervisor by mail that the licensee has been selected for an audit.

(2) Upon receipt of an audit notification, the licensed assistant and the licensed speech-language pathologist supervisor who agreed to accept responsibility for the services provided by the licensed assistant shall mail the requested proof of compliance to the board.

(3) The licensed assistant and the supervising speech-language pathologist shall comply with the board's request for documentation and information concerning compliance with the audit.

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 30, 2009.

TRD-200905520

Kerry Ormson, Ed.D., Au.D.

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Earliest possible date of adoption: January 10, 2010

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



## **TITLE 25. HEALTH SERVICES**

### **PART 11. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS**

#### **CHAPTER 702. INSTITUTE STANDARDS ON ETHICS AND CONFLICTS, INCLUDING THE ACCEPTANCE OF GIFTS AND DONATIONS TO THE INSTITUTE**

**25 TAC §§702.3, 702.5, 702.7, 702.9, 702.11, 702.13, 702.15, 702.17, 702.19, 702.21**

The Cancer Prevention and Research Institute of Texas (Institute) proposes amendments to §§702.3, 702.5, 702.7, 702.9, and 702.11; and new §§702.13, 702.15, 702.17, 702.19 and §702.21, regarding institute standards on ethics and conflicts, including relationships between the institute and private organizations and donors. The proposed amendments and new rules are to be codified under Chapter 702, titled "Institute Standards on Ethics and Conflicts, Including the Acceptance of Gifts and Donations to the Institute." The Institute has also filed the proposed repeal of §703.13 and §703.15. The notice of the proposed repeal is published in this issue of the *Texas Register*.

The purpose of these proposed amendments and new rules is to clarify several existing rules, to reflect changes to the statute, for consistency with other chapters, and to provide additional guidance regarding applicable conflict of interest standards, procedures for recusal and restrictions on communication that provide certain applicants unfair advantages. In addition, proposed amendments and new rules promulgate more comprehensive rules regarding the acceptance of gifts and donations to the Institute. The Texas Health and Safety Code, §102.106 directs the Institute's Oversight Committee to adopt conflict of interest rules to apply to the Oversight Committee. In addition, these amendments and new rules are proposed pursuant to and in satisfaction of the provisions of Texas Government Code, Chapters

572 and 2255, Texas Health and Safety Code, Chapter 102, and other relevant statutes.

The title of the chapter is changed to reflect the addition of provisions regarding the acceptance of gifts and donations to the Institute.

Section 702.3 is amended to delete the following terms from the section: "act," "conflict of interest," "awarding official," "budget period," "CPRIT," "contract proposal," "development," "executive level employee," "grant," "grant proposal or grant application," "grant recipient," "peer review group," "personal or private interest," "project approach," "project concept," "project period," "request for proposals," "research," "research and development contract project," "solicited contract proposal," and "unsolicited contract proposal" because these terms are either not used elsewhere in the chapter or are addressed by other definitions. The Institute proposes the addition of the definitions for the following terms: "ad hoc committee," "applicant," "application," "cancer prevention and research fund," "funding award," "recipient," "scientific research and prevention program committee," and "university advisory committee." The addition of these definitions provides clarification and maintains consistency with terms used throughout Chapters 702 and 703.

Section 702.5 is amended to clarify the intent of the Institute that the grant review and award process be fair, unbiased and free from conflicts of interest, impropriety and self dealing.

Section 702.7 is amended to provide additional guidance regarding the process and procedures for acceptance of gifts and donations made to the Institute, including the relationship between the donor and the Institute.

Section 702.9 is amended to include additional standards of conduct for employees of the Institute and members of the Oversight Committee as set forth by Texas Health and Safety Code, Chapter 102.

Section 702.11 is amended to provide additional clarity regarding prohibited conflicts of interest applicable to Oversight Committee members, Institute employees, ad hoc committee members, university advisory committee members, and scientific research and prevention program committee members regarding the review, discussion, deliberation, or vote on an application for funds from the Institute.

Section 702.13 is being repealed (regarding the process and procedure for investigating unreported conflicts of interests) and a new §702.13 is proposed to provide procedures for individuals subject to the conflict rules to disclose any conflicts of interest and be recused from review.

Section 702.15 is being repealed (regarding availability of information) and a new §702.15 is proposed to provide additional clarification regarding the process and procedure for investigating unreported conflicts of interest held by persons subject to the conflict rules. The proposed section also provides a process for a grant applicant to seek re-review of the application based upon unreported conflicts of interest.

New §702.17 is proposed to provide a process for the Executive Director to waive the conflict of interest provisions prohibiting participation of an individual subject to the conflict rules upon a finding that exceptional circumstances outweigh potential bias posed by the conflict of interest.

New §702.19 is proposed to restrict communication between an applicant and a member of the Oversight Committee, the Executive Director, or a scientific research and prevention program committee member regarding the substance of a pending application and to provide a process for a waiver of the prohibition to be granted upon a finding that the waiver is in the interest of promoting the objectives of the Institute and does not give one or more applicant an unfair advantage.

New §702.21 is proposed to require Oversight Committee members to receive regular training in the state's open government laws. This proposed section does not change the current requirement found in §702.15.

Kristen Pauling Doyle, General Counsel for the Cancer Prevention and Research Institute of Texas, has determined that for the first five-year period the rules are in effect there will be no foreseeable implications relating to costs or revenues for state or local government as a result of enforcing or administering the rules.

Ms. Doyle also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be clarification of the policies and procedures the Institute will follow to implement its statutory duties. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

Ms. Doyle has determined that the rules shall not have an effect on small businesses or micro businesses.

Written comments on the proposal may be submitted to Kristen Pauling Doyle, General Counsel, Cancer Prevention and Research Institute of Texas, P.O. Box 12097, Austin, Texas 78711 no later than 30 days after the date of publication in the *Texas Register*. Comments may be submitted electronically to [kdoyle@cpr.it.state.tx.us](mailto:kdoyle@cpr.it.state.tx.us). Comments may be submitted by facsimile transmission to (512) 475-2563.

The amendments and new rules are proposed under the authority of the Texas Health and Safety Code Annotated, §102.101(e) and §102.106, which provide the Institute with the authority to govern members of the Oversight Committee and its own activities, and which direct the Oversight Committee to adopt rules relating to conflict of interest.

There is no other statute, article or code that is affected by this proposal.

#### §702.3. *Definitions.*

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

(1) Ad hoc committee means a committee of experts created by the Oversight Committee to advise the Oversight Committee on issues related to cancer.

(2) Applicant means the public or private institution of higher education, as defined by §61.003, Education Code, research institution, government organization, non-governmental organization, non-profit organization, other public entity, private company, individual, or consortia, including any combination of the aforementioned, that submits an application to the Institute for a grant funded by the Cancer Prevention and Research Fund. Unless otherwise indicated, this term includes the principal investigator.

(3) Application means the written proposal submitted to the Institute by an applicant that, if successful, will result in an award of money from the Cancer Prevention and Research Fund. An application

may be submitted in response to a published Request for Applications or unsolicited by the Institute.

(4) Cancer Prevention and Research Fund means the dedicated account in the general revenue fund consisting of patent, royalty, and license fees and other income received under a contract with a CPRIT funding award recipient, legislative appropriations, gifts, grants, and other donations, and earned interest.

[(1) Act means the Texas Health and Safety Code, Chapter 102.]

[(2) Conflict of interest means a member of the peer review group or close relative or professional associate of the reviewer has a financial or other interest in an application or proposal that is known to the reviewer or the government official managing the review and would cause a reasonable person to question the reviewers impartiality if he or she were to participate in the review.]

[(3) Awarding official means the Oversight Committee and any other officer or employee of the Institute to whom the authority to make an award has been delegated; except that where the Act specifically authorizes another official to make awards in connection with a particular program, the awarding official shall mean that official and any other officer or employee of the Institute to whom the authority to make an award has been delegated]

[(4) Budget period means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.]

[(5) CPRIT and Institute mean the Cancer Prevention and Research Institute of Texas.]

[(5) [(6)] Close relative means a parent, spouse, domestic partner, or son or daughter.

[(7) Contract proposal means a written offer to enter into a contract that is submitted to the appropriate agency official by an individual or other entity, which includes, at a minimum, a description of the nature, purpose, duration, and cost of the project, and the methods, personnel, and facilities to be utilized in carrying out the project. A contract proposal may be unsolicited by the Institute or submitted in response to a request for proposals.]

[(8) Development means the systematic use of knowledge gained from research to create useful materials, devices, systems, or methods.]

(6) [(9)] Entity means any organization [entity] recognized by law, including a sole proprietorship, partnership, firm, corporation, holding company, joint stock company, receivership, or trust, as well as any program, enterprise, non-profit corporation public or private research or academic institution.

(7) [(10)] Executive Director means the Executive Director of the CPRIT and any other official or employee of the CPRIT to whom the authority involved has been delegated.

(8) Funding Award means any award of money from the Cancer Prevention and Research Fund made by the Institute to an applicant in response to a solicited or unsolicited application. A funding award must be in the form of an executed contract between the Institute and the Recipient.

[(11) Executive-level employee means the Executive Director, Chief Operating Officer, General Counsel, Chief Prevention Officer, Chief Scientific Officer and other similarly situated employee with decision-making authority. It also means any individual employed by the Institute who is compensated, as of the last date of state employment or at the time a determination regarding conflict of interest

is made, at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule, including an employee who is exempt from the state's position classification plan.]

[(12) Grant as used in this chapter includes cooperative agreements.]

[(13) Grant proposal or grant application means any application to receive funding from the Institute.]

[(14) Grant recipient or awarded grant means any entity, natural or legal, and any person who has been awarded or received grant funds from the Institute.]

(9) [(15)] Institute means the Cancer Prevention and Research Institute of Texas or CPRIT.

(10) [(16)] Institute employee means any individual within the employ of the Institute, including any individuals performing duties for the Institute pursuant to a contract of employment.

(11) [(17)] Oversight Committee member means any person appointed to and serving on the Oversight Committee of the Institute, or any person who sits on that board by operation of statute or by designation.

[(18) Peer review group, also referred to as scientific review group, means a group of primarily non-government experts qualified by training and experience in particular scientific or technical fields, or as authorities knowledgeable in the various disciplines and fields related to the scientific areas under review, to give expert advice on the scientific and technical merit of grant applications or contract proposals, or the concept of contract projects, in accordance with the rules of the Institute.]

[(19) Personal or private interest in an entity exists, notwithstanding the provisions of Texas Government Code Chapter 572, when an Oversight Committee member or the member's spouse:]

[(A) Owns or controls, directly or indirectly, less than a 5% interest in a business entity or other organization receiving money from the Institute. Interests subject to this provision include sharing in profits, proceeds, or capital gains. Examples of ownership or control, include but are not limited to owning shares, stock, or otherwise, and are not dependent on whether voting rights are included;]

[(B) Is a member of the board of directors, other governing board or any committee of the entity;]

[(C) Serves as an elected or appointed officer of the entity;]

[(D) Is an employee of the entity or is negotiating future employment with the entity;]

[(E) Represents in business or law; this prohibition includes close relatives; or]

[(F) Could reasonably foresee that an action taken by the Institute or its Oversight Committee could result in a financial benefit to the individual of 100% or more.]

(12) [(20)] Principal investigator means a single individual designated by the grantee in the grant application and approved by the Institute, who is responsible for the scientific and technical direction of the project.

(13) [(21)] Professional associate of the reviewer means any colleague, scientific mentor, or student with whom the peer reviewer is currently conducting research or other significant pro-



fessional activities or with whom the member has conducted such activities within three years before the date of the review.

(14) Recipient means the public or private institution of higher education, as defined by §61.003, Education Code, research institution, government organization, non-governmental organization, non-profit organization, other public entity, private company, individual, or consortia, including any combination of the aforementioned, who is awarded money from the Cancer Prevention and Research Fund. Unless otherwise indicated, this term includes the principal investigator.

[(22) Project approach means the methodology to be followed and the resources needed in carrying out the project.]

[(23) Project concept means the basic purpose, scope, and objectives of the project.]

[(24) Project period means that time period during which the project may be supported.]

[(25) Request for proposals means an Institute solicitation to prospective offerors to submit a proposal to fulfill specific agency requirements based on terms and conditions defined in the request for proposals. The request for proposals shall contain information sufficient to enable all offerors to prepare proposals, and is as complete as possible with respect to: nature of work to be performed; descriptions and specifications of items to be delivered; performance schedule; special requirements clauses, or other circumstances affecting the contract; format for cost proposals; and evaluation criteria by which the proposals will be evaluated.]

[(26) Research means a systematic investigation, study or experiment designed to contribute to general knowledge relating broadly to public health by establishing, discovering, developing, elucidating or confirming information about, or the underlying mechanisms relating to, the biological functions, diseases, or related matters to be studied.]

[(27) Research and development contract project means an identified, circumscribed activity, involving a single contract or two or more similar, related, or interdependent contracts, intended and designed to acquire new or fuller knowledge and understanding in the areas of cancer research and/or to use such knowledge and understanding to develop useful materials, devices, systems, or methods.]

(15) [(28)] Scientific Research and Prevention Program committee means one or more groups of experts in the field of cancer research, prevention or commercialization appointed by the Executive Director and approved by the Oversight Committee for the purpose of reviewing grants applications and making recommendations to the Executive Director regarding the award of cancer research and prevention grants. [review group has the same meaning as peer review group, which is defined in paragraph (18) of this section.]

(16) University Advisory Committee means the committee created by the Texas Health and Safety Code, §102.154 to advise the Oversight Committee regarding the role of institutions of higher education in cancer research.

[(29) Solicited contract proposal means a response to a solicitation that, if accepted, would bind the offeror to perform the resultant contract. Responses to invitations for bids (sealed bidding) are offers called "bids" or "sealed bids"; responses to requests for proposals (negotiation) are offers called "proposals."]

[(30) Unsolicited contract proposal means a written proposal for a new or innovative idea that is submitted to an agency on the initiative of the offeror for the purpose of obtaining a contract with the state and that is not in response to a request for proposals; Broad

Agency Announcement, Program Research and Development Announcement, or any other Institute-initiated solicitation or program.]

§702.5. *Intent.*

It is the intent of the Institute that the grant review and funding award process be fair, unbiased and free from conflicts of interest, [any person or entity subject to these policies avoids even the appearance of] impropriety and [or] self-dealing.

§702.7. *Acceptance of Gifts and Donations by the Institute.*

(a) As authorized by Texas Health and Safety Code Section 102.054, the Institute may accept gifts from any source to support the operations of the Institute and to further its purposes. All funds received from donations to the Institute will be deposited to the state treasury and used for the purpose specified by the donor or for general Institute programs when no purpose is specified.

(b) A member or an employee of the Institute shall not authorize a donor to use the property of the Institute unless the property is used in accordance with a contract between the Institute and the donor, the contract is found by the Institute to serve a public purpose, the contract contains provisions to ensure the public purpose continues, and the Institute is reasonably compensated for the use of the property.

(c) Procedure for acceptance of gifts.

(1) Gifts to Institute may be designated for one of the following categories:

(A) Unrestricted General Support;

(B) Restricted Programmatic Support;

(C) Endowed and Restricted Funds; or

(D) Other (includes gifts of real or personal property).

(2) Gifts of ten thousand dollars or less may be accepted on behalf of the Institute by the Executive Director.

(3) The Executive Committee of the Oversight Committee may accept gifts of cash, stock, bonds, or personal property with a value in excess of ten thousand dollars but less than one million dollars on behalf of Institute. If one or more Executive Committee members do not agree with the decision to accept the gift on behalf of Institute, the decision to accept the gift will be made by a majority vote of the Oversight Committee.

(4) Acceptance of gifts made to Institute of cash, stock, bonds, or personal property with a value in excess of one million dollars, gifts of real property regardless of value, and all other gifts not herein described shall be approved by a majority vote of the Oversight Committee. To assist in its decision, a report shall be created by the Executive Director that includes the following information:

(A) Name and biographical data regarding the individual or organization making the gift.

(B) A description of the gift.

(C) A list of conditions or requirements to be imposed on the Institute as a result of accepting the gift.

(D) If one of the conditions is naming, then include a description of the object to be named and whether there is a time limit on continuing the name.

(E) If the gift is real property, an evaluation of the gift by the General Land Office.

(F) If the gift is stock or other investments, a description of how they will be sold and the expected net proceeds.

(G) A description of how the gift will be used.

(5) All funds received from donations to the Institute will be deposited to the state treasury and used for the purpose specified by the donor or for general Institute programs when no purpose is specified.

(d) The Institute encourages the offer of gifts of additional revenue and real and personal property through naming.

(1) Naming can be given to both real objects and inanimate objects, such as grant programs.

(2) The Oversight Committee will consider a request for naming in connection with a gift of real or personal property of substantial value to Institute and its programs. In determining whether a gift has substantial value, the Oversight Committee will evaluate the following factors:

(A) The size of the real or personal property in relation to other fund sources--including bonds--available at the same time and consideration of whether the donation will make a material contribution to the Institute's goals and programs that otherwise would not be made.

(B) Availability of the real or personal property.

(C) Flexibility (will the Institute have discretion in the use of the real or personal property or will it be limited to certain uses).

(3) The Oversight Committee must approve the recommendation to name an object or program by majority vote of its members.

(e) The Oversight Committee may refuse a gift to the Institute for any reason, including:

(1) The gift requires an initial and/or on-going expenditure that will likely equal or exceed the value of the gift.

(2) The gift is from an institution, entity, organization or individual that has applied for funding from the Institute, currently receives funding from the Institute, or has received funding from the Institute at any time in the past two years. This limitation applies to donations in excess of \$1,000 by a director, officer, or executive of an institution, entity, organization, or individual.

(3) The Institute shall return a gift made by an institution, entity, organization, or individual that was otherwise eligible to make the donation at the time that the gift was accepted by the Institute in the event that the contributor subsequently submits an application for funding from the Institute within the fiscal year of the donation.

(4) For purposes of this section, the limitation on gifts does not apply to the following institution, entity, organization, or individual:

(A) A not-for-profit 503(c)(3) corporation that is a separate legal entity from the associated institution, entity, organization, or individual.

(B) A donation that would be otherwise unacceptable pursuant to paragraph (2) of this subsection that is made as the result of the final bequeathal.

(f) At each meeting of the Oversight Committee, a list of all gifts that have been accepted by the Executive Director and by the Executive Committee since the last meeting will be presented as an information item on the public agenda. The list will include the identity of the contributor, unless the contributor has requested anonymity, the type of gift (unrestricted general support, restricted programmatic support, endowed/restricted funds, or other), and the amount of the gift. The Institute shall maintain a list of gifts received, including the identity of contributor, unless the contributor has requested anonymity, the type of gift, and the amount of the gift.

§702.9. General Standards of Conduct for Oversight Committee Members and Institute Employees.

Pursuant to ~~[Notwithstanding]~~ the provisions of Texas Government Code Chapter 572 and Texas Health and Safety Code Chapter 102:

(1) A member of the Oversight Committee or employee of the Institute shall not accept or solicit any gift, favor, or service that might reasonably tend to influence him or her in the discharge of official duties or that he or she knows or should know is being offered with the intent to influence him or her with the intent to influence his or her official conduct.

(2) A member of the Oversight Committee or employee of the Institute shall not accept employment or engage in any business or professional activity, which he or she might reasonably expect would require or induce that person to disclose confidential information acquired by reason of his or her official position.

(3) A member of the Oversight Committee or employee of the Institute shall not accept other employment or compensation, which could reasonably be expected to impair his or her independence of judgment in the performance of his or her official duties.

(4) A member of the Oversight Committee or employee of the Institute shall not make personal investments or have a financial interest which could reasonably be expected to create a substantial conflict between his or her private interest and the individual's official duties as a member of the Oversight Committee or employee of the Institute.

(5) A member of the Oversight Committee or employee of the Institute shall not intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised his or her official powers or performed his or her official duties in favor of another.

(6) An Oversight Committee member or employee of the Institute shall not lease, directly or indirectly, any property, capital equipment, employee or service to any program, business, enterprise or institution that receives a grant from the Institute.

(7) A member of the Oversight Committee or the member's spouse shall not submit a grant application for funding by the Institute.

(8) A member of the Oversight Committee or the member's spouse shall not be employed by or participate in the management of a business entity or other organization receiving money from the Institute.

(9) A member of the Oversight Committee or the member's spouse shall not own or control, directly or indirectly, more than five percent interest in a business or entity or other organization receiving money from the Institute.

(10) A member of the Oversight Committee or the member's spouse shall not use or receive a substantial amount of tangible goods, services, or money from the Institute other than reimbursement authorized for Oversight Committee members, attendance, or expenses.

§702.11. [Recusal and] Conflicts of Interest Requiring Recusal.

(a) For purposes of this chapter, a conflict of interest exists when an individual subject to this rule has an interest in the outcome of an application such that the individual is in a position to gain financially, professionally, or personally from either a positive or negative evaluation of the grant proposal. Individuals subject to this rule are:

(1) Oversight Committee members;

(2) University Advisory Committee members;

(3) Ad hoc committee(s) members;

(4) Institute employees; and

(5) Scientific Research and Prevention Program committee members.

(b) Except under exceptional circumstances as provided in §702.17 of this chapter (relating to Exceptional Circumstances Requiring Participation), an individual who has a conflict of interest with respect to an application may not participate in the review, discussion, deliberation, or vote on the application.

(c) A financial conflict of interest exists if the individual subject to this rule or a close relative of the individual:

(1) Owns or controls, directly or indirectly, an ownership interest of five percent (5%) or more in a business entity or other organization receiving or applying to receive money from the Institute. Interests subject to this provision include sharing in profits, proceeds, or capital gains. Examples of ownership or control, include but are not limited to owning shares, stock, or otherwise, and are not dependent on whether voting rights are included.

(2) Could reasonably foresee that an action taken by the Scientific Research and Prevention Program committee, the Institute or its Oversight Committee could result in a financial benefit to the individual of 100% or more.

(d) For purposes of this rule, a professional conflict of interest exists if the individual subject to this rule or a close relative:

(1) Is a member of the board of directors, other governing board or any committee of an entity or other organization receiving or applying to receive money from the Institute during the same grant cycle;

(2) Serves as an elected or appointed officer of an entity or other organization receiving or applying to receive money from the Institute;

(3) Is an employee of or is negotiating future employment with an entity other organization receiving or applying to receive money from the Institute;

(4) Represents an entity or other organization receiving or applying to receive money from the Institute in business or law;

(5) Is a professional associate of a primary member of the research/prevention program applicant's team;

(6) Is a student, postdoctoral associate, or part of a laboratory research group for a primary member of the research/program applicant's team or has been within the past six years;

(7) Is engaged or is actively planning to be engaged in collaboration with a primary member of the research/prevention program applicant's team; or

(8) Has long-standing scientific differences or disagreements with a primary member of the research/prevention program applicant's team that are known to the professional community and could be perceived as affecting objectivity.

(e) For purposes of this rule, a personal conflict of interest exists if the applicant is a family member or close personal friend of an individual subject to this rule.

(f) Nothing herein shall prevent Oversight Committee members, Institute employees, or Scientific Research and Prevention Program committee members from adopting more stringent standards with regard to prohibited conflicts of interest.

~~[(a) Personal or private interest (as defined in §702.3(19) of this chapter) requiring Committee member recusal. An Oversight~~

~~Committee member with a personal or private interest in a decision before the Oversight Committee, must disclose the interest in an open meeting of the Oversight Committee and must recuse him/her self from participation in the matter.]~~

~~[(b) Personal or private interest requiring recusal of others. A member of a advisory committee, an executive level employee of the Institute or Institute employee in a position to influence the awarding, administration, review or evaluation of a grant proposal or awarded grant who has an ownership interest of 5% or more in an entity that applies for or receives a grant from the Institute is required to inform the presiding officer of the Oversight Committee and the Executive Director and to recuse him/her self from participation in that matter.]~~

~~[(c) Personal or private interest requiring recusal of peer review group. A member of a peer review group in a position to influence the awarding, administration, review or evaluation of a grant proposal or awarded grant is required to inform the Executive Director and to recuse himself/herself from participation in that matter if he/she or a close relative:]~~

~~[(1) Owns or controls, directly or indirectly, an ownership interest of 5% or more in a business entity or other organization receiving or applying to receive money from the Institute. Interests subject to this provision include sharing in profits, proceeds, or capital gains. Examples of ownership or control, include but are not limited to owning shares, stock, or otherwise, and are not dependent on whether voting rights are included;]~~

~~[(2) Is a member of the board of directors, other governing board or any committee of the entity;]~~

~~[(3) Serves as an elected or appointed officer of the entity;]~~

~~[(4) Is an employee of the entity or is negotiating future employment with the entity;]~~

~~[(5) Represents in business or law; or]~~

~~[(6) Could reasonably foresee that an action taken by the peer review group, Institute or its Oversight Committee could result in a financial benefit to the individual of 100% or more.]~~

~~[(d) An Oversight Committee member, executive level employee of the Institute, or Institute employee in a position to influence the awarding, administration, review or evaluation of a grant proposal or awarded grant shall not lease, directly or indirectly, any property, capital equipment, employee or service to any program, business, enterprise or institution that receives a grant from the Institute.]~~

~~[(e) Any appearance of a conflict of interest will result in recusal of a member of the Oversight Committee, a member of a peer review group, or a member of an advisory group, executive level employee of the Institute, or Institute employee in a position to influence the awarding, administration, review or evaluation of a grant proposal or awarded grant, unless a waiver is issued in compliance with §702.13 of this chapter, concerning procedures, determining that it would be difficult or impractical to carry out the review or action otherwise, and the integrity of the review process or committee action would not be impaired by the member's participation.]~~

~~[(f) A member of the Oversight Committee shall not submit a grant application for funding by the Institute.]~~

(g) The Executive Director may provide guidance to the members of the Oversight Committee, Institute employees, and Scientific Research and Prevention Program committee members [to individuals responsible for managing reviews; and to reviewers] on what interests would constitute a conflict of interest or an appearance of a conflict of interest.

§702.13. Disclosure of Conflict of Interest and Recusal from Review.

(a) If an Oversight Committee member has a conflict of interest as described in this chapter with respect to an application that comes before the individual for review or other action, the member shall:

(1) Notify the Executive Director and the presiding officer of the Oversight Committee of the conflict of interest (or the next ranking member of the Oversight Committee if presiding officer has the conflict of interest);

(2) Disclose the conflict of interest in an open meeting of the Oversight Committee; and

(3) Recuse himself/herself from participation in the review, discussion, deliberation and vote on the application, including access to information regarding the matter to be decided.

(b) If a Scientific Research and Prevention Program committee member has a conflict of interest as described in this chapter with respect to an application that comes before the individual for review or other action, the member shall:

(1) Notify the Scientific Research and Prevention Program committee chair and the CPRIT Chief Scientific Officer, Chief Prevention Officer, or the Chief Commercialization Officer as may be applicable, of the conflict of interest;

(2) Recuse himself/herself from any participation in the review, discussion, scoring, deliberation and vote on the application, including access to information regarding the matter to be decided; and

(3) Submit a signed certification post-review statement at the conclusion of the peer review process that he/she did not participate in the discussion or review of any application for which he/she had a conflict of interest.

(c) If a University Advisory Committee member or a member of an ad hoc committee has a conflict of interest as described in this chapter with respect to an application that comes before the individual for review, or other action, the member shall:

(1) Notify the Executive Director of the conflict of interest; and

(2) Recuse himself/herself from participation in the review, discussion, scoring, deliberation, and vote on the application, including access to information regarding the matter to be decided.

(d) If an Institute employee other than the Executive Director has a conflict of interest as described in this chapter with respect to an application that comes before the individual for review or other action, the employee shall:

(1) Notify the Executive Director of the conflict of interest; and

(2) Recuse himself/herself from participation in the review of the application and be prevented from accessing information regarding the matter to be decided.

(e) If the Executive Director has a conflict of interest as described in this chapter with respect to an application that comes before the Executive Director for review or other action, the employee shall:

(1) Notify the presiding officer of the Oversight Committee of the conflict of interest; and

(2) Disclose the conflict of interest in an open meeting of the Oversight Committee; and

(3) Recuse himself/herself from participation in the review of the application and be prevented from accessing information regarding the matter to be decided.

(f) Individuals subject this chapter are encouraged to self-report. Any individual who self-reports a potential conflict of interest or any impropriety or self-dealing, and who fully complies with any recommendations of the General Counsel and recusal from any discussion, voting, deliberation or access to information regarding the matter, shall be considered by the Institute to be in compliance with this chapter. The individual is still subject to the operation of other laws, rules, requirements or prohibitions. Substantial compliance with the procedures provided herein constitutes compliance.

(g) Intentional violations of this rule may result in the removal of the individual from further participation in the Institute's grant review process.

§702.15. Investigation of Unreported Conflicts of Interest Affecting the Grant Review Process.

(a) A person subject to this chapter shall immediately notify the Executive Director of a conflict of interest. A grant applicant seeking an investigation regarding whether an individual subject to this chapter failed to report a prohibited conflict of interest shall file a written request with the Institute's Executive Director. The request for investigation shall provide all facts regarding the alleged conflict of interest known to the grant applicant requesting the investigation. The Executive Director will notify the presiding officer of the Oversight Committee and the General Counsel who shall immediately determine the nature and extent of the conflict, if any.

(b) The request for investigation shall be submitted no later than 30 days after the date that the Executive Director presents the final funding recommendations for the affected grant cycle to the Oversight Committee.

(c) The General Counsel shall investigate the matter and shall provide to the Executive Director and presiding officer of the Oversight Committee an opinion regarding whether a conflict of interest exists and any appropriate course of action. The opinion shall include a statement of the facts giving rise to the potential conflict and shall provide an opinion whether a conflict of interest, impropriety, or self-dealing exists and any appropriate course of action. If the conflict is held by the presiding officer, the General Counsel shall provide the opinion to the next ranking member of the Oversight Committee who has no conflict.

(d) After consulting with the presiding officer (or, if appropriate, the next highest ranking Oversight Committee member), the Executive Director shall take immediate actions regarding the recusal of the individual from any discussion of or access to information regarding the matter at issue. If the alleged conflict of interest is held by the Executive Director, the presiding officer of Oversight Committee shall take actions regarding recusal.

(e) A final determination regarding the existence of a conflict of interest, involving an individual subject to this chapter shall be made by the Executive Director, or by the presiding officer of the Oversight Committee if the alleged conflict of interest is held by the Executive Director, and reported to the Oversight Committee. The Executive Director's determination will include actions to be taken, if any, to address the conflict of interest, including reconsideration of the application and referral of the application to a different Scientific Research and Prevention Program committee for review. The Executive Director's decision will be considered final unless three or more Oversight Committee members request that the issue be added to the agenda of the Oversight Committee.

(f) Written notice of the final decision will be provided to the person requesting an investigation, including further actions to be taken, if any.

(g) Unless specifically determined by the Executive Director or the Oversight Committee, the validity of an action taken with regard to a grant application is not affected by the fact that an individual that failed to report a conflict of interest participated in the action.

§702.17. Exceptional Circumstances Requiring Participation.

(a) In exceptional cases, as determined by the CPRIT Executive Director, the need for participation of the Oversight Committee member, Institute employee, ad hoc committee member, University Advisory Committee member or Scientific Research and Prevention Program committee member outweighs potential bias posed by a conflict of interest and a waiver will be granted, unless otherwise prohibited by state or federal law.

(b) To issue a waiver, the Executive Director must find that it would be difficult or impractical to carry out the review or action otherwise, and the integrity of the review process or committee action would not be impaired by the member's participation. The waiver may include limits on certain activities to be taken by the individual, such as voting on the application.

(c) The interest in the application held by the Oversight Committee member, Institute employee, ad hoc committee member, University Advisory Committee member or Scientific Research and Prevention Program committee member and the reason for issuing the waiver shall be disclosed in writing by the Executive Director and submitted to the presiding officer of the Oversight Committee prior to the Oversight Committee's decision regarding the slate of applications recommended for funding.

§702.19. Restriction on Communication Regarding Pending Application.

(a) Communication regarding the substance of a pending application between the applicant and an Oversight Committee member, the Executive Director, or a Scientific Research and Prevention Program committee member is prohibited, except for communication with an applicant for the purpose of resolving a question raised by the grant application.

(b) The prohibition on communication begins on the first day that applications for the particular funding award are accepted by the Institute and extends until the applicant receives notice regarding a final decision on the application. The prohibition on communication does not apply to the time period when pre-applications or letters of interest are accepted.

(c) Intentional, serious, or frequent violations of this rule may result in the disqualification of the applicant from further consideration for a CPRIT funding award. An inadvertent violation of this rule will not affect the applicant's eligibility to receive a CPRIT funding award.

(d) This rule is not intended to prohibit open dialogue between the public and the Executive Director or a member of the Oversight Committee regarding the general status or nature of pending applications.

(e) The Executive Director may grant a waiver from the general prohibition on communication upon finding that the waiver is in the interest of promoting the objectives of the Institute and is not intended to give one or more applicants an unfair advantage.

§702.21. Availability of Information.

The members of the Oversight Committee shall receive training on the Texas Public Information Act and the Texas Open Meetings Act after the conclusion of each regular session of the Texas Legislature. This requirement is in addition to any statutorily required training and may be met by attending a training session during a meeting of the Oversight Committee, or via other form of in-person, video, or on-line training approved by the Attorney General.

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 30, 2009.

TRD-200905516

William "Bill" Gimson

Executive Director

Cancer Prevention and Research Institute of Texas

Earliest possible date of adoption: January 10, 2010

For further information, please call: (512) 305-8422



## CHAPTER 702. INSTITUTE STANDARDS ON ETHICS AND CONFLICTS, INCLUDING RELATIONSHIPS BETWEEN THE INSTITUTE AND PRIVATE ORGANIZATIONS AND DONORS

### 25 TAC §702.13, §702.15

*(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 Cancer Prevention and Research Institute of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The Cancer Prevention and Research Institute of Texas (Institute) proposes the repeal of §702.13 and §702.15, regarding institute standards on ethics and conflicts, including relationships between the institute and private organizations and donors.

The Texas Health and Safety Code, §102.106 authorizes the Institute's Oversight Committee to adopt conflict of interest rules to apply to the Oversight Committee. In addition, this repeal is proposed pursuant to and in satisfaction of the provisions of Texas Government Code, Chapters 572 and 2255, Texas Health and Safety Code, Chapter 102, and other relevant statutes. The matters addressed by the repealed provisions will be incorporated into new rules proposed for Chapter 702. The new and amended sections of Chapter 702 are proposed in this issue of the *Texas Register*.

Kristen Pauling Doyle, General Counsel for the Cancer Prevention and Research Institute of Texas, has determined that for the first five-year period the repeal is in effect there will be no foreseeable implications relating to costs or revenues for state or local government as a result of enforcing or administering the repeal of the rules.

Ms. Doyle also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of the repeal will be clarification of the policies and procedures the Institute will follow to implement its statutory duties. There are no anticipated economic costs to persons who are required to comply with the repeal of the rules as proposed.

Ms. Doyle has determined that the repeal shall not have an effect on small businesses or micro businesses.

Written comments on the proposed repeal may be submitted to Kristen Pauling Doyle, General Counsel, Cancer Prevention and Research Institute of Texas, P.O. Box 12097, Austin, Texas

78711 no later than 30 days after the date of publication in the *Texas Register*. Comments may be submitted electronically to [kdoyle@cpr.it.state.tx.us](mailto:kdoyle@cpr.it.state.tx.us). Comments may be submitted by facsimile transmission to (512) 475-2563.

The repeal is proposed under the authority of the Texas Health and Safety Code Annotated, §102.101(e) and §102.106, which provide the Institute with the authority to govern members of the Oversight Committee and its own activities, and which direct the Oversight Committee to adopt rules relating to conflict of interest.

There is no other statute, article or code that is affected by the proposed repeal.

§702.13. *Procedures.*

§702.15. *Availability of Information.*

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

Filed with the Office of the Secretary of State on November 30, 2009.

TRD-200905511

William "Bill" Gimson

Executive Director

Cancer Prevention and Research Institute of Texas

Earliest possible date of adoption: January 10, 2010

For further information, please call: (512) 305-8422



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 19. STATE ENERGY CONSERVATION OFFICE

##### SUBCHAPTER D. LOAN PROGRAM FOR ENERGY RETROFITS

###### 34 TAC §§19.42, 19.44, 19.45

The Comptroller of Public Accounts (comptroller) proposes amendments to §§19.42, 19.44, and 19.45, concerning definitions, applications and selection, and project funding and repayment, and relating to the comptroller providing notice of the availability of and application procedures for loans to state agencies and local governments for energy conservation and efficiency projects. Through the State Energy Conservation Office (SECO), the comptroller received additional federal funds through the American Recovery and Reinvestment Act (ARRA) of 2009, Pub. L. No. 111-5 (ARRA). Pursuant to the authority of Government Code, §§447.001, 447.011, and 2305.032, SECO applied and received ARRA funds through the U.S. Department of Energy as part of the State Energy Plan and the LoanSTAR program, which when using stimulus funding will be called the Building Energy Retrofit Revolving Loan Program. Use of these funds requires amendments to the LoanSTAR program that are appropriate as well for the use of the existing funds.

The amendments to §19.42(4) and (6) change the definitions of estimated simple payback and interest fee. Conforming changes are made throughout the rule.

The amendments to §19.44 outline a process that SECO will use to notify the public of the availability and award of loan funds for the LoanSTAR program. Currently, SECO accepts applications whenever submitted and loans are awarded when funds are available on a first-come, first-serve basis. Pursuant to these amendments, SECO will determine when funds are available to make new loans, including the ARRA funds, and publish a notice in the *Texas Register* and other sources to announce the amount of LoanSTAR funds available for the application period, the maximum amount of funds available for each loan recipient, the interest rate, eligibility criteria, application requirements, application evaluation criteria, any requirements in addition to those identified in the rules, the date by which the application must be submitted to SECO, the anticipated date of loan approvals, and any other information or instructions necessary and appropriate for awarding the loans as determined by SECO. All program documents will be available on the internet at the comptroller's web site and through the U.S. mail upon request. To be considered for the loan, an applicant has to submit an application to SECO and provide any additional information that may be requested by SECO. To award a loan, SECO will review the applications according to the criteria identified in the published notice, notify all applicants of the decision on the applications, and provide a loan agreement to the applicants receiving a loan. Applicants must execute the loan agreement to receive a loan.

The amendments to §19.45 change language to clarify the basis by which SECO will determine the interest rate charged and the length of time necessary to repay the loans.

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

Mr. Heleman also has determined that for each year of the first five years the rules are in effect, the proposed amendments would benefit the public by facilitating the use of ARRA funds for energy related programs in Texas. The proposed amendments would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rules.

Comments on the proposals may be submitted to Dub Taylor, Director, State Energy Conservation Office, Comptroller of Public Accounts, Post Office Box 13528, Capitol Station, Austin, Texas 78711-3528.

These rules are proposed under Government Code, §447.001, which authorizes SECO to administer and implement the State Energy Plan and use the ARRA funds, and Government Code, §230.5.011 which authorizes the comptroller to establish procedures and adopt rules as necessary to administer the LoanSTAR program.

The amendments implement Government Code §2305.032.

###### §19.42. *Definitions.*

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

- (1) Building--A structure that consumes energy.
- (2) Energy Conservation Measure [~~conservation measure~~] (ECM)--A commercially available energy efficient device, technique, or technology that is designed to reduce energy consumption, peak demand, and/or utility costs at an existing facility that a public sector institution owns, or to achieve similar savings from enhancements that

exceed all applicable energy-related regulatory requirements in a proposed facility to be owned by such institution.

(3) Energy Conservation Measure [conservation measure] (ECM) project--The identification, design, installation, monitoring, and evaluation of one or more energy efficient measures that are designed to reduce energy consumption, peak demand, and/or utility cost.

(4) Estimated simple payback period--The estimated number of years necessary for the savings from the energy savings improvements to equal the cost of installing the improvements as determined by the formula total estimated energy conservation measure costs (including audit, metering, installation, equipment, and engineering design but excluding interest) divided by the annual estimated utility cost savings.

(5) Facility--Any major energy using group of buildings in geographic proximity to each other and/or a major energy using system that one or more public sector institutions own and occupy or operate.

(6) Interest rate [fee]--The percentage of the loan amount charged on an annual basis by the State Energy Conservation Office (SECO) to a borrower for the use of the LoanSTAR program proceeds [interest charge that covers the costs of administering the LoanSTAR Program].

(7) Loan agreement--The written agreement between an applicant and [the State Energy Conservation Office (SECO)] that details all terms and requirements under which the loan is issued, including the intended use of the loan proceeds.

(8) LoanSTAR Program--The state Revolving Loan Program that SECO administers, and which funds energy conservation measures. The program is comprised of five elements: energy audits, efficiency retrofits or enhancements, a revolving loan financing mechanism, program monitoring, and evaluation.

(9) Project cost--All costs that SECO determines to be directly related to the identification, design, implementation, metering, and monitoring of an energy conservation measure.

(10) Public sector institution--Any state department, commission, board, office, institution, facility, or other agency; a public junior college or community college; an institution of higher education as defined in Education Code, §61.003; units of local government including a county, city, town, a public or non-profit hospital or health care facility; a public school; or a political subdivision of the state.

(11) SECO--The Comptroller of Public Accounts State Energy Conservation Office or legally designated successor.

§19.44. *Application and Selection.*

(a) Fund Availability. From time to time, the State Energy Conservation Office (SECO) may publish a Notice of Loan Fund Availability (NOLFA) and request for applications regarding the availability of LoanSTAR loans under this subchapter. The notice shall be published in the *Texas Register* and on the comptroller's Web site. The notice shall include:

- (1) the total of funds available for LoanSTAR loans for the application period;
- (2) the maximum amount of funds available for each loan recipient;
- (3) the interest rate to be charged to loan recipients;
- (4) eligibility criteria;
- (5) application requirements;
- (6) application evaluation criteria;

(7) any requirements in addition to those set forth in this subchapter;

(8) the date by which the application must be submitted to SECO;

(9) the anticipated date of loan approvals; and

(10) any other information or instructions necessary and appropriate for awarding the loans as determined by SECO.

(b) Program documents. Application forms, program documents, and program guidelines shall be posted on the SECO website and, upon request, shall be provided by SECO through U.S. Mail.

(c) Application process. To be considered for a LoanSTAR loan, an applicant shall submit to SECO an application in the form and manner as prescribed in the NOLFA.

(d) Additional application documentation. SECO may request additional information at any time prior to funding a loan in order to effectively evaluate any application and to protect the interest of the state.

(e) Application approval. To approve and award a LoanSTAR loan, SECO shall:

(1) determine the eligibility of the applicant according to the criteria identified in the NOLFA and this subchapter;

(2) review the application according to the requirements identified in the NOLFA;

(3) in the event that the total amount of funds requested by all eligible and timely applicants exceeds the amount of funds available, evaluate and rank all eligible and timely applications according to the criteria identified in the NOLFA;

(4) notify all applicants of SECO's decision on the applications; and

(5) provide approved applicants a LoanSTAR loan agreement for execution that includes:

(A) the approved loan amount;

(B) interest rate as identified in the NOLFA;

(C) repayment schedule;

(D) reporting requirements; and

(E) such other terms and conditions SECO determines to be necessary and appropriate.

(f) Loan execution. To receive LoanSTAR loan proceeds, an approved applicant must execute and return the loan agreement to SECO.

~~[(a) Application Period. The State Energy Conservation Office (SECO) will accept and process applications from public sector institutions that seek loan funds for energy conservation measures on a "first come, first serve" basis.]~~

~~[(b) Application Process.]~~

~~[(1) Each applicant shall submit to SECO a copy of its energy assessment report with a completed loan application that is directed to the attention of the LoanSTAR Program.]~~

~~[(2) The LoanSTAR Program will evaluate loan applications on the basis of the following criteria:]~~

~~[(A) estimated simple payback period;]~~

~~ability to repay the loan through energy demand savings;~~  
~~engineering assessment of the viability of the technology;~~  
~~likelihood of effective project monitoring; and~~  
~~ability to meet all state and federal program eligibility requirements.~~

~~(3) SECO will approve loans based on the LoanSTAR Program staff recommendations and engineering evaluations of estimated paybacks and reliability.~~

~~(4) A public sector institution that receives a loan from SECO will receive a loan agreement that identifies the existing or proposed buildings to be modified, approved measures, rate of interest, loan amount, and loan terms and conditions.~~

~~(5) Institutions that are denied funding shall receive written notification that states the reasons for denial and possible actions for qualifying the non-selected projects.~~

#### *§19.45. Project Funding and Repayment.*

(a) The term of the loan shall be determined by the State Energy Conservation Office (SECO) based on the anticipated energy and demand savings and the estimated energy conservation measure project installation schedule.

(b) SECO shall set the interest rates in an amount sufficient to recover the cost of administering the program.

~~(a) The LoanSTAR Program will determine the term of the loan based upon anticipated energy and demand savings and time that are needed to install the energy conservation measure(s) (ECMs).~~

~~(b) An interest fee that covers the cost of administration and operation of the program will be charged at a rate that the State Energy Conservation Office (SECO) will determine. All interest fees will be computed on an annual percentage rate basis.~~

(c) Loan payout and repayment.

(1) Loan proceeds may be used to pay for the entire cost of the retrofit project, including the cost of the energy assessment report, engineering design, construction, equipment acquisition and installation, maintenance, and metering and monitoring.

(2) Loan funds shall be disbursed to the borrower upon receipt of supporting documentation that SECO requires.

(3) A state agency may use general revenue funds that are appropriated for utilities to make loan payments as stipulated in Government Code, Chapter 2305.

(4) The borrower shall repay the principal of and interest on the loan with payments that are not less than the amount of the energy savings estimated by the energy assessment report to result from the energy conservation measures implemented with the loan proceeds.

~~(4) Loan repayment schedules shall be determined on the basis of expected payback and project installation time.~~

(5) Frequency of payments shall be no greater than quarterly.

(6) No loans will be forgiven.

(d) Loan recipient responsibilities (project monitoring).

(1) Loan recipients shall provide the LoanSTAR Program with the access and information that is necessary to monitor the performance of the retrofits, as stated in the loan agreement.

(2) Loan recipients shall be responsible for submission of all reports that the LoanSTAR Program requests as outlined in the loan agreement.

(3) Compliance with applicable local, state, and federal procurement guidelines and procedures is the responsibility of the loan recipient.

(e) Title to equipment.

(1) Title to all equipment that is acquired under this program will vest in the borrower, in accordance with applicable state statutes.

(2) Disposition and inventory of any equipment shall be done in accordance with state statutes and regulations.

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 30, 2009.

TRD-200905514

Ashley Harden

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: January 10, 2010

For further information, please call: (512) 475-0387



## **TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

### **PART 11. TEXAS JUVENILE PROBATION COMMISSION**

#### **CHAPTER 341. TEXAS JUVENILE PROBATION COMMISSION STANDARDS SUBCHAPTER I. ELECTRONIC DATA INTERCHANGE SPECIFICATIONS**

##### **37 TAC §341.60**

The Texas Juvenile Probation Commission proposes amendments to §341.60 concerning the Commission's electronic data interchange specifications. The amendments are being proposed in an effort to collect information required for mandatory reporting to the legislature.

Lisa Capers, Deputy Executive Director and General Counsel, has determined that for the first five year period the amendments are in effect, there will be minimal fiscal implications for state or local government. This fiscal impact will affect only four departments statewide, specifically only counties that do not operate caseworker as their means to collect and transmit data to the Commission. These four departments will have to create a new table structure in order to send data on a monthly basis to the Commission. There will be no fiscal implications for small businesses or individuals as a result of enforcement or implementation.

Ms. Capers has also determined that for each year of the first five years the amendments are in effect, the public benefit expected as a result of enforcement or implementation will be to



eliminate the need for juvenile probation departments to report electronic data independent of the electronic data interchange specifications and for state and local government to have more accurate information on the effectiveness of the juvenile probation system.

Public comments on the proposed amendment may be submitted in writing to Kristy Almager at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas 78711-3547. Comments may also be submitted electronically to *Kristy.Almager@tjpc.state.tx.us* or faxed to (512) 424-6718.

The amendments are proposed under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affected by these amendments.

§341.60. *TJPC Monthly Folder Extract.*

The TJPC Monthly Folder Extract data shall include all data fields required by TJPC Electronic Data Interchange Specifications found in the figure below.

Figure 1: 37 TAC §341.60 (No change.)

Figure 2: 37 TAC §341.60

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 30, 2009.

TRD-200905487

Lisa A. Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

Earliest possible date of adoption: January 10, 2010

For further information, please call: (512) 424-6710



## CHAPTER 345. JUVENILE JUSTICE PROFESSIONAL CODE OF ETHICS

The Texas Juvenile Probation Commission (TJPC) proposes new Chapter 345, §§345.100, 345.110, 345.200, 345.300, and 345.310, relating to standards for juvenile justice professional code of ethics. These new standards are being proposed in an effort to clarify and make more efficient the interpretation of the Commission's Officer Code of Ethics for juvenile justice professionals.

Lisa Capers, Deputy Executive Director and General Counsel, 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. There will be no fiscal implications for small businesses or individuals as a result of enforcement or implementation.

Ms. Capers has also determined that for each year of the first five years the new rules are in effect, the public benefit expected as a result of enforcement or implementation will be that juvenile justice professionals who have committed ethical violations can be more quickly and efficiently processed and potentially removed from positions working with or supervising juveniles.

Public comments on the proposed rules may be submitted in writing to Kristy Almager at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas 78711-3547. Comments may also be submitted electronically to *Kristy.Almager@tjpc.state.tx.us* or faxed to (512) 424-6718.

## SUBCHAPTER A. DEFINITIONS AND APPLICABILITY

### 37 TAC §345.100, §345.110

These rules are proposed under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affected by these proposed rules.

§345.100. Definitions.

Terms used in this chapter shall have the following meanings unless otherwise expressly defined within the chapter.

(1) Commission--The Texas Juvenile Probation Commission.

(2) Juvenile--A person who is under the jurisdiction of the juvenile court, confined in a juvenile justice facility, or participating in a juvenile justice program.

(3) Juvenile Justice Facility ("facility")--A facility, including its premises and all affiliated sites, whether contiguous or detached, operated wholly or partly by or under the authority of the governing board, juvenile board or by a private vendor under a contract with the governing board, juvenile board or governmental unit that serves juveniles under juvenile court jurisdiction. The term includes, but is not limited to:

(A) A public or private juvenile pre-adjudication secure detention facility, including a short-term detention facility (i.e., holdover) required to be certified in accordance with Texas Family Code §51.12;

(B) A public or private juvenile post-adjudication secure correctional facility required to be certified in accordance with Texas Family Code §51.125, except for a facility operated solely for children committed to the Texas Youth Commission; and

(C) A public or private non-secure juvenile post-adjudication residential treatment facility housing juveniles under juvenile court jurisdiction.

(4) Juvenile Justice Professional--A person who is certified as a juvenile probation officer or juvenile supervision officer and who is employed by a juvenile probation department, juvenile justice program or a juvenile justice facility.

(5) Juvenile Justice Program ("program")--A program or department operated wholly or partly by the governing board, juvenile board or by a private vendor under a contract with the governing board, or juvenile board that serves juveniles under juvenile court jurisdiction or juvenile board jurisdiction. The term includes a juvenile justice alternative education program and a non-residential program that serves juvenile offenders under the jurisdiction of the juvenile court or juvenile board jurisdiction and a juvenile probation department.

(6) Juvenile Probation Department ("department")--All physical offices and premises utilized by a county or district level governmental unit established under the authority of a juvenile board(s) to facilitate execution of the responsibilities of a juvenile probation

department enumerated in Title 3 of the Texas Family Code and Chapter 141 of the Texas Human Resources Code.

§345.110. Applicability.

(a) Unless otherwise noted, this code of ethics applies to persons certified as juvenile probation officers or juvenile supervision officers (hereafter referred to as "juvenile justice professionals") employed by a juvenile probation department, juvenile justice program or juvenile justice facility.

(b) The code of ethics is intended to ensure that juvenile justice professionals adhere to the level of professionalism required by the Commission as the licensing agency issuing the certification.

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

Filed with the Office of the Secretary of State on November 30, 2009.

TRD-200905484

Lisa A. Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

Earliest possible date of adoption: January 10, 2010

For further information, please call: (512) 424-6710



## SUBCHAPTER B. POLICY AND PROCEDURE

### 37 TAC §345.200

This rule is proposed under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affected by this proposed rule.

§345.200. Policy and Procedure.

Juvenile probation departments, juvenile justice programs and juvenile justice facilities shall have written policies and procedures for reporting violations of the code of ethics to the administration of the juvenile probation department, juvenile justice programs or juvenile justice facility and the Commission.

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 30, 2009.

TRD-200905485

Lisa A. Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

Earliest possible date of adoption: January 10, 2010

For further information, please call: (512) 424-6710



## SUBCHAPTER C. CODE OF ETHICS

### 37 TAC §345.300, §345.310

These rules are proposed under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affected by these proposed rules.

§345.300. Adherence and Reporting Violations.

(a) To ensure the safety, protection and welfare of the juveniles and families served by the juvenile justice system, juvenile justice professionals shall adhere to the code of ethics set forth in this chapter.

(b) Juvenile justice professionals shall report to the appropriate authorities and/or entities any unethical behavior or violations of the code of ethics.

§345.310. Code of Ethics.

(a) Juvenile justice professionals found to be in violation of the provisions of this subsection shall be subject to disciplinary action including, but not limited to, suspension, revocation or denial of the professional certification issued under the authority of the Commission.

(b) The people of Texas expect juvenile justice professionals to exhibit unflinching honesty and respect for the dignity and individuality of human beings and display a commitment to professional and compassionate service.

(c) The Commission subscribes to the following code of ethics principles:

(1) Juvenile justice professionals shall:

(A) abide by all federal laws, guidelines and rules, state laws, and Commission administrative rules;

(B) respect the authority and follow the directives of the juvenile court and governing juvenile board;

(C) respect and protect the legal rights of all children and their parents and/or guardians;

(D) serve each child with concern for the child's welfare and with no expectation of personal gain;

(E) respect the significance of all elements of the justice and human services systems and cultivate a professional cooperation with each segment;

(F) respect and consider the right of the public to be safeguarded from juvenile delinquency;

(G) be diligent in their responsibility to record and make available for review any and all information that could contribute to sound decisions affecting a child or the public safety;

(H) report without reservation any corrupt or unethical behavior that could affect a juvenile or the integrity of the juvenile justice system;

(I) maintain the integrity and confidentiality of juvenile information and not seek more information than needed to perform their duties, nor reveal information to any person who does not have authorized access to the information for a proper professional use;

(J) perform all duties impartially and without regard to race, ethnicity, gender, disability, national origin, religion, sexual orientation, political belief or socioeconomic status; and

(K) treat all juveniles and their families with courtesy, consideration and dignity.

(2) Juvenile justice professionals shall not:

(A) use their official position to secure privileges or advantages;

(B) permit personal interest to impair the objectivity that must be maintained to impartially execute their official duties;

(C) accept gifts, presents, favors, or other advantages that could give the appearance of impropriety or impair the impartial and objective exercise of professional responsibilities;

(D) maintain or give the appearance of maintaining an inappropriate relationship with a juvenile residing in a facility or under the jurisdiction of the juvenile court that includes, but is not limited to, bribery, solicitation or acceptance of gifts, favors, or services from juveniles or their families;

(E) discriminate against any employee, juvenile, parent or guardian on the basis of race, ethnicity, gender, disability, national origin, religion, sexual orientation, political belief or socioeconomic status;

(F) engage in behaviors that misuse government property or resources, or that use the personal effects or funds belonging to a juvenile;

(G) be designated as a perpetrator in a Commission abuse, exploitation and neglect investigation conducted under the authority of Texas Family Code Chapter 261 and Chapter 350 of this title;

(H) interfere with or hinder any abuse, exploitation and neglect investigation, including a criminal investigation conducted by law enforcement or an investigation conducted pursuant to Texas Family Code Chapter 261 or Chapter 350 and Chapter 358 of this title;

(I) deliver into or remove from the grounds of a juvenile facility, program or department any item of contraband or possess or control any item of contraband beyond the time period required to immediately report and deliver such item to the proper authority within the facility, program or department;

(J) utilize unnecessary force or violence and shall only use the amount of force reasonably necessary and appropriate when justified to ensure the security of juveniles, the facility, program or department; or

(K) falsify or make material omissions entries to governmental records.

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 30, 2009.

TRD-200905486

Lisa A. Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

Earliest possible date of adoption: January 10, 2010

For further information, please call: (512) 424-6710

◆ ◆ ◆

# 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 22. EXAMINING BOARDS

### PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

#### CHAPTER 323. POWERS AND DUTIES OF THE BOARD

##### 22 TAC §323.3

The Texas Board of Physical Therapy Examiners withdraws the proposed amendments to §323.3 which appeared in the September 11, 2009, issue of the *Texas Register* (34 TexReg 6265).

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

TRD-200905476  
John P. Maline  
Executive Director  
Texas Board of Physical Therapy Examiners  
Effective date: November 24, 2009  
For further information, please call: (512) 305-6900



#### CHAPTER 341. LICENSE RENEWAL

##### 22 TAC §341.1

The Texas Board of Physical Therapy Examiners withdraws the proposed amendments to §341.1 which appeared in the September 11, 2009, issue of the *Texas Register* (34 TexReg 6270).

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

TRD-200905469  
John P. Maline  
Executive Director  
Texas Board of Physical Therapy Examiners  
Effective date: November 24, 2009  
For further information, please call: (512) 305-6900



##### 22 TAC §341.2

The Texas Board of Physical Therapy Examiners withdraws the proposed amendments to §341.2 which appeared in the September 11, 2009, issue of the *Texas Register* (34 TexReg 6271).

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

TRD-200905470  
John P. Maline  
Executive Director  
Texas Board of Physical Therapy Examiners  
Effective date: November 24, 2009  
For further information, please call: (512) 305-6900



##### 22 TAC §341.3

The Texas Board of Physical Therapy Examiners withdraws the proposed amendments to §341.3 which appeared in the September 11, 2009, issue of the *Texas Register* (34 TexReg 6272).

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

TRD-200905471  
John P. Maline  
Executive Director  
Texas Board of Physical Therapy Examiners  
Effective date: November 24, 2009  
For further information, please call: (512) 305-6900



##### 22 TAC §341.5

The Texas Board of Physical Therapy Examiners withdraws the proposed amendments to §341.5 which appeared in the September 11, 2009, issue of the *Texas Register* (34 TexReg 6274).

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

TRD-200905472  
John P. Maline  
Executive Director  
Texas Board of Physical Therapy Examiners  
Effective date: November 24, 2009  
For further information, please call: (512) 305-6900



##### 22 TAC §341.8

The Texas Board of Physical Therapy Examiners withdraws the proposed amendments to §341.8 which appeared in the September 11, 2009, issue of the *Texas Register* (34 TexReg 6275).

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

TRD-200905473  
John P. Maline  
Executive Director  
Texas Board of Physical Therapy Examiners  
Effective date: November 24, 2009  
For further information, please call: (512) 305-6900



**22 TAC §341.9**

The Texas Board of Physical Therapy Examiners withdraws the proposed amendments to §341.9 which appeared in the September 11, 2009, issue of the *Texas Register* (34 TexReg 6276).

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

TRD-200905474  
John P. Maline  
Executive Director  
Texas Board of Physical Therapy Examiners  
Effective date: November 24, 2009  
For further information, please call: (512) 305-6900



**22 TAC §341.20**

The Texas Board of Physical Therapy Examiners withdraws the proposed amendments to §341.20 which appeared in the September 11, 2009, issue of the *Texas Register* (34 TexReg 6277).

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

TRD-200905475  
John P. Maline  
Executive Director  
Texas Board of Physical Therapy Examiners  
Effective date: November 24, 2009  
For further information, please call:



# ADOPTED RULES

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

## TITLE 16. ECONOMIC REGULATION

### PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

#### CHAPTER 74. ELEVATORS, ESCALATORS, AND RELATED EQUIPMENT

##### 16 TAC §74.50

The Texas Commission of Licensing and Regulation ("Commission") adopts an amendment to an existing rule at 16 Texas Administrative Code ("TAC") §74.50 regarding the installation of elevator door restrictors and providing elevator firefighters' service without changes to the proposed text as published in the September 4, 2009, issue of the *Texas Register* (34 TexReg 6045) and will not be republished. The adopted amendment takes effect December 15, 2009.

The amendment implements House Bill 3628, 81st Legislature, Regular Session, 2009, which extended the date on which building owners must install elevator door restrictors and provide firefighters' service. The amended rule details the application and notification requirements for obtaining the extension. The compliance date for installation of elevator door restrictors is extended to September 1, 2010 and the provisioning of firefighters' service is extended to September 1, 2012.

The amendments also require building owners to verify: (1) that all tenants in the building received notice of the application; and (2) the application and plans of compliance will be provided to all occupants in the building immediately upon request.

The Texas Department of Licensing and Regulation ("Department") drafted and distributed the proposed rule to persons internal and external to the agency. The proposed amendment was published in the *Texas Register* on September 4, 2009. The comment period closed on October 5, 2009. No public comments were received regarding the proposed rule.

The amendment is adopted under Chapter 754, Health and Safety Code, which directs the Department's governing body, the Commission to adopt rules to establish an annual inspection and certification of equipment covered by standards adopted under Chapter 754; and Texas Occupations Code Chapter 51, which authorizes the Commission to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Chapter 754, Health and Safety Code, and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the adoption.

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

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

TRD-200905477

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Effective date: December 15, 2009

Proposal publication date: September 4, 2009

For further information, please call: (512) 463-7348



## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 61. SCHOOL DISTRICTS

##### SUBCHAPTER AA. COMMISSIONER'S RULES ON SCHOOL FINANCE

##### 19 TAC §61.1014

The Texas Education Agency (TEA) adopts the repeal of §61.1014, concerning additional state aid for school employee benefits. The repeal is adopted without changes to the proposed text as published in the October 9, 2009, issue of the *Texas Register* (34 TexReg 6973) and will not be republished. The section establishes the methods the TEA uses to determine, for each school district and open-enrollment charter school, eligibility to receive additional state aid to pay contributions under a group health insurance plan. The adopted repeal is necessary because of the repeal of the Texas Education Code (TEC), §42.2514.

The TEC, §42.2514, authorized the commissioner of education to adopt rules to implement the provision of additional state aid for school employee benefits. The commissioner exercised rule-making authority to adopt 19 TAC §61.1014, Additional State Aid for School Employee Benefits, effective May 4, 2008.

House Bill (HB) 3646, 81st Texas Legislature, 2009, made amendments to the TEC, §42.2516, Additional State Aid for Tax Reduction, which incorporated the funding previously delivered in a separate allotment for the state aid authorized under the TEC, §42.2514. Accordingly, the TEC, §42.2514, was repealed. Instead, state aid for school employee benefits will be included as part of a larger funding payment.

The adopted repeal of 19 TAC §61.1014 implements the statutory changes by removing from rule a separate provision relating to additional state aid for school employee benefits.

No changes were made to the rule since published as proposed.

The adopted repeal has no procedural and reporting implications. The adopted repeal has no locally maintained paperwork requirements.

The TEA determined that 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 rule action began October 9, 2009, and ended November 9, 2009. No public comments were received.

The repeal is adopted under the TEC, §42.2514, as added by HB 3343, 77th Texas Legislature, 2001, which initially authorized the commissioner of education to adopt rules to implement additional state aid for school employee benefits. HB 3646, 81st Texas Legislature, 2009, repealed the TEC, §42.2514, and incorporated the funding into the TEC, §42.2516, Additional State Aid for Tax Reduction.

The repeal implements the repeal of the TEC, §42.2514.

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 30, 2009.

TRD-200905512

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Effective date: December 20, 2009

Proposal publication date: October 9, 2009

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



## CHAPTER 129. STUDENT ATTENDANCE SUBCHAPTER AA. COMMISSIONER'S RULES

### 19 TAC §129.1027

The Texas Education Agency adopts an amendment to §129.1027, concerning the optional flexible school day program (OFSDP). The amendment is adopted without changes to the proposed text as published in the October 9, 2009, issue of the *Texas Register* (34 TexReg 6986) and will not be republished. The section establishes provisions for administering the program. The adopted amendment updates the current rule to reflect statutory changes resulting from the 81st Texas Legislature, 2009.

The Texas Education Code (TEC), §29.0822, authorizes the commissioner of education to adopt rules for the administration of optional flexible school day programs (OFSDPs) provided by school districts and open-enrollment charter schools for certain eligible students. Through 19 TAC §129.1027, Optional

Flexible School Day Program, adopted to be effective July 4, 2007, and amended to be effective October 23, 2008, the commissioner exercised rulemaking authority, specifying in rule OFSDP general provisions, definitions, student eligibility, application requirements, attendance and funding criteria, program operation requirements, and review and evaluation provisions, as well as circumstances under which OFSDP authorization would be revoked or denied.

House Bill (HB) 1297 and HB 3646, 81st Texas Legislature, 2009, amended the TEC, §29.0822, to increase the number of students eligible for participation in OFSDPs. Specifically, the changes removed language limiting program participation to students in Grades 9-12 and added a criterion for student eligibility to allow students who would be denied credit for one or more classes as a result of attendance requirements to be eligible for participation.

To implement statutory changes, the adopted amendment to 19 TAC §129.1027 removes references to Grades 9-12 and expands eligibility to include students who would be denied credit as a result of attendance requirements. The adopted amendment also deletes the definition for school year; cross-references 19 TAC §97.1051, Definitions, for the description of innovative redesign; specifies the maximum allowable attendance for funding purposes; and updates references to TEC sections that were renumbered by HB 3, 81st Texas Legislature, 2009.

Additional changes relating to formatting and word usage have also been made.

No changes were made to the rule since published as proposed.

School districts and open-enrollment charter schools will be required to report annually through the Public Education Information Management System which students participating in an OFSDP were participating to recover credits that they would otherwise be denied as a result of attendance requirements under the TEC, §25.092.

Any locally maintained paperwork requirements resulting from the proposed amendment correspond with and support the stated procedural and reporting implications.

The TEA determined that 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 rule action began October 9, 2009, and ended November 9, 2009. No public comments were received.

The amendment is adopted under the TEC, §29.0822, which authorizes the commissioner of education to adopt rules for the administration of the OFSDP.

The amendment implements the TEC, §29.0822.

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 30, 2009.

TRD-200905513

Cristina De La Fuente-Valadez  
Director, Policy Coordination  
Texas Education Agency  
Effective date: December 20, 2009  
Proposal publication date: October 9, 2009  
For further information, please call: (512) 475-1497



## TITLE 22. EXAMINING BOARDS

### PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

#### CHAPTER 329. LICENSING PROCEDURE

##### 22 TAC §329.5

The Texas Board of Physical Therapy Examiners adopts amendments to §329.5, concerning Licensing Procedures for Foreign-Trained Applicants, without changes to the proposed text as published in the September 11, 2009, issue of the *Texas Register* (34 TexReg 6266). The amendments update requirements for the licensure of foreign-trained applicants.

The amendments eliminate the requirement for a prescreening certificate, remove the two-year limit on the validity of a completed evaluation, delete specific details of the education evaluation requirements and make it clear that a foreign-trained applicant must meet the educational requirements as delineated in the appropriate version of the Federation of State Boards of Physical Therapy's coursework tool, establish that the board will issue a license only to an applicant located in the US, increase the number of hours or courses for which college placement tests may be used, and make clear that the board retains the right to make the determination of equivalency and does not delegate that authority to any other body. They also allow graduates of a foreign CAPTE-accredited program an exemption from the English language proficiency requirements and remove the requirement that an applicant provide proof of licensure in good standing in the country of education.

No comments were received regarding this section.

The amendments are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

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

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

TRD-200905463  
John P. Maline  
Executive Director  
Texas Board of Physical Therapy Examiners  
Effective date: December 14, 2009  
Proposal publication date: September 11, 2009  
For further information, please call: (512) 305-6900



##### 22 TAC §329.7

The Texas Board of Physical Therapy Examiners adopts new §329.7, Exemptions from Licensure, without changes to the proposed text as published in the September 11, 2009, issue of the *Texas Register* (34 TexReg 6269). The new rule reflects changes to the Physical Therapy Practice Act made during the 81st legislative session regarding the practice of physical therapy under certain circumstances by individuals not licensed by the board.

The new rule adds several categories of exemptions to the existing list of those who may practice physical therapy in Texas without being licensed by the board, and notification requirements for certain of those exempt categories.

No comments were received regarding this section.

The new rule is adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

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 25, 2009.

TRD-200905482  
John P. Maline  
Executive Director  
Texas Board of Physical Therapy Examiners  
Effective date: December 15, 2009  
Proposal publication date: September 11, 2009  
For further information, please call: (512) 305-6900



#### CHAPTER 347. REGISTRATION OF PHYSICAL THERAPY FACILITIES

##### 22 TAC §347.1

The Texas Board of Physical Therapy Examiners adopts amendments to §347.1, Definitions, without changes to the proposed text as published in the September 11, 2009, issue of the *Texas Register* (34 TexReg 6277). The amendments would eliminate the registration requirement for facilities that meet certain conditions.

The amendments would change the way the board defines a physical therapy facility, removing the requirement that a physical therapist providing services on an unpredictable and irregular basis in a setting or facility which he does not own or manage, and in which healthcare is not the primary service offered, register as a portable facility. It would allow a physical therapist providing services within those parameters to do so without registering the facility in which he is providing services.

No comments were received regarding this section.

The amendments are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.



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

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

TRD-200905465

John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

Effective date: December 14, 2009

Proposal publication date: September 11, 2009

For further information, please call: (512) 305-6900



## **TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

### **PART 11. TEXAS JUVENILE PROBATION COMMISSION**

#### **CHAPTER 359. MEMORANDUM OF UNDERSTANDING**

##### **37 TAC §359.100**

The Texas Juvenile Probation Commission adopts new Chapter 359, §359.100, relating to memorandum of understanding. This standard is adopted with changes as published in the October 9, 2009, issue of the *Texas Register* (34 TexReg 7045) and will be republished.

TJPC adopts this rule in an effort to comply with the requirements of §1701.258 of the Texas Occupations Code, which was enacted during the 81st Legislative Session, 2009.

No public comment was received.

This rule is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by this new standard.

*§359.100. Memorandum of Understanding Between the Texas Juvenile Probation Commission and the Texas Commission on Law Enforcement Officer Standards and Education.*

(a) The Texas Juvenile Probation Commission (Commission) adopts by reference the memorandum of understanding (MOU) between the Texas Commission on Law Enforcement Officer Standards and Education. The MOU contains the agreement required by Texas Occupations Code, Chapter 1701, §1701.258, to establish the respective responsibilities of these agencies in developing a basic training program in the use of firearms by juvenile probation officers and fulfilling related statutory mandates.

(b) The MOU is adopted by rule in this section.

(c) The effective date of the MOU, with respect to the Commission, is January 1, 2010.

Figure: 37 TAC §359.100(c)

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 30, 2009.

TRD-200905483

Lisa A. Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

Effective date: January 1, 2010

Proposal publication date: October 9, 2009

For further information, please call: (512) 424-6710



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

### **PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS**

#### **CHAPTER 370. LICENSE RENEWAL**

##### **40 TAC §370.2**

The Texas Board of Occupational Therapy Examiners (TBOTE) adopts an amendment to §370.2, concerning Late Renewal, without changes to the proposed text as published in the September 11, 2009, issue of the *Texas Register* (34 TexReg 6298) and will not be republished.

The amendment adds language to 40 TAC §370.2 to allow methods for returning to licensure for former licensees, which reflects the changes to the OT Practice Act during the 81st legislative session. The rule will be adopted to become effective on January 1, 2010.

Three comments were received regarding adoption of the amendment. One supported the proposed amendment. One addressed the former licensee's ability and wanted the board to administer a proficiency test. The board could not find a proficiency test and thus rejected this suggestion. The third comment was from the American Occupational Therapy Association (AOTA) which suggested the board acknowledge a continuing education course which would address the issue of re-entry to the profession. Should such a course be provided by AOTA, the board will amend the rule to recognize it, but does not want to acknowledge this hypothetical provision without knowledge of the course.

The amendment is adopted under the Occupational Therapy Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out the duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this amended 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 23, 2009.

TRD-200905462

John Maline  
Executive Director  
Texas Board of Occupational Therapy Examiners  
Effective date: January 1, 2010  
Proposal publication date: September 11, 2009  
For further information, please call: (512) 305-6900



# 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 2: 37 TAC §341.60

TEXAS JUVENILE PROBATION COMMISSION

Electronic Data Interchange Specifications

Record Specifications:

Record Type	Field Name	Description	Type	Size	Format	Begin Column	End Column	Edit Criteria	Dependencies
Header	Headquarter County Number	County where department headquarters is located.	numeric	3	999	001,254	3		
Header	ECR Folder	Record identifier for Header Record.	alphanumeric	14		Blank fill	10		
Header	Report Type	Should specify the first day of the reporting period.	alphanumeric	2		Blank fill	18		
Header	Report Period Begin Date	Should specify the first day of the reporting period. A multi-month period may be specified.	numeric	8	YYYYMMDD		20	Must be a valid date and specify the first day of a month.	
Header	Report Period End Date	Should specify the last day of the reporting period. A multi-month period may be specified.	numeric	8	YYYYMMDD		28	Must be a valid date and specify the last day of the reporting period. Must be greater than or equal to the Report Period Begin Date.	
Header	Users Initials	User generating this extraction process.	alphanumeric	3	left-justify, blank fill		36	Blank fill	CASEWORKER departments
Header	CASEWORKER Program Release Number	Used to determine revision of CASEWORKER that created the extracted information.	alphanumeric	8	left-justify, blank fill		39	Blank fill	CASEWORKER departments only
Header	Unique Run ID	Date and time of extraction process.	alphanumeric	14	YYYYMMDDHHMMSS		47	Blank fill	
Header	Additional Email Address	Specify an additional email address (if any) where the processing log should be sent. The log will automatically be sent to the CJPO's address, this field is to be used only if your department desires a second copy.	alphanumeric	100	left-justify, blank fill		61	Blank fill	
Header	Date of Last Comprehensive Folder Edit (CFE)	Information extracted from CASEWORKER systems regarding the status of their last Comprehensive Folder Edit. Used by TJPC to determine future training issues.	numeric	6	YYYYMMDD		161	Zero fill	CASEWORKER departments only
Header	Number of Errors on Last CFE		numeric	5	99999		169	Zero fill	CASEWORKER departments only
Header	Number of Warnings on Last CFE		numeric	5	99999		174	Zero fill	CASEWORKER departments only
Header	Individual error/warning numbers from last CFE.		numeric	205			179	Zero fill	CASEWORKER departments only
Header	End of Record Marker		alphanumeric	1			384	Must contain T	
Decode	Headquarter County Number	County where department headquarters is located.	numeric	3	999	001,254	1		
Decode	FILLER		alphanumeric	14		Blank fill	4		
Decode	Record Type	Record identifier for Decode Record.	alphanumeric	2		10*	18		
Decode	Decode Type	Specifies the category of the following key (code).	alphanumeric	4	left-justify, blank fill		20		
Decode	Decode Key (code)	Key (code) used by department for specified Decode Type (category).	alphanumeric	10	left-justify, blank fill		24		
Decode	Decode Description	Informative description of the Decode Key (code).	alphanumeric	40	left-justify, blank fill		34		
Decode	CASEWORKER Record ID	Unique record identifier assigned by CASEWORKER.	alphanumeric	36	left-justify, blank fill		74		
Decode	End of Record Marker		alphanumeric	1			110	Must contain T	
Child	Headquarter County Number	County where department headquarters is located.	numeric	3	999	001,254	1		
Child	Personal ID Number	Unique child identifier.	numeric	7	99999999		4		
Child	FILLER		numeric	7		Zero fill	11		
Child	Record Type	Record identifier for Child Record.	alphanumeric	2		10*	18		
Child	Child's Last Name	The child's last name.	alphanumeric	35	left-justify, blank fill		20		
Child	Child's First Name	The child's first name.	alphanumeric	35	left-justify, blank fill		54		
Child	Child's Middle Name	The child's middle name.	alphanumeric	35	left-justify, blank fill		89		
Child	Child's Name Suffix	The child's name suffix.	alphanumeric	3	left-justify, blank fill		92		
Child	Race	The child's race/ethnicity.	alphanumeric	1			125		A-Asian B-African American H-Hispanic I-American Indian U-Unknown W-White
Child	Sex	The child's gender.	alphanumeric	1			128		M-Male F-Female U-Unknown
Child	Date of Birth	The child's date of birth.	numeric	8	YYYYMMDD		130		Valid date between 1/1/1900 and 12/31/2099
Child	Social Security Number	The child's social security number.	numeric	9	999999999		138		00000000, 99999999, 5-digit zip code #
Child	Zip Code	Zip code of the child's residence.	numeric	9	999999999		147		acceptable with trailing zeros.

Record Specifications:

Record Type	Field Name	Description	Type	Size	Format	Begin Column	End Column	Edm Columns	Dependencies
Child	Child Lives With	Specifies the person(s) with whom the child lives. If the makeup of the child's household differs from the options provided, list the principal caretaker.	alphanumeric	4	left-justify, blank fill	156	159	BOFH-Two parents (natural or adoptive step or adoptive and step) BEFH-Combination of two parents (natural and step or adoptive and step) FATH-Father (natural, adoptive or step) MOTH-Mother (natural, adoptive or step) GPGR-Grandparents GARD-Legal guardian (non-family) RELA-Other relative(s) GRUP-Group home or institution that provides 24 hour care SELF-Child lives alone SPOU-Spouse (child's legal or common-law) FRND-Friend (peer, adult friend, or boyfriend/girlfriend) OTHR-Other UNKN-Unknown Y, N or U	
Child	Special Education?	Has the child been identified as a special education student?	alphanumeric	1		160	160	ED-Emotionally Disturbed LD-Learning Disabled MR-Mentally Retarded OT-Other PD-Physical Disability UN-Unknown Y, N or U	Required if the Special Education field is 'Y'. Otherwise blank fill.
Child	Special Education Handicapping Condition	If the child has been identified as a special education student, specify the primary handicapping condition.	alphanumeric	2	left-justify, blank fill	161	162		
Child	Mental Health Needs	Does the child have mental health needs?	alphanumeric	1	left-justify, blank fill	163	163		
Child	Date Determined Mentally Ill	Date that the child was first determined to have mental health needs (by the department).	numeric	8	YYYYMMDD	164	171	Valid date between 1/1/1900 and 12/31/2099 Y, N, U or blank fill if not applicable.	Required if the Mental Health Needs field is 'Y'. Otherwise blank fill.
Child	In Treatment?	Is the child currently in mental health treatment?	alphanumeric	1		172	172		Required if the Mental Health Needs field is 'Y'. Otherwise blank fill.
Child	Diagnosis	What is the child's primary diagnosed mental health condition?	alphanumeric	2		173	174	AA-Adjustment Disorder AD-Attention Deficit Hyperactivity Disorder BP-Bipolar CD-Conduct Disorder CC-Cognitive Disorder DA-Disruptive Disorder DD-Depressive Disorder DM-Depression Not Otherwise Specified ED-Eating Disorder GA-Generalized Anxiety IC-Impulse Control Disorder MB-Major Depression MR-Mental Retardation OC-Other Anxiety Disorder OP-Other Mood Disorder OT-Other Psychotic Disorder PD-Personality Disorder PS-Post Traumatic Stress Disorder PV-Perverse Developmental Disorder SA-Schizoaffective Schizophrenia UN-Unknown Blank fill if not applicable. Y, N, S (suspected), or U Y, N, S (suspected), or U Y, N, S (suspected), or U Y, N, S (suspected), or U Y, N, S (suspected), or U 00000000, 99999999 or blank fill	Required if the Mental Health Needs field is 'Y'. Otherwise blank fill.
Child	Gang Affiliation/Membership	Is the juvenile currently or has the juvenile ever been affiliated with a gang?	alphanumeric	1		175	175		
Child	Sexual Abuse?	Has the child ever been a victim of sexual abuse?	alphanumeric	1		176	176		
Child	Physical Abuse?	Has the child ever been a victim of physical abuse?	alphanumeric	1		177	177		
Child	Emotional Abuse?	Has the child ever been a victim of emotional abuse?	alphanumeric	1		178	178		
Child	DPS SID Number	The child's State Identification Number (SID) as issued by the Department of Public Safety	alphanumeric	8		179	186		
Child	CASEWORKER Record ID	Unique record identifier assigned by CASEWORKER.	alphanumeric	36	left-justify, blank fill	187	222		CASEWORKER departments only
Child	End of Record Marker		alphanumeric	1		223	223	Must contain 'Y'	

Referral	Headquarter County Number	County where department headquarters is located.	numeric	3	599	1	3	001, 254	
Referral	Personal ID Number	Unique child identifier.	numeric	7	9999999	4	10	0000001, 9999999	
Referral	Referral Number	Unique referral identifier.	numeric	7	9999999	11	17	0000000, 9999999	
Referral	Record Identifier for Referral Record	Record identifier for Referral Record.	alphanumeric	2		18	19	03	

Record Specifications:

Record Type	Field Name	Description	Type	Size	Format	Begin Column	End Column	EDI Criteria	Dependencies
Referral	Referral Type	Type of referral. Definitions of these categories are available on the TJPC website.	alphanumeric	2		20	21	TR-Formal Referral PA-Paper Complaint CS-Country Supervision TR-Interim/Permanent Transfer C-I-Child Intervention CD-Contract Detention CP-Contract Placement NJ-Non-Jurisdiction I-Interstate Compact	Courtesy Supervision (CS) only valid for offenses that occurred prior to September 1, 2005.
Referral	Referral Date	For formal, paper formalized and crisis intervention referral types, the referral date is when face-to-face contact with the child occurs. For paper complaints, it is the date that the department received the complaint. For non-jurisdictional, interstate and interstate compact, it is the date the child was received. For transfers, it is the official supervision start date.	numeric	8	YYYYMMDD	22	29	Valid date between 1/1/1900 and 12/31/2099.	
Referral	County Number	County referring the child. Same as Headquarters County Number unless referred to a multi-county jurisdiction. If Referral Type is Contract Detention, Contract Placement or Non-Jurisdiction, indicate the referring county or use a special identifier (755-759) if applicable.	numeric	3	999	30	32	001-254 755-Other State 756-TYC 757-JNS 758-Other U.S. Government Agency 759-State or Local Government Agency	County specified must be within the department's jurisdiction or special identifier (755-759).
Referral	School Status	School status at time of referral.	alphanumeric	2		33	34	IS-In Regular School DO-Dropped Out SE-Suspended/Expelled GD-GED SP-Special HS-High School AE-Alternative Education JJ-Juvenile Justice Alternative Education Program CS-Charter School PS-Private School UN-Unknown	Required for all Formal and Paper Formalized referrals, otherwise blank fill.
Referral	Last Grade Completed	The last grade completed by the child at time of referral.	numeric	2	99	35	36	00-12	Must be non-zero value if School Status is known.
Referral	Substance Abuse	Is the juvenile in need of substance abuse services?	alphanumeric	1		37	37	Y-Yes, not being treated T-Yes, being treated N-No S-Suspected U-Unknown	Required for all Formal and Paper Formalized referrals, otherwise blank fill.
Referral	Referral Source	The agency referring the child to the probation department.	alphanumeric	1		38	38	P-Law Enforcement Agency S-School D-Probation Department O-Other T-TYC	
Referral	Primary Alleged Offense	At intake, the most serious offense the child is alleged to have committed.	alphanumeric	8	99999999	39	46	A valid TJPC-DPS offense code. A current list of codes may be obtained from TJPC's website or by contacting TJPC directly.	An Offense Record must exist for this referral with the same offense code and the Alleged Offense Indicator field must contain "P".
Referral	Primary Alleged Offense Preparatory Code	Designates that the Primary Alleged Offense was a preparatory (attempted, conspired or solicited) offense. Reduces offense by one degree.	alphanumeric	1		47	47	A-Attempted C-Conspired S-Solicited Blank fill if no modification	
Referral	Primary Disposition Offense Code	The most serious offense at disposition of the referral.	alphanumeric	8	99999999	48	55	A valid TJPC-DPS offense code. A current list of codes may be obtained from TJPC's website or by contacting TJPC directly.	An Offense Record must exist for this referral with the same offense code and the Disposition Indicator field must contain "P".
Referral	Primary Disposition Offense Preparatory Code	Designates that the Primary Disposition Offense was a preparatory (attempted, conspired or solicited) offense. Reduces offense by one degree.	alphanumeric	1		56	56	A-Attempted C-Conspired S-Solicited Blank fill if no modification	
Referral	Primary Disposition	Department defined code for disposition.	alphanumeric	4	left-justify, blank fill	57	60	Department specified code.	Required if Disposition Date field complete. Must include a Decode Record for each code specified.

Record Specifications:

Record Type	Field Name	Description	Type	Size	Format	Begin Column	End Column	Edit Criteria	Dependencies
Referral	Primary Disposition (TJPC category)	Summarized category of Primary Disposition field as defined by TJPC. Definitions of these categories are available on the TJPC website.	numeric	3	999	61	63	Department Actions: 01-Dismissed or Withdrawn 02-Deferred Prosecution 03-Deferred Prosecution Prosecutor Actions: 04-4-No Probable Cause/Dismissed 05-4-Released 06-5-Non-Suited 07-6-Deferred Prosecution Court Actions: 08-0-Dismissed 09-1-Not Guilty 082-Adjudicated with no Disposition 096-Supervisory Caution 100-Deferred Prosecution 110-Adjudicated to Probation 111-Determinate Sentence Probation 120-Modified/Extended Probation 121-Adjudicated to Probation 135-Consent to Sentence to TYC 146-Determinate Commitment to TYC 150-Certified as an Adult 910-Consolidated and Disposed in Another Case 920-Transferred with no Disposition	Required if Disposition Date field completed.
Referral	Disposition Date	Date a disposition was assigned to this referral.	numeric	8	YYYYMMDD	64	71	Valid date between 1/1/1900 and 12/31/2099. Zero fill if not applicable.	Required if Primary Disposition (TJPC category) value equals 111 or 140.
Referral	Determinate Sentence Months	The total number of months ordered if the child is either committed to the Texas Youth Commission or placed on probation for a determinate sentence.	numeric	3	999	72	74	001_999 or zero fill if not applicable.	Required if Primary Disposition (TJPC category) value equals 111 or 140.
Referral	Diverted to Where	Designates the type of agency, organization or program (outside of the juvenile justice system) where the child was diverted. Do not complete this field for referrals that are not diverted to an adult. Definitions of these categories are available on the TJPC website.	alphanumeric	4	left-justify, blank fill	75	78	MHTH-Mental Health Services FCFS-Family/Child Protective Services DAC-Drug & Alcohol Counseling POP-Final Offender Program STAR-S TAR/Prevention Program TRAP-Transparency Program VCT-Victim Mediation OTHR-Other Blank fill if not applicable.	
Referral	Risk Level	Risk Level determined prior to the disposition of a juvenile's case	alphanumeric	1		79	79	L - Low Risk M - Medium Risk H - High Risk	
Referral	Needs Level	Needs Level determined prior to the disposition of a juvenile's case	alphanumeric	1		80	80	L - Low Need M - Medium Need H - High Need	
<p>The following section provides for two subsequent dispositions. This section is used only for children who violate the terms of their deferred prosecution and are subsequently adjudicated on the same referral, or for dispositions that are appealed and are subsequently assigned a different disposition. It is not used for modifications. See descriptions and edit criteria above.</p>									
Referral	Subsequent Primary Disposition (TJPC category)	See descriptions above.	alphanumeric	4	left-justify, blank fill	81	84		See dependencies above.
Referral	Subsequent Disposition Date	See descriptions above.	numeric	3	999	85	87		See dependencies above.
Referral	Subsequent Determinate Sentence Months	See descriptions above.	numeric	3	999	88	95		See dependencies above.
Referral	Subsequent Diverted to Where (TJPC category)	See descriptions above.	alphanumeric	4	left-justify, blank fill	99	102		See dependencies above.
Referral	Subsequent Disposition Date	See descriptions above.	numeric	3	999	107	108		See dependencies above.
Referral	Subsequent Determinate Sentence Months	See descriptions above.	numeric	3	999	110	117		See dependencies above.
Referral	Subsequent Diverted to Where	See descriptions above.	alphanumeric	4	left-justify, blank fill	118	120		See dependencies above.
Referral	Risk Level	Risk Level determined prior to the disposition of a juvenile's case	alphanumeric	1		121	124		See dependencies above.
Referral	Risk Level	Risk Level determined prior to the disposition of a juvenile's case	alphanumeric	1		125	125	L - Low Risk M - Medium Risk H - High Risk	

Record Specifications:

Record Type	Field Name	Description	Type	Size	Format	Begin Column	End Column	Edit Criteria	Dependencies
Referral	Needs Level	Needs Level determined prior to the disposition of a juvenile's case	alphanumeric	1		128	128	L - Low Need M - Medium Need H - High Need	
<b>End of subsequent disposition section.</b>									
Referral	CASEWORKER Record ID	Unique record identifier assigned by CASEWORKER.	alphanumeric	36	left-justify, blank fill	127	162	Blank fill	CASEWORKER departments only
Referral	Originating Offense Referral Number	Distinguishes the referral number of the originating offense for juveniles referred for probation of a court order offense.	numeric	7	9999999	163	169	0000000..9999999	Must be nonzero value if Primary Disposition Offense is Violation of a Court Order.
Referral	End of Record Marker		alphanumeric	1		170	170	Must contain T	

Detention	Headquarter County Number	County where department headquarters is located.	numeric	3	999	1	3	001..254	
Detention	Personal ID Number	Child's Personal ID Number (PID).	numeric	7	9999999	4	10	0000001..9999999	
Detention	Referral Number	Specifies the referral for which this secure detention applies.	numeric	7	9999999	11	17	0000001..9999999	
Detention	Record Type	Record identifier for Detention Record.	alphanumeric	2		18	19	TDN	
Detention	Detention Sequence Number	Uniquely identifies this detention record from all other detention records for the specified Personal ID Number.	numeric	6	999999	20	25	000001..999999	Used in conjunction with the PID Number and Referral Number to determine unique detention event. Once assigned it should not be changed.
Detention	Detention Facility	TJPC registered facility identification number for secure detention facilities in Texas or department defined code for facilities outside of Texas.	alphanumeric	7	left-justify, blank fill	26	32		If facility is not in Texas then TJPC registered facility identification code, otherwise a department specified code.
Detention	Date Detained	The date the child was placed in detention.	numeric	8	YYYYMMDD	33	40	Valid date between 1/1/1900 and 12/31/2099.	
Detention	Time Detained	The time the child was placed in detention.	numeric	4	HHMM	41	44	HH between 00..23 and MM between 00..59. 0000 is considered midnight.	
Detention	Date Released	The date the child was released from detention.	numeric	8	YYYYMMDD	45	52	Valid date between 1/1/1900 and 12/31/2099 and greater than or equal to the Date Detained.	
Detention	Time Released	The time the child was released from detention.	numeric	4	HHMM	53	56	Valid date between 1/1/1900 and 12/31/2099 and greater than or equal to the Date Detained. Zero fill if not applicable.	
Detention	CASEWORKER Record ID	Unique record identifier assigned by CASEWORKER.	alphanumeric	36	left-justify, blank fill	57	92	Blank fill	Required if Date Released field is populated.
Detention	End of Record Marker		alphanumeric	1		93	93	Must contain T	CASEWORKER departments only

MAYSI	Headquarter County Number	County where department headquarters is located.	numeric	3	999	1	3	001..254	
MAYSI	Personal ID Number	Child's Personal ID Number (PID).	numeric	7	9999999	4	10	0000001..9999999	
MAYSI	Referral Number	Specifies the referral for which this MAYSI screening applies.	numeric	7	9999999	11	17	0000001..9999999	
MAYSI	Record Type	Record identifier for MAYSI Record.	alphanumeric	2		18	19	TMA	
MAYSI	MAYSI Sequence Number	Uniquely identifies this MAYSI record from all other MAYSI records for the specified Personal ID Number.	numeric	6	999999	20	25	000001..999999	Used in conjunction with the PID Number and Referral Number to determine unique MAYSI record. Once assigned it should not be changed.
MAYSI	Screening Date	Date the screening instrument was administered to the child for the specified referral. If the MAYSI was not administered, enter the date that the department was notified that the child was already in detention or in treatment, enter the referral date.	numeric	8	YYYYMMDD	26	33	Valid date between 1/1/1900 and 12/31/2099.	
MAYSI	Administered?	Was the MAYSI-2 administered to the juvenile?	alphanumeric	1	Y or N	34	34	Y or N	
MAYSI	Reason Not Administered	Why was the MAYSI-2 not administered?	alphanumeric	1		35	35	A-Assessed by mental health professional E-Child already in detention or referral R-Child Refused Test T-Child is already in treatment for mental health U-Child is physically or mentally unable O-Other reason	Required if Administered value is "N". Blank fill if not applicable.
MAYSI	Alcohol/Drug Use (AD) Score	Refer to MAYSI-2 Scoring Summary.	alphanumeric	1		36	36	0..8 or blank fill if not applicable.	Required if Administered value is "Y".
MAYSI	Aggri/Infrable (AI) Score	Refer to MAYSI-2 Scoring Summary.	alphanumeric	1		37	37	0..9 or blank fill if not applicable.	Required if Administered value is "Y".
MAYSI	Depressed-Anxious (DA) Score	Refer to MAYSI-2 Scoring Summary.	alphanumeric	1		38	38	0..9 or blank fill if not applicable.	Required if Administered value is "Y".
MAYSI	Somatic Complaints (SC) Score	Refer to MAYSI-2 Scoring Summary.	alphanumeric	1		39	39	0..6 or blank fill if not applicable.	Required if Administered value is "Y".
MAYSI	Suicide Ideation (SI) Score	Refer to MAYSI-2 Scoring Summary.	alphanumeric	1		40	40	0..5 or blank fill if not applicable.	Required if Administered value is "Y".



Electronic Data Interchange Specifications

TEXAS JUVENILE PROBATION COMMISSION

Record Specifications:

Record Type	Field Name	Description	Type	Size	Format	Begin Column	End Column	Edit Criteria	Dependencies
MAYSI	Thought Disturbance BOYS (TD) Score	Refer to MAYSI-2 Scoring Summary.	alphanumeric	1		41	41	0, 5 or blank fill if not applicable.	Required if Administered value is "Y" and Sex is "M". If Sex is "F", blank fill.
MAYSI	Traumatic Experiences (TE) Score	Refer to MAYSI-2 Scoring Summary.	alphanumeric	1		42	42	0, 5 or blank fill if not applicable.	Required if Administered value is "Y".
MAYSI	Referred for Subsequent Assessment?	Was the child referred to a mental health professional for a subsequent assessment based on the MAYSI results?	alphanumeric	1		43	43	Y or N	Required if Administered value is "Y".
MAYSI	Referred to Where	If the child was referred for a subsequent assessment, to what type of provider was he/she referred?	alphanumeric	1		44	44	U-Contract Provider C-Community Center M-Local MH/HR P-Private Provider O-Other	Required if Referred for Subsequent Assessment value is "Y".
MAYSI	Subsequent Assessment?	Did the child receive a subsequent assessment by a mental health professional?	alphanumeric	1		45	45	Y, N, U (unknown) or blank fill if not applicable.	Required if Referred for Subsequent Assessment value is "Y".
MAYSI	CASEWORKER Record ID	Unique record identifier assigned by CASEWORKER.	alphanumeric	36	left-justify, blank fill	46	81	Blank fill	CASEWORKER departments only
MAYSI	End of Record Marker		alphanumeric	1		82	82	Must contain "I"	
Behavioral Health	Headquarter County Number	County where department headquarters is located.	numeric	3		1	3	001-254	
Behavioral Health	Personal ID Number	Child's Personal ID Number (PID).	numeric	7	9999999	4	10	0000001-9999999	
Behavioral Health	FILLER		numeric	7	9999999	11	17	Zero fill	
Behavioral Health	Record Type	Record identifier for Behavioral Health Record.	alphanumeric	2		18	19	"BH"	
Behavioral Health	Behavioral Health Sequence Number	Uniquely identifies this behavioral health record from all other behavioral health records for the specified Personal ID Number.	numeric	6	9999999	20	25	000001-999999	Used in conjunction with the PID Number to determine the specific behavioral health event. Once assigned it should not be changed.
Behavioral Health	Referral Date	The date that the child was referred to the mental health or substance abuse provider.	numeric	8	YYYYMMDD	26	33	Valid date between 1/1/1900 and 12/31/2099.	
Behavioral Health	Presenting Problem	The type of behavioral health service to which the juvenile is being referred.	alphanumeric	1		34	34	M-Mental Health S-Substance Abuse	
Behavioral Health	Referred For	For what was the child referred?	alphanumeric	1		35	35	A-Assessment/Evaluation C-Crisis Intervention S-Substance Abuse S-Service O-Other	
Behavioral Health	Referred To	To what type of provider was the child referred?	alphanumeric	1		36	36	C-Contract Provider H-Home Staff M-Local MH/Substance Abuse Provider P-Private Provider O-Other	
Behavioral Health	Referral Outcome	What was the outcome of this referral?	alphanumeric	1		37	37	C-Completed P-Not Completed U-Unknown Outcome	
Behavioral Health	CASEWORKER Record ID	Unique record identifier assigned by CASEWORKER.	alphanumeric	36	left-justify, blank fill	38	73	Blank fill	CASEWORKER departments only
Behavioral Health	Funding Source	The source of funding for the service provided by the behavioral health referral.	alphanumeric	2		74	74	TA-State Aid Grant TB-Royalty Grant TC-Community Reconciliation Grant TE-LIVE Federal Foster Care TF-Progressive Sanctions JPO Grant TH-Diversionary Fund Grant TI-Secure Entry Placement Grant TJ-Social Based Diversionary Grant TK-Intensive Community Based Pilot Grant TL-Small Grant Attachment Placement Grant TM-NAACP Discretionary Grant TN-NAACP Discretionary Grant TO-Intensive Community Based Program Grant TP-Community Corrections Grant U-Unknown V-Unknown W-NAACP Discretionary Grant X-Intensive Community Based Program Grant Y-Community Corrections Grant	
Behavioral Health	End of Record Marker		alphanumeric	1		76	76	Must contain "I"	

TEXAS JUVENILE PROBATION COMMISSION

Electronic Data Interchange Specifications

Record Specifications:

Record Type	Field Name	Description	Type	Size	Format	Begin Column	End Column	Edit Criteria	Dependencies
Behavioral Health Treatment	Headquarter County Number	County where department headquarters is located.	numeric	3	999	1	3	001..254	
Behavioral Health Treatment	Personal ID Number	Child's Personal ID Number (PID).	numeric	7	9999999	4	10	0000001..9999999	
Behavioral Health Treatment	Record Type	Record Identifier for Behavioral Health Treatment Record.	alphanumeric	2		11	12	"B"	
Behavioral Health Treatment	Behavioral Health Treatment Sequence Number	Uniquely identifies this behavioral health treatment record from all other behavioral health treatment records for the specified Personal ID Number.	numeric	9	9999999	13	19	000001..999999	Used in conjunction with the PID Number to determine unique behavioral health event. Once assigned it should not be changed.
Behavioral Health Treatment	Treatment Begin Date	The date that the child began the mental health or substance abuse treatment.	numeric	8	YYYYMMDD	19	26	Valid date between 11/1/1900 and 12/31/2099.	
Behavioral Health Treatment	Presenting Problem	The type of behavioral health treatment to which the juvenile is being referred.	alphanumeric	1		27	27	Mental Health S-Substance Abuse	
Behavioral Health Treatment	Referred To	From what type of provider was the child treated?	alphanumeric	1		28	28	C-Contract Provider H-Home Stay M-Local Mental Health/ Substance Abuse Provider P-Private Provider O-Other	
Behavioral Health Treatment	Funding Source	The source of funding for the behavioral health treatment.	alphanumeric	2		29	30	TA- State Aid Grant TB- Border Grant TC- Community Reinvestment Grant TD- Departmental Fund TE- US Federal Enticase TF- Prosecutive Sandbox JFC Grant TG- Prosecutive Sandbox JFC Grant TH- Diversionary Fund Grant TI- Collaborative Program Grant TJ- Secure Entry Placement Grant TK- Special Needs Diversionary Grant TL- Prosecutive Sandbox JFC TM - Small County Diversionary Placement Grant TN- Intensive Community Based Pilot Grant TO- Intensive Community Based Program Grant TP- Intensive Community Based Program Grant TQ - Community Concessions Grant TR - Parent TS - Insurance TU - Other TV - No Cost to Department TW - State Funds, Non-JFC	
Behavioral Health Treatment	Treatment End Date	The date that the child ends the mental health or substance abuse treatment.	numeric	8	YYYYMMDD	31	38	Valid date between 11/1/1900 and 12/31/2099.	
Behavioral Health Treatment	CASEWORKER Record ID	Unique record identifier assigned by CASEWORKER.	alphanumeric	36	left-justified, blank fill	39	74	Blank fill	CASEWORKER departments only
Behavioral Health Treatment	End of Record Marker		alphanumeric	1		75	75	Must contain "I"	

Drug Testing	Headquarter County Number	County where department headquarters is located.	numeric	3	999	1	3	001..254	
Drug Testing	Personal ID Number	Child's Personal ID Number (PID).	numeric	7	9999999	4	10	0000001..9999999	
Drug Testing	Record Type	Record Identifier for Drug Testing Record.	alphanumeric	2		11	12	"D"	
Drug Testing	Drug Testing Sequence Number	Uniquely identifies this drug testing record from all other drug testing records for the specified Personal ID Number.	numeric	9	9999999	13	19	000001..999999	Used in conjunction with the PID Number to determine unique behavioral health event. Once assigned it should not be changed.
Drug Testing	Test Date	The date that the drug test was administered to the child.	numeric	8	YYYYMMDD	13	26	Valid date between 11/1/1900 and 12/31/2099.	

TEXAS JUVENILE PROBATION COMMISSION

Electronic Data Interchange Specifications

Record Specifications:

Record Type	Field Name	Description	Type	Size	Format	Begin Column	End Column	Edit Char	Dependencies
Duo_Testing	Test Results	The results of the duo test.	alphanumeric	1		2Z	2Z	P - Positive N - Negative I - Inconclusive	
Duo_Testing	Funding Source	The source of funding for the duo test.	alphanumeric	2		28	28	TA - State Aid Grant TB - Bonds Grant TC - Commutation Reduction Grant TE - JIVE Federal Foster Care TF - Progressive Sanctions JPO Grant TH - Diversionary Fund Grant TI - Collaborative Program Grant TJ - Secure Felony Placement Grant TK - Special Needs Diversionary Grant TL - Progressive Sanctions ISJPC TM - Small County Diversionary Placement TN - Intensive Community Based Pilot Grant TO - JMAP Diversionary Grant TP - Intensive Community Based Program Grant TQ - Community Corrections Grant TR - Parent TS - Insurance TT - Other TU - No Cost to Department TV - State Funds, Non-TJPC	
Duo_Testing	CASEWORKER Record ID	Unique record identifier assigned by CASEWORKER.	alphanumeric	36	left-justify, blank fill	30	65	Blank fill	CASEWORKER departmental unit
Duo_Testing	End of Record Marker		alphanumeric	1		68	68	Must contain 'I'	

Record Type	Field Name	Description	Type	Size	Format	Begin Column	End Column	Dependencies
Offense	Headquarter County Number	County where department headquarters is located.	numeric	3	999	1	3	
Offense	Personal ID Number	Child's Personal ID Number (PID).	numeric	7	9999999	4	10	
Offense	Referral Number	Specifies the referral for which this offense applies.	numeric	7	9999999	11	17	
Offense	Record Type	Record identifier for Offense Record.	alphanumeric	2		18	19	OP
Offense	Unique Offense Number	Uniquely identifies this offense record from all other offense records for the specified Personal ID Number.	numeric	6	999999	20	25	Used in conjunction with the PID Number and Referral Number to determine unique offense event. Once assigned it should not be changed.
Offense	Alleged Offense Date	The date the alleged offenses occurred.	numeric	8	YYYYMMDD	26	33	Valid date between 1/1/1900 and 12/31/2099.
Offense	Alleged Offense Counts	Used to specify multiple occurrences (counts) of the same offense and incident.	numeric	2	99	34	35	
Offense	Alleged Offense Code	Used to designate the DPS offense code for the alleged offense.	alphanumeric	8	99999999	36	43	A valid TJPC-DPS offense code. A current list of codes may be obtained from TJPC's website or by contacting TJPC directly.
Offense	Alleged Offense Preparatory Code	Used to designate the Alleged Offense was a preparatory offense.	alphanumeric	1		44	44	A - Attempted S - Conspired S - Co-Offense Blank fill if no modification
Offense	Alleged Offense Indicator	Designates the status of the offense at time of intake. An offense may be designated as a primary or secondary offense. However, if during disposition the child is being disposed on an offense not originally listed, enter a new offense and designate it as 'added at disposition' or 'revised at disposition'.	alphanumeric	1		45	45	P - Primary alleged offense S - Secondary alleged offense R - Revised offense at time of disposition A - Added offense at time of disposition
Offense	Disposition Indicator	Designates the status of the offense at time of disposition.	alphanumeric	1		46	46	P - Primary disposition offense C - Consolidated with primary offense D - Dismissed (not included in the disposition)
Offense	Weapon Used	Specifies the type of weapon used during the commission of the offense.	alphanumeric	2		47	48	BK - Brass Knuckles CL - Club or other similar device EC - Explosive/Explosive Weapon FB - Firearm/Bomb HG - Handgun KN - Knife MA - Mace or other chemical dispensing device RL - Rifle SG - Shotgun OG - Other Gun OT - Other Blank fill if not applicable.

Record Specifications:

Record Type	Field Name	Description	Type	Size	Format	Beam Column	End Column	Ent Criteria	Dependencies
Offense	School Related Location	Specifies the offense occurred on a school campus or during a school related activity.	alphanumeric	4	left-justify, blank fill	49	52	CCAM-On Campus OTHR-School Related Activity-OutOf Campus Blank fill if not applicable.	
Offense	School Campus Number	Specifies the Texas Education Agency (TEA) assigned campus number where the offense took place. If the offense occurred 'in transit' then use the home campus number. May be obtained from the local campus, school district or Texas Education Agency (TEA).	numeric	9	999999999	53	61	00000000..99999999 or zero fill if not applicable. Required if School Related Location field is "CCAM". Zero fill if not applicable.	
Offense	CASEWORKER Record ID	Unique record identifier assigned by CASEWORKER.	alphanumeric	36	left-justify, blank fill	62	97	Blank fill	CASEWORKER departments only
Offense	End of Record Marker		alphanumeric	1		98	98	Must contain 'I'	
Placement	Headquarter County Number	County where department headquarters is located.	numeric	3	999	1	3	001..254	
Placement	Personal ID Number	Child's Personal ID Number (PID).	numeric	7	9999999	4	10	000001..999999	
Placement	Record Number	Specifies the record for which the placement applies.	numeric	7	9999999	1	7	000001..999999	
Placement	Record Type	Record identifier for Placement Record.	alphanumeric	2		18	19	TLC	Used in conjunction with the PID Number and Referral Number to determine unique placement event. Once assigned it should not be changed.
Placement	Placement Sequence Number	Uniquely identifies this placement record from all other placement records for the specified Personal ID Number.	numeric	6	999999	20	25	000001..999999	
Placement	Placement Facility	TJPC registered facility identification number or department defined code for placement facility.	alphanumeric	7	left-justify, blank fill	26	32	If Placement Type is Secure Correctional (S) then code must be a TJPC registered facility identification code. If Placement Type is not Secure Correctional (S) then code must be a TJPC registered facility identification code.	
Placement	Placement Type	Type of residential placement used.	alphanumeric	1		33	33	E-Emergency F-CPS Placement K-Kinship Placement (by court) L-Foster Care P-Parental Placement S-Secure Correctional R-Residential (non-secure)	
Placement	Service Type	Description of the primary service delivered at the facility.	alphanumeric	1		34	34	B-BoysCamp C-Correctional G-Female Offender M-Mental Health P-Pregnant Female S-Substance Abuse T-Treatment X-Sex Offender O-Other	Required if Placement Type field is not Emergency Shelter (E).
Placement	Cost Per Day	Specifies per day charge for this placement. Zero specifies a recent (fee) placement. If the cost per day changes during the placement, create a new record.	numeric	5	999.99 (implied decimal)	35	39	\$999.00..\$500.00	
Placement	Level of Care	Level of care as defined by TJPC or the Texas Department of Family Protective Services (FPS). TJPC Levels of Care are considered "Correctional". Definitions of these categories are available on the TJPC website.	alphanumeric	1		40	40	C-Basic Correctional L-Specialized Correctional E-Emergency B-Basic M-Moderate S-Specialized H-Intensive U-Unknown Blank fill if not applicable.	If the placement ended prior to 9/1/2003, then the old Levels of Care (1..6) should be used.
Placement	Placement Date In	The date the child entered the placement facility.	numeric	8	YYYYMMDD	41	48	Valid date between 1/1/1900 and 12/31/2099.	
Placement	Placement Date Out	The date the child exited the placement facility.	numeric	8	YYYYMMDD	49	56	Valid date between 1/1/1900 and 12/31/2099 and greater than or equal to the Placement Date In. Zero fill if not applicable.	
Placement	Discharge Reason	Specifies the reason the child left the facility. Definitions of these categories are available on the TJPC website.	alphanumeric	1		57	57	S-Completed B-Absent without Permission C-Changed Facility/Cost Per Day Changed/ Changed Level of Care D-Deceased F-Depletion of Funds/Closure J-Transferred out of Jurisdiction U-Unsuitable/Not Eligible X-Failure to Comply	Required if Placement Date Out field completed. If 'C' is used a new Placement Record must exist.
Placement	CASEWORKER Record ID	Unique record identifier assigned by CASEWORKER.	alphanumeric	36	left-justify, blank fill	58	93	Blank fill	CASEWORKER departments only

TEXAS JUVENILE PROBATION COMMISSION

Electronic Data Interchange Specifications

Record Specifications:

Record Type	Field Name	Description	Type	Size	Format	Edi Column	Edi Column	Edi Column	Experiences
						TA-SHA-Add Grant	TA-SHA-Add Grant	TA-SHA-Add Grant	
Placement	Funding Source	The source of funding for the child's placement.	alphanumeric	2		TE - Shelter Care Grant TE - Commitment Reduction Grant TE - IVE Federal Foster Care TE - Protective Services JFCO Grant TH - Diversionary Fund Grant TK - Collaborative Program Grant TL - Special Needs Placement Grant TM - Special Needs Diversionary Grant TO - Protective Services JFCO Grant TP - Small County Diversionary Placement Grant TU - Intensive Community Based Pilot Grant TW - JJAEP Diversionary Grant TX - Intensive Community Based Program Grant TY - Community Corrections Grant OP - Parent OO - Other ON - One Cost to Department OS - State Funds, Non-IPC Must contain T	95	96	
Placement	End of Record Marker		alphanumeric	1					

Program	Headquarter County Number	County where department headquarters is located.	numeric	3	999				
Program	Personal ID Number (PID)	Child's Personal ID Number (PID).	numeric	7	9999999				
Program	Special Identifier	Special identifier, which this program applies.	numeric	11	9999999				
Program	Record Type	Record identifier for Program Record.	alphanumeric	2					
Program	Program Sequence Number	Uniquely identifies this program record from all other program records for the specified Personal ID Number.	numeric	6	999999				Used in conjunction with the PID Number and Referral Number to determine unique program event. Once assigned it should not be changed.
Program	Program Name	Department defined code for the program.	alphanumeric	4	left-justify, blank fill				Must include a Decode Record for each code specified.
Program	Program Provider	Type of provider for program.	alphanumeric	1					
Program	Program Type	Summarizes the program into specific categories based on its primary purpose. Definitions of these categories are available on the T-IPC website.	alphanumeric	3					

Record Specifications:

Record Type	Field Name	Description	Type	Size	Format	Begin Column	End Column	Edit Criteria	Dependencies
Program	Program Referral Date	The date that the child was referred to the program. (This is generally not the same date as the program begin date.)	numeric	8	YYYYMMDD	34	41	SAP-Substance Abuse Prevention/Intervention SUT-Substance Abuse Treatment SNT-Substance Abuse Treatment Targeted WPC-Workshop VSC-Victim Services VOC-Vocational/Employment OTH-Other	
Program	Program Begin Date	The date the child physically began the program.	numeric	8	YYYYMMDD	42	49	Valid date between 1/1/1900 and 12/31/2099. Zero fill if not applicable.	Required when the child enters the program.
Program	Program End Date	The date the child exited the program.	numeric	8	YYYYMMDD	50	57	Valid date between 1/1/1900 and 12/31/2099 and greater than or equal to the Program Begin Date. Zero fill if not applicable.	
Program	Program Outcome	Specifies the program outcome. Definitions of these categories are available on the TJPCC website.	alphanumeric	1		58	58	S-Completed B-Absent without Permission D-Deceased F-Depletion of Funds/Closure I-Interim Supervision U-Undiscovered Eligible X-Failure to Comply	Required if Program End Date field completed.
Program	CASEWORKER Record ID	Unique record identifier assigned by CASEWORKER.	alphanumeric	36	left-justify, blank fill	59	94	Blank fill	CASEWORKER departments only
Program	Funding Source	The source of funding for the child's program.	alphanumeric	2		95	95	IA-State Aid Grant IB-Resider Grant IC-Commitment Reduction Grant IE-JIVE Federal Foster Care IF-Progressive Sanctions JPC Grant IH-Discretionary Fund Grant II-Collaborative Program Grant IL-Special Needs Discretionary Grant IO-Probationary Sanctions JPC IP-Small County Operational Placement Grant IU-Intensive Community Based Pilot Grant IW-JAEP Discretionary Grant IX-Intensive Community Based Program Grant IY-Community Corrections Grant GP-Parent GI-Insurance GO-Other GN-NG Cont to Detainment SO-State Funds, Non-TJPC	
Program	End of Record Marker		alphanumeric	1		97	97	Must contain 'T'	

Supervision	Headquarter County Number	County where department headquarters is located.	numeric	3	999	1	3	001-254	
Supervision	Personal ID Number	Child's Personal ID Number (PID).	numeric	7	9999999	4	10	000001-9999999	
Supervision	Referral Number	Specifies the referral for which this supervision applies.	numeric	7	9999999	11	17	000001-9999999	
Supervision	Record Type	Record identifier for Supervision Record.	alphanumeric	2		18	19	'SV'	
Supervision	Supervision Sequence Number	Uniquely identifies this Supervision record from all other supervision records for the specified Personal ID Number.	numeric	6	999999	20	25	000001-999999	Used in conjunction with the PID Number and Referral Number to determine unique supervision event. Once assigned it should not be changed.
Supervision	Supervision Type	Specifies the type of supervision. Definitions of these categories are available on the TJPCC website.	alphanumeric	4	left-justify, blank fill	26	29	PROB-Court Ordered Probation DEFER-Deferred Prosecution CDEL-Conditional Release from Detention TEMP-Temporary Pre-Court Monitoring INDR-Indirect Supervision PRBI-Interim Probation PRBP-Permanent Probation (Transferred) ILCT-Inter-county Transfer Supervision DEF-Interim Deferred Prosecution	
Supervision	Supervision Begin Date	The beginning date of the supervision.	numeric	8	YYYYMMDD	30	37	Valid date between 1/1/1900 and 12/31/2099 and greater than or equal to the supervision	
Supervision	Supervision Expected End Date	The date that the supervision is scheduled to end (based on a court order or department agreement).	numeric	8	YYYYMMDD	38	45	Valid date between 1/1/1900 and 12/31/2099 and greater than or equal to the Supervision	
Supervision	Supervision End Date	The ending date of the supervision.	numeric	8	YYYYMMDD	46	53	Valid date between 1/1/1900 and 12/31/2099 and greater than or equal to the Supervision Begin Date. Zero fill if not applicable.	

TEXAS JUVENILE PROBATION COMMISSION

Electronic Data Interchange Specifications

Record Specifications:

Record Type	Field Name	Description	Type	Size	Format	Begin Column	End Column	Est Criteria	Dependencies
Supervision	Supervision Outcome	Specifies the supervision outcome. Definitions of these categories are available on the TJPC website.	alphanumeric	1		54	54	S-Completed A-Admitted to the Adult System B-Admitted to Court Permission D-Deceased J-Transferred out of Jurisdiction T-TYC Commitment X-Failure to Comply	Required if Supervision End Date field completed.
Supervision	CASEWORKER Record ID	Unique record identifier assigned by CASEWORKER.	alphanumeric	36	left-justify, blank fill	55	90	Blank fill	CASEWORKER departments only
Supervision	End of Record Marker		alphanumeric	1		91	91	Must contain 'T'	

Non-Residential Service	Headquarter County Number	County where department headquarters is located.	numeric	3	999	1	3	001-254	
Non-Residential Service	Personal ID Number	Child's Personal ID Number (PID).	numeric	7	9999999	4	10	0000001-9999999	
Non-Residential Service	Referral Number	Specifies the referral for which this non-residential service applies	numeric	7	9999999	11	17	0000001-9999999	
Non-Residential Service	Record Type	Record Identifier for Non-Residential Service Record.	alphanumeric	2		18	19	TNR	
Non-Residential Service	Sequence Number	Uniquely identifies this non-residential service record from all other non-residential services for the specified Personal ID Number and referral number.	numeric	6	999999	20	25	000001-999999	Used in conjunction with the PID Number to determine unique behavioral health service center assigned. It must not be changed.
Non-Residential Service	Date of Service	The date that the service was provided to the child.	numeric	8	YYYYMMDD	26	33	Valid date between 1/1/1900 and 12/31/2099.	
Non-Residential Service	Service Type	The type of service provided to the child	alphanumeric	1		34	34	P - Positive N - Negative I - Inappropriate	
Non-Residential Service	Funding Source	The source of funding for the non-residential service.	alphanumeric	2		35	36	TA-State AM Grant TB-Border Grant TC-Community Reconciliation Grant TD-Non-Profit Foster Care TE-JVC Federal Foster Care TF-Non-Profit Residential Care TG-Non-Profit Residential Care TH-Non-Profit Residential Care TI-Collaborative Program Grant TJ-Secure Entry Placement Grant TK-Special Needs Diversionary Grant TL-Preventive Services (S/PQ) TM-Special Needs Diversionary Placement Grant TN-Small County Diversionary Placement Grant TO-Intensive Community Based Plk. Grant TP-JJAPR Discretionary Grant TQ-Intensive Community Based Program Grant TR-Community Reconciliation Grant TS-Parent TU-Insurance TV-Other TW-Other TX-No Cost to Department TY-Other TZ-Other 00-Blank fill	
Non-Residential Service	CASEWORKER Record ID	Unique record identifier assigned by CASEWORKER.	alphanumeric	36	left-justify, blank fill	37	72	Blank fill	CASEWORKER departments only
Non-Residential Service	End of Record Marker		alphanumeric	1		73	73	Must contain 'T'	

Delete	Headquarter County Number	County where department headquarters is located.	numeric	3	999	1	3	001-254	
Delete	FILLER		alphanumeric	14		4	17	Blank fill	
Delete	Record Type	Record identifier for Delete Record.	alphanumeric	2		18	19	'XX'	
Delete	Delete Record Type	A Delete Record should only be used to remove records reported in error. It should NOT be used to remove sealed or purged records. A request to delete a Child Record will cause all records for the specified PID Number to be removed. A request to delete a Referral Record will cause all records attached to the referral (i.e. detentions, offenses, placements, etc) to be removed. All other delete requests will remove only the requested record.	alphanumeric	2		20	21	01-Child 03-Referral 0N-Detention 0M-MAYSI 0H-Behavioral Health 0F-Offense 0L-Placement 0G-Program 0V-Supervision	

Record Specifications:

Record Type	Field Name	Type	Size	Format	Begin Column	End Column	Edit Criteria	Dependencies
Delete	Delete Personal ID Number	numeric	7	9999999	22	28	000001..999999	Required for all delete transactions.
Delete	Delete Referral Number	numeric	7	9999999	29	35	000001..999999, zero fill if not applicable	Required for all delete transactions except '01-Child and '01-Behavioral Health.
Delete	Delete Sequence Number	numeric	6	999999	36	41	000001..999999, zero fill if not applicable	Required for all delete transactions except '01-Child and '03-Referral.
Delete	CASEWORKER Record ID	alphanumeric	36	left-justify, blank fill	42	77	Blank fill	CASEWORKER departments only
Delete	End of Record Marker	alphanumeric	1		78	78	Must contain T	

Trailer	Headquarter County Number	numeric	3	999	1	3	001..254	
Trailer	FILLER	alphanumeric	14		4	17	"ZZZZZZZZZZZZZZZZ"	Must be last record in the file.
Trailer	Record Type	alphanumeric	2		18	19	"ZZ"	
Trailer	Total Record Count	numeric	8	99999999	20	27		Compared to calculated number of records to ensure complete file was transmitted.
Trailer	End of Record Marker	alphanumeric	1		28	28	Must contain T	



## MEMORANDUM OF UNDERSTANDING

Between  
The Texas Commission of Law Enforcement Officer Standards and Education and  
The Texas Juvenile Probation Commission

### I. Parties

The parties to this Memorandum of Understanding (MOU) are the Texas Commission on Law Enforcement Officer Standards and Education, a regulatory agency of the state of Texas, hereinafter called the "Commission" and the Texas Juvenile Probation Commission, a regulatory agency of the state of Texas, hereinafter referred to as "TJPC".

### II. Background and Purpose

WHEREAS, the Texas Juvenile Probation Commission represents that juvenile probation officers are not "peace officers" as defined under Section 1701.001 of the Texas Occupations Code and Article 2.12 of the Code of Criminal Procedure, respectively; and

WHEREAS, the 81<sup>st</sup> Texas Legislature enacted Section 142.006 of the Human Resources Code to authorize juvenile probation officers to carry a firearm in the course of their duties and sets forth other specific qualifying requirements; and

WHEREAS, Section 1701.258 of the Occupations Code was amended to require the Texas Commission of Law Enforcement Officer Standards and Education and the Texas Juvenile Probation Commission to adopt a MOU to establish a basic training program in the use of firearms by juvenile probation officers; and

WHEREAS, this agreement, entered into pursuant to Section 1701.258 of the Texas Occupations Code, represents a mutual understanding and sets forth each agency's respective responsibilities in developing a basic training program and fulfilling the related statutory mandates; and

NOW THEREFORE, know all men by these presents; that in consideration of mutual covenants, agreements and benefits of both parties, it is agreed as follows:

### III. Responsibilities of Both Parties

By entering this agreement, the Commission and TJPC agree to:

1. Establish a program to provide instruction in:
  - a. legal limitations on the use of firearms and on the powers and authority of juvenile probation officers;
  - b. range firing and procedure, and firearms safety and maintenance; and
  - c. other topics determined by the Commission and the Texas Juvenile Probation Commission to be necessary for the responsible use of firearms by juvenile probation officers.

**IV.**  
**Specific Roles and Responsibilities of Each Party (Commission)**

The Commission, as a signatory to this memorandum, agrees to:

1. Coordinate the development of a training curriculum in the use of firearms by juvenile probation officers based upon the training needs assessment conducted by TJPC and/or a designated representative;
2. Administer the training program and issue a certificate of firearms proficiency to each juvenile probation officer the Commission determines has successfully completed the program, contingent upon the authorization of the local chief juvenile probation officer of the department that employs the juvenile probation officer;
3. Ensure that each local chief juvenile probation officer submit a report of training and other required documentation for each course conducted in accordance with the Commission's rules; and
4. Establish, at its discretion, reasonable and necessary fees for the administration of the training program.
5. Establish or adopt, at its discretion, administrative policies, procedures and rules necessary to fully implement and comply with this legislative mandate.

**V.**  
**Specific Roles and Responsibilities of Each Party (TJPC)**

TJPC, as a signatory to this memorandum, agrees to:

1. Coordinate the development of the juvenile probation officer training curriculum based upon the training needs assessment conducted by TJPC and/or a designated representative.
2. Conduct a juvenile probation officer training needs assessment to be utilized by the Commission in the development of the firearms curriculum; and
3. Provide technical assistance to the Commission during the development of the training curriculum.

**VI.**  
**Psychological Assessment and Criminal History Background Check**

In compliance with the terms of this memorandum of understanding, each chief administrative officer that authorizes participation in the juvenile probation officer firearms proficiency training program shall:

1. Ensure that all officers making application for the certificate of firearms proficiency training program undergo a psychological assessment administered in accordance with Section 215.15 (d)(2) and other applicable requirements or administrative rules of the Commission; and
2. Conduct, in accordance with Section 211.1(a)(9) of the Commission's administrative rules or other applicable law, a complete criminal history search submitted through the Texas Department of Public Safety electronic clearinghouse and subscription service and Fingerprint Applicant Services of Texas (FAST) system to determine whether the applicant meets the minimum eligibility requirements to participate in the firearms training program established by the Commission.

**VII.  
Administrative Department Suspension and Officer Disqualification**

The Commission and TJPC, to the extent possible, further agree to the following:

1. The Commission may suspend the local juvenile probation department's administrative number with the Commission if the local juvenile probation department is found to be unsatisfactory under the risk assessment process, as defined by Chapter 1701, Occupations Code and Section 215.5 and 215.13 of the Commission's rules. The Commission shall reinstate the administrative number upon reasonable evidence that the local juvenile probation department has made the necessary changes as directed by the Commission;
2. The Commission shall regularly provide notification to TJPC regarding all juvenile probation departments and/or chief juvenile probation officers whose identifying number has been administratively suspended under the Commission's rules; and
3. Notwithstanding the provisions of Section 1701.258 and the terms of this agreement, TJPC reserves the right to disqualify a juvenile probation officer who has been issued a certificate of firearms proficiency by the Commission, in accordance with the provisions set forth in Section 142.006 of the Human Resources Code.
4. The TJPC shall regularly provide notification to the Commission of any action by TJPC to disqualify a juvenile probation officer who has been issued a certificate of firearms proficiency by the Commission, in accordance with the provisions set forth in Section 142.006 of the Human Resources Code.

**VIII.  
Effective Date**

This Memorandum of Understanding is effective on the date of the last agency signature and has no expiration date. Amendments will be made as deemed necessary and agreed to by the signing parties or as mandated by statute.

**IX.  
Execution of Agreement**

For the faithful performance of the terms of this Memorandum of Understanding, the parties hereto in their capacities execute this agreement, affix their signatures and bind themselves.

**Texas Commission of Law Enforcement Officer Standards and Education**

By: \_\_\_\_\_  
**TIM BRAATEN**  
**EXECUTIVE DIRECTOR**

Date: \_\_\_\_\_

**Texas Juvenile Probation Commission**

By: \_\_\_\_\_  
**VICKI SPRIGGS**  
**EXECUTIVE DIRECTOR**

Date: \_\_\_\_\_

---

---

# IN

# ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

---

---

## Texas Department of Agriculture

Request for Proposals: Enology and Viticulture Education and Research Grant Program

**Statement of Purpose.** In accordance with Texas Agriculture Code, Chapter 50B and Texas Alcoholic Beverage Code, Section 205.03, the Texas Department of Agriculture (TDA) seeks to fund grant proposals for enology and viticulture education and research. \$1,376,000 is available over the two-year grant period.

**Eligibility.** The grant funds may be awarded to public or private entities, including institutions of higher education and governmental entities. Joint efforts between eligible entities will be considered, and a project proposal may include a request for funding of a project to be conducted by more than one entity.

**Funding Parameters.** TDA reserves the right to fund projects partially or fully. TDA reserves the right to negotiate individual elements of any proposal and to reject any and all proposals. Where more than one proposal is acceptable for funding, TDA may request cooperation between grantees or revision/adjustment to a proposal in order to avoid duplication and to realize the maximum benefit to the state. Selected projects will receive funding on a cost-reimbursement basis.

All costs directly or indirectly related to preparation of a response to this Request for Proposals (RFP) or any oral presentation required to supplement and/or clarify the RFP which may be required by TDA shall be the sole responsibility of, and shall be borne by the applicant.

**Eligible Projects.** The project must meet at least one topical area listed below:

1. Developing and maintaining viticulture and enology-related education programs;
2. Eliminating diseases and pests that negatively impact the production of grapes and wine in the United States;
3. Developing technologies or practices that will increase grape production in Texas and will have an overall benefit to the production of grapes and wine; and
4. Conducting research in the areas of enology and viticulture to support the continued growth of the grape and wine industry.

### Objectives and Criteria.

1. Projects funded must be dedicated to education and/or conducting research in the areas of enology and viticulture to support the continued growth of the grape and wine industry.
2. Criteria that will be used in evaluating the proposal include:
  - a. Extent to which the proposal benefits and supports the growth of the wine grape and wine industry;
  - b. Extent to which the proposal contributes to a coordinated effort to address issues faced by the wine grape and wine industry, including the need for more educational and research opportunities in enology and viticulture, and increases the economic impact of the wine industry;

- c. Ability of the applicant institution to sustain an enology and/or viticulture program; and
- d. Detail and reasonableness of project budget submitted, including justification for proposed line item expenditures;
- e. Feasibility of the objectives; and
- f. Ability to measure objectives in a distinct quantifiable manner and provide meaningful support to the project's purpose.

### Proposal Limitations.

1. Projects may not exceed 2 years.
2. Proposals may not include more than 10% in indirect costs.

**Eligible Expenses.** Expenses that are necessary and reasonable for proper and efficient performance and administration of a project are eligible; however, these expenses must be properly documented with sufficient backup detail, including copies of paid invoices in accordance with grant agreement. Examples of eligible expenditures are:

1. Personnel costs - both salary and benefits;
2. Travel - domestic travel for employees only; out-of-state and international travel must be pre-approved;
3. Equipment - nonexpendable, tangible personal property that has a useful life of more than one year and costs \$5,000 or more (vehicle(s) purchase is not an eligible expenditure);
4. Supplies and direct operating expenses - equipment that costs less than \$5,000, such as research and office supplies, postage, telecommunications, printing, etc.;
5. Contracts - agreements made with other universities or private parties to perform a portion of the project; and
6. Indirect costs - no more than 10% of direct costs.

**Ineligible Expenses.** Expenses that are prohibited by state or federal law are ineligible. Refer to the Uniform Grant Management Standards for more detailed information. [http://www.governor.state.tx.us/divisions/stategrants/guidelines/file\\_s/UGMS062004.doc](http://www.governor.state.tx.us/divisions/stategrants/guidelines/file_s/UGMS062004.doc). The following are some examples of these ineligible expenses:

1. Alcoholic beverages;
2. Entertainment;
3. Contributions - charitable or political;
4. Expenses falling outside of the project grant agreement period;
5. Expenditures not specifically listed in the project budget; and
6. Expenses that are not adequately documented.

**Submission Requirements.** Each proposal may not exceed six (6) pages, the acceptable font size is 12 point, and all margins must be 1 inch and must include the following information:

1. Cover sheet with names, titles, addresses, telephone and fax numbers, and email addresses of the project managers. Indicate who is designated as the lead researcher and point of contact;

2. Proposal summary, not to exceed one page. Include a statement about how the proposal benefits the wine grape and wine industry;
3. Identification of the key personnel to be funded and/or involved in the project, including information on their experience;
4. Performance objectives;
5. Work plan;
6. Detailed description of the anticipated beneficial impact on the wine and grape industry; and
7. Detailed project budget outlining anticipated expenses including but not limited to: personnel, travel, supplies, contracts and equipment costs along with justification for proposed line item expenditures.

**Reporting Requirements.** Approved projects are required to submit the following reports:

1. Project reports on a quarterly basis detailing specific, deliverable accomplishment of project objectives for the time periods specified in the project grant agreement;
2. Final compliance project report due either upon completion of the project or sixty days after the termination of the project grant agreement. The final report shall be submitted in a hard copy format and an electronic format utilizing Word. The final report shall contain:
  - a. A project summary - history of the project, its objectives, importance, effort, results, and commercial applications of the project;
  - b. A description of the successes, challenges, and any limitations of the program;
  - c. Technical and economic content - overall background of the project and the part (if any) that research plays in providing results, discussion of the technical, social and other benefits to the local community and to Texas, discussion of the economics of the project, including direct impact on local communities (jobs) and/or indirect impact (related businesses), and commercialization of the project; and
  - d. A description of future plans, including how the project will continue after the grant is expended and how additional funding might address expansion efforts.
3. Budget reports on a quarterly basis for the time periods specified in the project grant agreement that details the grant award spent to date;
4. A final budget report due sixty days after the completion of the project or the termination of the project grant agreement; and
5. Subject to call of committee for presentations to provide specific reports on how the project is accomplishing this program's objectives with tangible results.

**General Compliance Information.**

1. All grant awards are subject to the availability of appropriations and authorizations by the Texas Legislature.
2. Any delegation by the Grantee to a subcontractor regarding any duties and responsibilities imposed by the grant award shall be approved in advance by TDA and shall not relieve the Grantee of its responsibilities to TDA for their performance.
3. Any information or documentation submitted to TDA is subject to disclosure under the Texas Public Information Act.
4. Awarded grant projects must remain in full compliance or be subject to termination at the discretion of TDA.
5. While TDA attempts to observe the strictest confidence in handling the research proposals, it cannot guarantee complete confidentiality on any matters that lie beyond its control. The confidentiality of recipi-

ent's "proprietary data" so designated shall be strictly observed to the extent permitted by appropriate Texas laws, including the Texas Public Information Act. There shall be no restriction on the publication of research results except when taking into consideration effects of prior publication on possible patents or use of copyrighted material.

6. Control of the ownership and disposition of all patentable products and inventories shall be agreed to by Grantee and TDA. A copy of the grantee's intellectual property policy should be made available to TDA upon request.

7. Grant recipients must keep a separate bookkeeping account with a complete record of all expenditures relating to the research project. Records shall be maintained for three years after the completion of the research project or as otherwise agreed upon with TDA. TDA and the Texas State Auditor's Office reserve the right to examine all books, documents, records, and accounts relating to the research project at any time throughout the duration of the agreement and for three years immediately following completion of the project. If there has been any litigation, claim, negotiation, audit or other action started prior to the expiration of the three-year period involving the records, then the records must be retained until the completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later. TDA and the Texas State Auditor's Office reserve the right to inspect the research locations and to obtain from the research team full information regarding all project activities.

8. If the Grantee has a financial audit performed in any year during which Grantee receives funds from TDA, and if TDA requests information about the audit, the Grantee shall provide such information to TDA or provide information as to where the audit report can be publicly viewed, including the audit transmittal letter, management letter, and any schedules in which the Grantee's funds are included.

9. Grant awards to Texas institutions shall comply in all respects with the Uniform Grant Management Standards (UGMS). A copy may be downloaded from the following website: [www.governor.state.tx.us/divisions/stategrants/guidelines/files/UGMS0 12001.doc](http://www.governor.state.tx.us/divisions/stategrants/guidelines/files/UGMS0 12001.doc)

**Deadline for Submission of Responses.** Responses to this request should be submitted to Texas Department of Agriculture, Attention: Ms. Mindy Fryer, Grants Specialist, P.O. Box 12847, Austin, Texas 78711. The street address is 1700 North Congress, 11th Floor, Austin, Texas 78701. Fax: (888) 223-9048, e-mail: [grants@TexasAgriculture.gov](mailto:grants@TexasAgriculture.gov).

**Submissions must be received no later than 5:00 p.m. on January 22, 2010.**

TDA will send an acknowledgement receipt by email indicating the response was received.

For questions regarding submission of the proposal and TDA documentation requirements, please contact Ms. Mindy Fryer, Grants Specialist, at (512) 463-6908 or by email at [grants@TexasAgriculture.gov](mailto:grants@TexasAgriculture.gov).

**Texas Public Information Act.** All proposals shall be deemed, once submitted, to be the property of the TDA and are subject to the Texas Public Information Act, Texas Government Code, Chapter 552.

TRD-200905534  
 Dolores Alvarado Hibbs  
 General Counsel  
 Texas Department of Agriculture  
 Filed: December 2, 2009



## Request for Proposals: Enology Education and Research Grant Program

**Statement of Purpose.** In accordance with Texas Agriculture Code, Chapter 50B and Texas Alcoholic Beverage Code, §205.03, the Texas Department of Agriculture (TDA) is required to fund grant proposals for enology education and research totaling \$560,000 for the 2010-2011 Biennium.

**Eligibility.** Pursuant to statutory direction, TDA shall grant funds to an appropriate institution of higher education. Joint efforts between eligible entities will be considered, and a project proposal may include a request for funding of a project to be conducted by more than one entity.

**Funding Parameters.** TDA reserves the right to fund projects partially or fully. TDA reserves the right to negotiate individual elements of any proposal and to reject any and all proposals. Where more than one proposal is acceptable for funding, TDA may request cooperation between grantees or revision/adjustment to a proposal in order to avoid duplication and to realize the maximum benefit to the state. Selected projects will receive funding on a cost-reimbursement basis.

All costs directly or indirectly related to preparation of a response to this Request for Proposals (RFP) or any oral presentation required to supplement and/or clarify the RFP which may be required by TDA shall be the sole responsibility of, and shall be borne by the applicant.

**Eligible Projects.** Section 205.03, Texas Alcoholic Beverage Code states that TDA shall distribute funds as follows annually:

1. \$50,000 to fund a faculty position in enology outreach;
2. \$50,000 to fund enology outreach program operations;
3. \$50,000 to fund a faculty position in enology research;
4. \$50,000 to fund enology research program operations;
5. \$30,000 for technical support personnel for enology research; and
6. \$50,000 to fund two graduate internships in enology.

### Objectives and Criteria.

1. Projects funded must be dedicated to education and/or conducting research in enology and to support the continued growth of the grape and wine industry in Texas.
2. Criteria that will be used in evaluating the proposal include:
  - a. Extent to which the proposal benefits and supports the growth of the wine grape and wine industry;
  - b. Extent to which the proposal contributes to a coordinated effort to address issues faced by the wine grape and wine industry, including the need for more educational and research opportunities in enology, and increases the economic impact of the wine industry;
  - c. Ability of the applicant institution to sustain an enology program;
  - d. Detail and reasonableness of project budget submitted, including justification for proposed line item expenditures;
  - e. Feasibility of objectives; and
  - f. The ability to measure objectives in a distinct quantifiable manner and provide meaningful support to the project's purpose.

### Proposal Limitations.

1. Projects may not exceed 2 years.
2. Proposals may not include more than 10% in indirect costs.

**Eligible Expenses.** Expenses that are necessary and reasonable for proper and efficient performance and administration of a project are eligible; however, these expenses must be properly documented with sufficient backup detail, including copies of paid invoices in accordance with grant agreement. Examples of eligible expenditures are:

1. Personnel costs - both salary and benefits;
2. Travel - domestic travel for employees only; out-of-state and international travel must be pre-approved;
3. Equipment - nonexpendable, tangible personal property that has a useful life of more than one year and costs \$5,000 or more (vehicle(s) purchase is not an eligible expenditure);
4. Supplies and direct operating expenses - equipment that costs less than \$5,000, such as research and office supplies, postage, telecommunications, printing, etc.;
5. Contracts - agreements made with other universities or private parties to perform a portion of the project; and
6. Indirect costs - no more than 10% of direct costs.

**Ineligible Expenses.** Expenses that are prohibited by state or federal law are ineligible. Refer to the Uniform Grant Management Standards for more detailed information. [http://www.governor.state.tx.us/divisions/stategrants/guidelines/file\\_s/UGMS062004.doc](http://www.governor.state.tx.us/divisions/stategrants/guidelines/file_s/UGMS062004.doc). The following are some examples of these ineligible expenses:

1. Alcoholic beverages;
2. Entertainment;
3. Contributions - charitable or political;
4. Expenses falling outside of the project grant agreement period;
5. Expenditures not specifically listed in the project budget; and
6. Expenses that are not adequately documented.

**Submission Requirements.** Each proposal may not exceed six (6) pages, the acceptable font size is 12 point, and all margins must be 1 inch and must include the following information:

1. Cover sheet with names, titles, addresses, telephone and fax numbers, and email addresses of the project managers. Indicate who is designated as the lead researcher and point of contact;
2. Proposal summary, not to exceed one page. Include a statement about how the proposal benefits the wine grape and wine industry;
3. Identification of the key personnel to be funded and/or involved in the project, including information on their experience;
4. Performance objectives;
5. Work plan;
6. Detailed description of the anticipated beneficial impact on the wine and grape industry; and
7. Detailed project budget outlining anticipated expenses including but not limited to: personnel, travel, supplies, contracts, and equipment costs along with justification for proposed line item expenditures.

**Reporting Requirements.** Approved projects are required to submit the following reports:

1. Project reports on a quarterly basis detailing specific, deliverable accomplishment of project objectives for the time periods specified in the project grant agreement;
2. Final compliance project report due either upon completion of the project or sixty days after the termination of the project grant agree-

ment. The final report shall be submitted in a hard copy format and an electronic format utilizing Word. The final report shall contain:

- a. A project summary - history of the project, its objectives, importance, effort, results, and commercial applications of the project;
  - b. A description of the successes, challenges, and any limitations of the program;
  - c. Technical and economic content - overall background of the project and the part (if any) that research plays in providing results, discussion of the technical, social and other benefits to the local community and to Texas, discussion of the economics of the project, including direct impact on local communities (jobs) and/or indirect impact (related businesses), and commercialization of the project; and
  - d. A description of future plans, including how the project will continue after the grant is expended and how additional funding might address expansion efforts.
3. Budget reports on a quarterly basis for the time periods specified in the project grant agreement that details the grant award spent to date;
  4. A final budget report due sixty days after the completion of the project or the termination of the project grant agreement; and
  5. Subject to call of committee for presentations to provide specific reports on how the project is accomplishing this program's objectives with tangible results.

#### **General Compliance Information.**

1. All grant awards are subject to the availability of appropriations and authorizations by the Texas Legislature.
2. Any delegation by the Grantee to a subcontractor regarding any duties and responsibilities imposed by the grant award shall be approved in advance by TDA and shall not relieve the Grantee of its responsibilities to TDA for their performance.
3. Any information or documentation submitted to TDA as part of the project grant proposal is subject to disclosure under the Texas Public Information Act.
4. While TDA attempts to observe the strictest confidence in handling the research proposals, it cannot guarantee complete confidentiality on any matters that lie beyond its control. The confidentiality of recipient's "proprietary data" so designated shall be strictly observed to the extent permitted by appropriate Texas laws, including the Texas Public Information Act. There shall be no restriction on the publication of research results except when taking into consideration effects of prior publication on possible subsequent patent and license to use copyrighted material.
5. Awarded grant projects must remain in full compliance with state and federal laws and regulations. Noncompliance with such law may result in termination by TDA.
6. Control of the ownership and disposition of all patentable products and inventories shall be agreed to by Grantee and TDA. A copy of the grantee's intellectual property policy should be made available to TDA upon request.
7. Grant recipients must keep a separate bookkeeping account with a complete record of all expenditures relating to the research project. Records shall be maintained for three years after the completion of the research project or as otherwise agreed upon with TDA. TDA and the Texas State Auditor's Office reserve the right to examine all books, documents, records, and accounts relating to the research project at any time throughout the duration of the agreement and for three years immediately following completion of the project. If there has been any litigation, claim, negotiation, audit or other action started prior to

the expiration of the three-year period involving the records, then the records must be retained until the completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later. TDA and the Texas State Auditor's Office reserve the right to inspect the research locations and to obtain from the research team full information regarding all project activities.

8. If the Grantee has a financial audit performed in any year during which Grantee receives funds from TDA, and if TDA requests information about the audit, the Grantee shall provide such information to TDA or provide information as to where the audit report can be publicly viewed, including the audit transmittal letter, management letter, and any schedules in which the Grantee's funds are included.

9. Grant awards to Texas institutions shall comply in all respects with the Uniform Grant Management Standards (UGMS). A copy may be downloaded from the following website: [www.governor.state.tx.us/divisions/stategrants/guidelines/files/UGMS012001.doc](http://www.governor.state.tx.us/divisions/stategrants/guidelines/files/UGMS012001.doc)

**Deadline for Submission of Responses.** Responses to this request should be submitted to Ms. Mindy Fryer, Grants Specialist, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. The street address is 1700 North Congress, 11th Floor, Austin, Texas 78701. Fax: (800) 509-1190, e-mail: [grants@TexasAgriculture.gov](mailto:grants@TexasAgriculture.gov).

**Submissions must be received no later than 5:00 p.m. on Friday, January 22, 2010.**

TDA will send an acknowledgement receipt by email indicating the response was received.

For questions regarding submission of the proposal and TDA documentation requirements, please contact Ms. Mindy Fryer, Grants Specialist, at (512) 463-6908 or by email at [grants@TexasAgriculture.gov](mailto:grants@TexasAgriculture.gov).

**Texas Public Information Act.** All proposals shall be deemed, once submitted, to be the property of the TDA and are subject to the Texas Public Information Act, Texas Government Code, Chapter 552.

TRD-200905535

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Filed: December 2, 2009

## **Comptroller of Public Accounts**

### **Certification of the Average Taxable Price of Gas and Oil - October 2009**

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined that the average taxable price of crude oil for reporting period October 2009, as required by Tax Code, §202.058, is \$55.65 per barrel for the three-month period beginning on July 1, 2009, and ending September 30, 2009. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of October 2009, from a qualified Low-Producing Oil Lease, is not eligible for exemption from the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined that the average taxable price of gas for reporting period October 2009, as required by Tax Code, §201.059, is \$2.74 per mcf for the three-month period beginning on July 1, 2009, and ending September 30, 2009. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of October 2009, from a qualified Low-Producing Gas Well, is eligible

for 50% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

Inquiries should be directed to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-200905515

Martin Cherry

General Counsel

Comptroller of Public Accounts

Filed: November 30, 2009



#### List of States with Resident Bidder Preferences

The list of state preference statutes and regulations below is published pursuant to Texas Government Code, §2252.003. The list should be used by Texas purchasing personnel in applying the "reciprocal preference" to bidders from other states (see Texas Government Code, §2252.002). A "reciprocal preference" is a purchasing preference where a purchasing entity gives a preference to its in-state bidders equivalent to what another state would give to its in-state bidders against a bidder from another state.

In compiling the list of other states' preference laws and regulations, citations to "in state" preference programs similar to Texas Human Resource Code, Chapter 122 (relating to Texas Council on Purchasing from People with Disabilities) and Government Code, Chapter 497 (relating to Texas Correctional Industries) have been omitted. Although these preferences theoretically favor "in state" bidders, there is no basis for applying reciprocal preference based on those state statutes since Texas has similar provisions. Citations to other preferences which do not discriminate based upon state of origin, such as recycled products preferences, have also been omitted. If state purchasers, agency counsel, or other staff have questions or concerns regarding the list or its application, please contact the Texas Procurement and Support Services division of the comptroller at [procurement\\_info@cpa.state.tx.us](mailto:procurement_info@cpa.state.tx.us) or (512) 463-3034.

#### ALABAMA

##### ALABAMA RESIDENT BIDDER PREFERENCE

**Certain State Agencies:** Preference to be given to Alabama commodities, firms, etc., Alabama Code, §41-16-57(b). In the purchase of or contract for personal property or contractual services preference shall be given to Alabama persons, firms, or corporations provided there is no sacrifice or loss in price or quality. Public Works contracts are specifically excluded as they are governed exclusively by Title 39 of the Code of Alabama. See reciprocal preference below.

**Generally:** Manner of awarding contracts generally; records; exemptions, Alabama Code, §41-16-27(c) and (f). Preference, provided there is no sacrifice or loss in price or quality, to commodities produced in Alabama or sold by Alabama persons, firms, or corporations. Alabama business entity (defined as any sole proprietorship, partnership, or corporation organized in the State of Alabama) to have preference in contractual services and purchases of personal property regarding certain services negotiated on behalf of two-year and four-year colleges and universities, unless the product or service supplied by a foreign corporation is substantially different or superior to the product or service supplied by the Alabama business entity.

**Highways:** Purchase of motor fuels, oils, greases and lubricants, Alabama Code, §23-1-51(a). All motor fuels, oils, greases and lubricants bought by or for the State Department of Transportation for use in the construction, maintenance and repair of the county roads and bridges

shall be purchased from vendors and suppliers residing in the county where such motor fuels, oils, greases and lubricants are to be used.

**Local Agencies:** Contracts for which competitive bidding required generally, Alabama Code, §41-16-50(a). Bids for items of personal property where the county, a municipality, or an instrumentality thereof is awarding authority, may award to bidder that is resident of "local preference zone" if bid is no more than 3.0% greater than that of the lowest bid.

**Public Contracts:** Contracts for which competitive bidding required; award to preferred vendor, Alabama Code, §41-16-20. Public contracts of \$7,500 or more awarded to "referred vendor" if price not more than 5.0% greater than lowest responsible bidder. Definition of "referred vendor" includes priority preference ranking and centers on location of manufacturing, and whether the business is located within the state. Public Works contracts are specifically excluded as they are governed exclusively by Title 39 of the Code of Alabama. See reciprocal preference below.

#### ALABAMA RECIPROCAL PREFERENCE

**Public Works:** Preference to resident contractors in letting of certain public contracts Alabama Code, §39-3-5. Application of reciprocal preference.

#### ALASKA

##### ALASKA RESIDENT BIDDER PREFERENCE

**Art:** Art requirements for public buildings and facilities, Alaska Statute, §35.27.020. Use of state cultural resources and selection of Alaska resident artists for commission of art works for public buildings and facilities is encouraged.

**Public Contracts:** Competitive Sealed Bidding; Contract award after bids, Alaska Statute, §36.30.170. "Alaska bidder" is defined as one holding a current Alaska business license, has maintained a place of business in the state for at least six months prior to the bid, and submits the bid in the name of the current business license holder. Alaska bidder preference of 5.0% for contracts based on solicited bids; Alaska bidder offering services through an employment program shall be awarded contract if bid not more than 15% higher than lowest bid; Alaska bidder preference of 5% for insurance-related contracts; Alaska bidder that is "qualifying entity" (one owned by a person with disability) shall be awarded contract if bid is not more than 10% higher than lowest bid; Alaska bidder with 50% or more of the bidder's employees qualifying as persons with a disability shall be awarded contract if bid is not more than 10% higher than lowest bid.

**Public Contracts:** Competitive Sealed Proposals; Award of contract, Alaska Statute, §36.30.250. Procurement officer shall take into account whether offeror qualifies as Alaska bidder in determining whether a proposal is advantageous to the state.

**Public Contracts:** Evaluation of Proposals, Alaska Administrative Code, Title 2, §12.260. Proposed price of Alaska bidder reduced by 5.0%; Numerical rating system 10% of total possible value assigned to proposal of Alaska bidder.

**Public Contracts:** Preferences, Alaska Statute Chapter 36, Article 05, §36.30.322. Forest Products; Only timber, lumber, and manufactured lumber products originating in this state from Alaska forests may be procured by an agency or used in construction projects of an agency unless the manufacturers and suppliers who have notified the commissioner of commerce, community, and economic development of their willingness to manufacture or supply Alaska forest products, §§36.30.324-36.30.332, Alaska Products Preference: Alaska products shall be used whenever practicable in procurements for an agency. Recycled Alaska products shall be used when they are of comparable



quality, of equivalent price, and appropriate for the intended use. Products are classified as "Alaska Products" by what percentage of the material and supplies are from "value added" in the State of Alaska. Penalties (reduced payments) are applied if a bidder commits to use of Alaska products and does not actually use them.

## ARIZONA

### ARIZONA RESIDENT BIDDER PREFERENCE

Preference for locally manufactured materials; Arizona Revised Statutes Ann. §34-242; Preference for bidders who furnish materials produced or manufactured in the State of Arizona to construct a building or structure, or additions to or alterations of existing buildings or structures to any political subdivision of the State of Arizona as long as a competing bidder is less than 5.0% lower. Bidders cannot claim a preference pursuant to both §34-242 and §34-243 and may not receive more than 5.0% total preference.

Preference for materials supplied by resident dealers; Arizona Revised Statutes Ann. §34-243; Preference to bidders who furnish materials supplied by a dealer who is a resident of the State of Arizona and paid taxes for no fewer than past two years to construct a building or structure, or additions to or alterations of existing buildings or structures for any political subdivision of Arizona whenever the bid of a competing bidder is less than 5.0% lower than that of the resident dealer.

## ARKANSAS

### ARKANSAS RESIDENT BIDDER PREFERENCE

Public Art Program: Selection committees, Arkansas Code Ann. §13-8-206(c)(2). If all factors equivalent, preference given to works of art by Arkansas artists.

Arkansas Procurement Law: Preference Among Bidders, Arkansas Code Ann., §19-11-259(B) (applies only to counties, municipalities and political subdivisions of the state and not to state agencies, as defined in §19-11-259(E)). If at least one bidder makes written claim for residency preference, preference given to resident Arkansas firm if bid not more than 5.0% of lowest nonresident bid. Bidder receiving preference for recycled paper may not also receive residency preference (see Arkansas Code Ann., §19-11-260, below).

Recycled Paper Products Preference: Arkansas Code Ann., §19-11-260 allows for an additional 1.0% preference for products containing the largest amount of recycled postconsumer paper materials recovered within the State of Arkansas.

Purchasing and Contracts: Priority for State Industries, Arkansas Code Ann., §19-11-304. Preference given to private industries located within Arkansas and employing Arkansas taxpayers over out-of-state penal institutions employing convict labor.

Purchasing and Contracts: Multiple private industry bids, Arkansas Code Ann., §19-11-305. Preference given to Arkansas bidder if bid not more than 5.0% over lowest nonresident private industry bidder and not more than 15% over lowest out-of-state correctional institution bidder.

Professional Services: Evaluation of qualifications, Arkansas Code Ann., §19-11-803. In evaluating qualifications shall consider firm's proximity to, and familiarity with, the area in which the project is located.

## CALIFORNIA

### CALIFORNIA RESIDENT BIDDER PREFERENCE

Agricultural Aircraft Operators: Giving contracts and purchasing supplies from residents, California Government Code, §4361. Preference given to agricultural aircraft operators who are California residents if

bids do not exceed by more than 5.0% lowest bid of nonresident agricultural aircraft operators.

Art in Public Buildings: State architect and council; duties, California Government Code, §15813.3. Preference may be given to artists who are California residents.

Enterprise Zone Act: State contracts for goods; preferences for bidders with worksites in enterprise zones, California Government Code, §7084.

Subsection (a) - Preference of 5.0% when the state prepares a solicitation for a contract for goods in excess of \$100,000, except a contract in which the worksite is fixed by the provisions of the contract, to California based companies which demonstrate and certify that not less than 50% of the labor hours required to perform the contract shall be accomplished at a worksite or worksites located in an enterprise zone.

Subsection (b) - Preference of 5.0% in evaluating proposals for contracts for services in excess of \$100,000, except a contract in which the worksite is fixed by the provisions of the contract, to California based companies who demonstrate and certify that not less than 90% of the labor hours required to perform the contract shall be accomplished at a worksite or worksites located in an enterprise zone.

Subsection (c) - Bidders complying with subsection (a) or (b) awarded preference as follows:

1.0% preference awarded to bidders who certify under penalty of perjury to hire persons living within a targeted employment area or enterprise zone equal to 5 to 9% of its workforce during the period of contract performance.

2.0% preference given to bidders who agree to hire persons living within a targeted employment area or enterprise zone equal to 10 to 14% of its work force during the period of contract performance.

3.0% preference given to bidders who agree to hire persons living within a targeted employment area or enterprise zone equal to 15 to 19% of its workforce during the period of contract performance.

4.0% preference given to bidders who agree to hire persons living within a targeted employment area or enterprise zone equal to 20% or more of its workforce during the period of the contract performance.

Subsection (d) - The maximum preference a bidder may be awarded is 15%. The maximum preference cost is not to exceed \$50,000 and if combined with other preference laws is not to exceed \$100,000.

Subsection (e) - Small business bidders qualified in accordance with §14838 shall have preference over non-small business bidders.

Local Agency Military Base Recovery Area Act: Preferences awarded to bidders on state contracts, California Government Code, §7118.

Subsection (a) - Preference of 5.0% when the state prepares a solicitation for contracts for goods in excess of \$100,000, except a contract in which the worksite is fixed by the provisions of the contract, to California-based companies who demonstrate and certify under penalty of perjury that no less than 50% of the labor required to perform the contract will be accomplished at a worksite or worksites located in a local agency military base recovery area ("LAMBRA").

Subsection (b) - Preference of 5.0% in evaluating proposals for contracts for services in excess of \$100,000, except a contract in which the worksite is fixed by the provisions of the contract, to California-based companies who demonstrate and certify under penalty of perjury that no less than 90% of the labor required to perform the contract is accomplished at a worksite or worksites located in a local LAMBRA.

Subsection (c) - Bidders complying with subsection (a) or (b) awarded preference as follows:

1.0% preference for bidders who certify under penalty of perjury to hire persons living within a LAMBRA that is equal to 5 to 9% of its work force during the period of contract performance.

2.0% preference for bidders who agree to hire persons living within a LAMBRA that is equal to 10 to 14% of its work force during the period of contract performance.

3.0% preference for bidders who agree to hire persons living within a LAMBRA that is equal to 15 to 19% of its work force during the contract performance.

4.0% preference for bidders who hire persons living within a LAMBRA that is equal to 20% or more of its work force during the contract performance.

Subsection (d) - The maximum preference a bidder may be awarded is 15%. The maximum preference cost is not to exceed \$50,000 and if combined with other preference laws is not to exceed \$100,000.

Subsection (e) - Small business bidder qualified in accordance with §14838 given preference over non-small business bidder.

Small Business Procurement and Contract Act: Preferences for Small and Micro Businesses, California Government Code, §§14835-14843. In solicitations where an award is to be made to the lowest responsible bidder meeting specifications, the preference to small business and microbusiness is 5.0% of the lowest responsible bidder meeting specifications. Definition of "small business" includes requirement that the principal office of the business is located in California, and that the businesses officers are domiciled in California. The preference to non-small business bidders that provide for small business or microbusiness subcontractor participation is, up to a maximum of 5.0% of the lowest responsible bidder meeting specifications. In solicitations where an award is to be made to the highest scored bidder based on evaluation factors in addition to price, the preference to small business or microbusiness is 5.0% of the highest responsible bidder's total score. The preference to non-small business bidders that provide for small business or microbusiness subcontractor participation is up to a maximum 5.0% of the highest responsible bidder's total score. The maximum small business preference shall not exceed \$50,000 for any bid and the combined cost for preferences granted by law shall not exceed \$100,000.

Target Area Contract Preference Act (TACPA), California Government Code, §4530-4535.3. Preference for California based companies submitting bids or proposals for state contracts to be performed at work-sites in distressed areas by persons with a high risk of unemployment when the contract is for goods or services in excess of \$100,000.00. Sections are discussed in more detail below.

TACPA: Contracts for goods; preference to companies performing contracts in distressed areas, California Government Code, §4533. Preference of 5.0% when the state prepares a solicitation for contracts for goods in excess of \$100,000, except a contract in which the worksite is fixed by the provisions of the contract, to California based companies who demonstrate and certify under penalty of perjury that at least 50% of the labor hours required to manufacture the goods and perform the contract is performed at a worksite or worksites located in a distressed area.

TACPA: Contracts for goods; additional preference, California Government Code, §4533.1. Additional preference awarded to bidders for contracts of goods in excess of \$100,000 and who comply with §4533 in following amounts:

1.0% preference for bidders who certify under penalty of perjury to hire persons with high risk of unemployment equal to 5 to 9% of its work force during the period of contract performance;

2.0% preference for bidders who agree to hire persons with high risk of unemployment equal to 10 to 14% of its work force during the period of contract performance;

3.0% preference for bidders who agree to hire persons with high risk of unemployment equal to 15 to 19% of its workforce during the period of contract performance; and

4.0% preference for bidders who agree to hire persons with high risk of unemployment equal to 20% or more of its workforce during the period of contract performance.

TACPA: Contracts for services; preference to companies performing contract in distressed areas, California Government Code, §4534. Preference of 5.0% in evaluating proposals for contracts for services in excess of \$100,000, except a contract in which the worksite is fixed by the provisions of the contract, to California based companies who demonstrate and certify under penalty of perjury that no less than 90% of the total labor hours required for the contract is performed at a worksite or worksites located in a distressed area.

TACPA: Contracts for services; additional preferences, California Government Code, §4534.1. Additional preference awarded to bidders for contracts for services in excess of \$100,000 and who comply with §4534 in following amounts:

1.0% preference for bidders who certify under penalty of perjury to hire persons with high risk of unemployment equal to 5 to 9% of its work force during the period of contract performance;

2.0% preference for bidders who agree to hire persons with high risk of unemployment equal to 10 to 14% of its work force during the period of contract performance;

3.0% preference for bidders who agree to hire persons with high risk of unemployment equal to 15 to 19% of its workforce during the period of contract performance; and

4.0% preference for bidders who agree to hire persons with high risk of unemployment equal to 20% or more of its workforce during the period of contract performance.

TACPA: Maximum preference; small business bidder preference, California Government Code, §4535.2. The maximum preference a bidder may be awarded is 15%. The maximum preference cost is not to exceed \$50,000 and if combined with other preference laws is not to exceed \$100,000. Small business bidders qualified in accordance with §14838 shall have precedence over non-small business bidders.

Regulations Employment and Economic Incentive Act: Worksite preference; contract for goods, California Code Register, Title 2, §1896.101. Preference of 5.0% when a state agency prepares an invitation for bid (IFB) for a contract for the purchase of goods exceeding \$100,000, except a contract where the worksite will be fixed by the terms of the contract, to California-based companies who certify under penalty of perjury that no less than 50% of the labor required to perform the contract shall be accomplished at a worksite or worksites located in a program area.

Employment and Economic Incentive Act: Hiring preference; contract for goods, California Code Register, Title 2, §1896.102. Additional preferences for bidder complying with §1896.101 from 1.0% to 4.0% in accordance with California Government Code, §7084.

Employment and Economic Incentive Act: Worksite preference; contract for services, California Code Register, Title 2, §1896.104. For contract for services in excess of \$100,000, preference of 5.0% for California companies that perform contract at worksite or worksites located in program area.

Employment and Economic Incentive Act: Hiring preference; contract for services, California Code Register, Title 2, §1896.105. Additional preferences for bidder complying with §1896.104 from 1.0% to 4.0% in accordance with California Government Code, §7084.

Small Business: Application of 5.0% preferences, California Code Register, Title 2, §1896.6. Small Businesses and Non-small Business Subcontractor.

Small Business: Computing the 5.0% preferences, California Code Register, Title 2, §1896.8. Computing Small Business and Non-small Business Subcontractor preferences.

Small Business: Eligibility for Certification as small business, California Code Register, Title 2, §1896.12. Eligibility for certification as small business includes requirement that the principal office is located in California.

Target Area Contract Preference Act: Worksite preference; purchase of goods, California Code Register, Title 2, §1896.31. Preference of 5.0% when a state agency prepares an invitation for bid (IFB) for a contract in excess of \$100,000, except a contract where the worksite will be fixed by the terms of the contract, to California based companies who certify under the penalty of perjury that no less than 50% of labor shall be accomplished at worksite located in distressed area.

Target Area Contract Preference Act: Hiring preference; purchase of goods, California Code Register, Title 2, §1896.32. Additional preferences for bidder complying with §1896.31 from 1.0% to 4.0% in accordance with California Government Code, §4533.1.

Target Area Contract Preference Act: Worksite preference; contract for services, California Code Register, Title 2, §1896.34. Preference of 5.0% when a state agency prepares an IFB or a request for proposals (RFP) for a contract for services in excess of \$100,000, except an IFB or a RFP where the worksite is fixed by the terms of the contract, to California based companies who certify under penalty of perjury that they will perform contract at worksite or worksites located in distressed area.

Target Area Contract Preference Act: Hiring Preference; contract for services, California Code Register, Title 2, §1896.35. Additional preferences for bidder complying with §1896.34 from 1.0% to 4.0% in accordance with California Government Code, §4534.1.

#### CALIFORNIA RECIPROCAL PREFERENCE

Public Contracts: California company; reciprocal preference against nonresident contractors, California Pub. Cont. Code §6107. Application of reciprocal preference California resident small businesses may claim the higher of this preference or the small bidder preference from California Government Code, §14835 et seq., but may not claim both.

#### COLORADO

##### COLORADO RESIDENT BIDDER PREFERENCE

Agricultural Products: Preference for state agricultural products, Colorado Revenue Statute Ann., §8-18-103. Contract awarded to resident bidder who produces products in state if of equal quality, suitable for bid, sufficient in quantity, and bid price equal or not reasonably exceeding lowest bid.

Commodities: Bid preference; state contracts, Colorado Revenue Statute Ann., §8-18-101(b). In invitation for bids for commodities contract, low tie bids between resident bidder and nonresident bidder, resident bidder given preference.

Design-Build Contracts: General procedures, Colorado Revenue Statute Ann., §43-1-1406. Preference to Colorado residents.

Professional Services: Preliminary selections, Colorado Revenue Statute Ann., §24-30-1403. In selection, Colorado firms given preference when qualifications appear to be equal.

Source Selection: Low tie Bids; award procedure and determination; bid preference, Colorado Revenue Statute Ann., §§24.103-202.5. In invitation for bids for supply contract, low tie bids between resident bidder and nonresident bidder, resident bidder given preference.

Contracts: Preferences 1 Colorado Code Register Article 111, R-24-111-102-02(b). In event of tie bids for commodities, preference given to resident bidder.

#### COLORADO RECIPROCAL PREFERENCE

Construction Project: Bid preference - public projects, Colorado Revenue Statute Ann., §8-19-101. Colorado resident bidder given a preference against a nonresident bidder from a state or foreign country equal to the preference given or required by the state or foreign country in which the nonresident bidder is a resident.

Public Projects: Resident bidder - reciprocity, Colorado Revenue Statute Ann., §8-19-102.5. Application of reciprocal preference.

#### CONNECTICUT

##### CONNECTICUT RESIDENT BIDDER PREFERENCE

Purchases and Printing: Award of contracts, Connecticut General Statute, §4a-59(c). All other factors being equal, preference given to supplies, materials and equipment produced, assembled or manufactured in the state and services originating and provided in the state.

#### DELAWARE

##### DELAWARE RESIDENT BIDDER PREFERENCE

Public Works: Large public works contract procedure; preference for Delaware labor, Delaware Code Ann. Title 29, §6962(d)(4)(b). Preference for Delaware laborers, workers or mechanics in the construction of all public works for the State of Delaware or any political subdivision, or by firms contracting with the State or any political subdivision thereof.

#### FLORIDA

##### FLORIDA RESIDENT BIDDER PREFERENCE

Procurement of Personal Property and Services; Commodities manufactured, grown, or produced in state given preference, Florida Statutes, §287.082. Whenever two or more competitive sealed bids are received, one or more of which relates to commodities manufactured, grown, or produced within this state, and whenever all things stated in such received bids are equal with respect to price, quality, and service, the commodities manufactured, grown, or produced within this state shall be given preference.

Procurement of Personal Property and Services; Preference to certain foreign manufacturers, Florida Statutes, §287.092. Any foreign manufacturing company with a factory in Florida and employing over 200 employees working in the state shall have preference over any other foreign company when price, quality, and service are the same, regardless of where the product is manufactured.

Public Buildings: Preference to home industries in building public buildings, Florida Statutes, §255.04. In erecting or constructing any public administrative or institutional building, preference given in letting of contracts for construction to material men, contractors, builders, architects, and laborers who reside in Florida as long as they can be employed at no greater expense than nonresident.

Public Printing: Preference given printing within the state, Florida Statutes, §283.35. In contract to have materials printed, preference

given to vendors located within Florida as long as printing can be done at no greater expense.

**Drug-free Workplace:** Preference to businesses with drug-free workplace programs, Florida Statutes, §287.087. When two or more bids, responses, or replies are identical with respect to price, quality, and services, the business certifying that they have implemented a drug-free workplace program shall be given preference.

**Identical Responses:** Identical Evaluations of Responses, Florida Administrative Code, §60A-1.011. When confronted with identical pricing or scoring from multiple vendors, agencies are instructed to utilize the order of preference listed.

**Commodities:** Public Service Commission Source Selection, bid openings and contract awards, preference to bidders within the state, §25-25.009(5), Florida Administrative Code. Preference to bidders within Florida if commodities can be purchased at no greater expense, and of equal quality. This is only applicable to the Public Service Commission.

#### FLORIDA RECIPROCAL PREFERENCE

**Commodities, Insurance and Contractual Services:** Preference to Florida businesses, Florida Statutes, §287.084. Application of reciprocal preference in purchases of personal property. Out-of-state bidders must provide a legal opinion regarding preferences in their home jurisdiction.

#### GEORGIA

##### GEORGIA RESIDENT BIDDER PREFERENCE

**Art:** Duties of Georgia Council for the Arts, Georgia Code Ann., §8-5-5. Preference may be given to artists who are Georgia residents.

**Purchasing:** Preference to Georgia products, etc., Georgia Code Ann., §50-5-60(a). Assuming there is no sacrifice or loss in price or quality preference given in state purchasing to Georgia goods and labor. Also, preference in all cases given to surplus products or articles produced or manufactured by other state departments, institutions, or agencies, which are available for distribution.

**Purchasing:** Use of compost in road building, etc., Georgia Code Ann., §50-5-60.4. Preference given to compost and mulch made in the State of Georgia from organics which are source separated from the state's nonhazardous solid waste stream.

**Purchasing:** State and local authorities to give preference to supplies, materials, and printing produced in Georgia, Georgia Code Ann. §50-5-61. State and local authorities shall give preference in purchasing and contracting, as far as may be reasonable and practicable, to supplies, materials, equipment, and agricultural products manufactured or produced in this state. Such preference shall not sacrifice price or quality.

**Purchasing:** Preference to local sellers, Georgia Code Ann., §50-5-62. All things being equal, preference given to local sellers of Georgia products, where the interest of the state is not sacrificed, and the quality and prices permit it.

#### GEORGIA RECIPROCAL PREFERENCE

**Purchasing:** Preference to Georgia products, etc., Georgia Code Ann., §50-5-60(b). Application of reciprocal preference.

#### HAWAII

##### HAWAII RESIDENT BIDDER PREFERENCE

**Economic Development:** Contracts, Hawaii Revenue Statute, §201-4. The department of business, economic development and tourism may contract with qualified private and public agencies, associations, firms,

or individuals provided that preference is given to contractors within the state.

**Procurement: Preferences;** Hawaii Products, Hawaii Revenue Statute, §103D-1002. Applies a preference for Hawaii products in three tiers (I, II, and III) depending on the amount of the overall value of the product manufacturing cost is added in Hawaii. Tier I is more than 25%, Tier II is more than 50%, and Tier III is more than 75%. Preference is added to bids by lowering the "Hawaii Product" by the following amounts: 3.0% for Tier I, 5.0% for Tier II, 10% for Tier III. State purchasing agency required to keep a list of "Hawaii Products".

**Procurement: Preferences;** Printing, binding and stationery, Hawaii Revenue Statute, §103D-1003. All bids submitted for a printing, binding, or stationery in which all work will be performed in-state receive a 15% preference for purposes of bid evaluation.

**Procurement: Preferences;** Software development businesses, Hawaii Revenue Statute, §103D-1006. In any expenditure of public funds for software development, the use of Hawaii software development businesses shall be preferred. Bid or offer by a non-Hawaii software development business shall be increased by a preference percentage pursuant to rules adopted by the policy board.

**Procurement Policy:** Evaluation procedure and contract award; Hawaii products, Hawaii Revenue Statute, §3-124-5. Order of preferences where more than one preference applicable.

**Procurement Policy:** Evaluation procedure and contract award; Printing, binding, and stationery, Hawaii Revenue Statute, §3-124-12. Order of preferences where more than one preference applicable.

**Procurement Policy:** Evaluation procedure and contract award; Reciprocal, Hawaii Revenue Statute, §3-124-18. Order of preferences where more than one preference applicable.

**Procurement Policy:** Solicitation procedures; Software development businesses, Hawaii Revenue Statute, §3-124-34. Hawaii software development businesses given 10% preference for evaluation.

**Procurement Policy:** Evaluation procedure and contract award; Software development businesses, Hawaii Revenue Statute, §3-124-35. Order of preferences where more than one preference applicable.

**Procurement Policy:** Evaluation procedure and contract award; Tax preference, Hawaii Revenue Statute, §3-124-55. Order of preferences where more than one preference applicable.

**Procurement Policy:** Evaluation procedure and contract award; Qualified Community Rehabilitation Programs, Hawaii Revenue Statute, §3-124-64. Order of preferences where more than one preference applicable.

#### HAWAII RECIPROCAL PREFERENCE

**Procurement:** Reciprocity, Hawaii Revenue Statute, §103D-1004. Application of reciprocal preference. Definition of "resident bidder" used by other state in applying preference applies.

**Procurement Policy:** Applicability - Reciprocal, Hawaii Revenue Statute, §3-124-17. Application of reciprocal preference.

#### IDAHO

##### IDAHO RESIDENT BIDDER PREFERENCE

**Property:** Requisitions for property; Notice; Form; Guarantee; Procedure for bidding, Idaho Code Ann. §67-5718. So long as price and quality are the same, preference given to bidders having a significant Idaho economic presence.

**Printing and Binding,** Idaho Code Ann. §60-101, §60-103. All printing, binding (excluding binding for state supported libraries), engraving,

ing and stationery for which the state contracts shall be executed within the state of Idaho. However, if the cost for the work is in excess of the charge usually made to private individuals for the same kind and quality of work, the state or local official may procure the work outside the state.

Purchasing: Tie Bids; Award, Idaho Administrative Code, §38.05.01.082. To discourage tie bid, may award to an Idaho resident or an Idaho domiciled bidder.

#### IDAHO RECIPROCAL PREFERENCE

Paper: Preference for Idaho suppliers and recycled paper products for purchases, Idaho Code Ann., §67-2349. Preference applied to out of state bidder identical to an Idaho bidder in the other bidder's state. Bidder domiciled outside the boundaries of Idaho considered Idaho domiciled bidder if significant Idaho economic presence for one year preceding the date of the bid.

Public Works: Preference for Idaho domiciled contractors on public works, Idaho Code Ann., §67-2348. Preference for Idaho bidders over out of state vendors in the same amount as would be applied against Idaho bidder when bidding in the other vendor's state.

#### ILLINOIS

##### ILLINOIS RESIDENT BIDDER PREFERENCE

Commodities: Purchase for public institutions of commodities in other states; preferences, 30 Illinois Comp. Statute Ann., §520/2. In purchasing commodities from vendors in other state, give preference to vendors whose home state does not prohibit purchase of Illinois commodities.

Purchasing: Preferences; Illinois agricultural products, 30 Illinois Comp. Statute Ann., §500/4550. In awarding contracts requiring the procurement of agricultural products, preference may be given to an otherwise qualified bidder or offeror who will fulfill the contract through the use of agricultural products grown in Illinois.

Purchasing: Illinois mined coal, 30 Illinois Comp. Statute Ann., §555/1. All state-funded public institutions in Illinois must purchase Illinois-mined coal unless it is more than 10% more expensive than coal from another state.

Procurement: Resident Bidder Preference, Illinois Administrative Code, Title 44, §1.4510. In breaking a tie, award given to resident vendor.

Purchases: Resident Vendor Preference, Illinois Administrative Code, Title 44, §500.1110(c). In breaking a tie, award given to resident vendor.

##### ILLINOIS RECIPROCAL PREFERENCE

Contracts: Resident bidders, 30 Illinois Comp. Statute Ann., §500/45-10. Application of reciprocal preference.

Purchases: Resident Vendor Preference, Illinois Administrative Code, Title 44, §500.1110(a). Application of reciprocal preference.

#### INDIANA

##### INDIANA RESIDENT BIDDER PREFERENCE

Public Works: "Indiana business" price preferences, Indiana Code Ann., §4-13.6-6-2.7. "Indiana Business" defined as principal place of business, majority of payroll, majority of employees, significant capital investments, or substantial positive economic impact, in the state of Indiana.

(c) Price preferences for contractor that is Indiana Business:

(1) 5.0% for contract expected to be less than \$500,000

(2) 3.0% for contract expected to be at least \$500,000 but less than \$1,000,000

(3) 1.0% for contract expected to be at least \$1,000,000

(d) Contract awarded to lowest responsive and responsible contractor regardless of preference if:

(1) contractor is Indiana contractor; or

(2) nonresident contractor from state bordering Indiana and the home state does not provide a preference to home state's contractors more favorable than is provided by Indiana law to Indiana contractors.

Purchasing Preferences: Preference to Indiana businesses, Indiana Code Ann., §5-22-15-20. Governmental body, except state lottery commission, may adopt rules to give preference to Indiana business under certain circumstances. Rules may not give preference that is more favorable to Indiana business than the other state's preference to other state's businesses. Rules must provide that contract awarded to lowest responsive and responsible offeror, regardless of preferences, if offeror is Indiana business or offeror is nonresident from state bordering Indiana and the home state does not provide a preference to home state's businesses more favorable than is provided by Indiana law to Indiana businesses.

Purchasing Preferences: Preferences for supplies, Indiana Code Ann., §5-22-15-20.5.

(d) Price preferences for supplies purchased from Indiana business:

(1) 5.0% for purchase expected to be less than \$500,00

(2) 3.0% for purchase expected to be at least \$500,000 but less than \$1,000,000

(3) 1.0% for purchase expected to be at least \$1,000,000

(e) Contract awarded to lowest responsive and responsible offeror regardless of preference if:

(1) offeror is Indiana business; or

(2) offeror is nonresident from state bordering Indiana and the home state does not provide preference to home state's businesses more favorable than is provided by Indiana law to Indiana businesses.

Small Business: Price preference for supplies to Indiana small businesses, Indiana Code Ann., §5-22-15-23. Governmental body shall give 15% preference for supplies to Indiana small business (defined as independently owned and operated, not dominant in its field, and satisfying other size criteria). Preference may be rejected if offer results in an unreasonable cost to the state.

State Policy: Establishment of the "Buy Indiana" presumption, Indiana Executive Order Number 05-05 (Jan. 10, 2005). State procurement subject to a "Buy Indiana" presumption requiring state agencies to buy their supplies and services from "Indiana businesses". Department of Administration to increase percentage of state procurement from Indiana businesses to 90% of state's total procurement volume.

##### INDIANA RECIPROCAL PREFERENCE

Public Works: Preference rules, Indiana Code Ann., §4-13.6-6-2.5. Application of a reciprocal preference against states who give preferences unfavorable to Indiana businesses. Preference may not be larger in favor of Indiana business than the other state's preference is to the other state's business.

#### IOWA

##### IOWA RESIDENT BIDDER PREFERENCE

Art in State Buildings: Competition of artists, Iowa Code Ann., §304A.13. Preference given to works by living or deceased Iowa artists.

Purchasing: Competitive bidding-preferences-reciprocal application-direct purchasing, Iowa Code Ann., §8A.311(12) and (15). Preference given to Iowa-based businesses if comparable in price to bids submitted by out-of-state businesses. Preference given to Iowa-based business that adopts policies, beyond those required by law, supportive of employees serving in the national guard and reserves.

Small Business: Procurements from small businesses-goals, Iowa Code Ann., §73.16. Requirement to purchase goods and services supplied by small businesses and establish procurement goal of at least 10% coming from such purchase.

#### Regulations

Goods and Services of General Use: Preferred products and vendors, Iowa Admin. Code §11-105.5(8A), §105.5(2) - Preference to Iowa-based businesses. Make every effort to support Iowa-based businesses. Tied responses to solicitations decided in favor of Iowa-based business.

Transportation: Contract award, Iowa Administrative Code, §761-20.4(307). 20.4(6)(b)-Tie bids. First preference to Iowa bidder.

#### IOWA RECIPROCAL PREFERENCE

Public Contracts and Bonds: Reciprocal resident bidder preference by state, its agencies, and political subdivisions, Iowa Code Ann., §73A.21. Application of reciprocal preference. If another state has more stringent definition of resident bidder, the more stringent definition is applicable as to bidders from that state.

Purchasing: Competitive bidding-preferences-reciprocal application-direct purchasing, Iowa Code Ann., §8A.311. Application of reciprocal preference.

#### KANSAS

KANSAS RESIDENT BIDDER PREFERENCE Contract and Purchases: Competitive bids; price preferences, Kansas Statute Ann., §75-3740. Tie bids awarded to resident bidder.

#### KANSAS RECIPROCAL PREFERENCE

Contracts and Purchases: State and local government contracts; bidders domiciled in other states, Kansas Statute Ann., §75-3740a. Application of reciprocal preference.

#### KENTUCKY

#### KENTUCKY RESIDENT BIDDER PREFERENCE

Miscellaneous Procurement Provisions: Kentucky-Grown Products, Kentucky Revenue Statute Ann., §45A.645. State agencies shall purchase Kentucky-grown agricultural products if they meet the agency's specifications and pricing requirements. Vendor must register under the Kentucky Proud Program located at Kentucky Revenue Statute Ann., §260.017.

Commonwealth Bond Counsel Business: Preference for Kentucky firms, Kentucky Revenue Statute Ann., §45A.873(2). Resident bidder ranked one place ahead of out-of-state firm in tie vote.

#### KENTUCKY RECIPROCAL PREFERENCE

Commonwealth Bond Counsel Business: Preference for Kentucky firms, Kentucky Revenue Statute Ann., §45A.873(1)(a). Application of reciprocal preference.

#### LOUISIANA

#### LOUISIANA RESIDENT BIDDER PREFERENCES

Land-Based Casino Contracts: Utilization of Louisiana goods and services, Louisiana Revenue Statute Ann., §27:246. Preference and priority given to Louisiana residents, laborers, vendors, and suppliers in contracts for goods and services if reasonably possible to do so without added expense, substantial inconvenience, or sacrifice in operational efficiency.

Materials, Supplies and Provisions: Preference to firms doing business in state, Louisiana Revenue Statute Ann., §38:2253, 39:1594.H. All things being equal, preference given to firms doing business in Louisiana. Preference inferior to and superseded where conflicting with Louisiana Revenue Statute Ann., §38:2251 (Louisiana products preferences).

Materials, Supplies and Provisions: Printing contracts, Louisiana Revenue Statute Ann., §38:2255. Requires that printing, lithographing, embossing, engraving, binding, record books, printed supplies, stationery and office supplies and equipment be purchased from Louisiana firms and/or performed in Louisiana by Louisiana firms unless bid submitted by firm outside Louisiana is 3.0% lower. Does not apply to specialized forms and printing, such as continuous forms, margin punched forms, football tickets, 24 sheet poster, music printing, steel dye and lithographed bonds, decalcomanias, revenue stamps, lithographing and bronzing on acetate, college annuals, fine edition binding, and books.

Materials, Supplies and Provisions: Supplies not ordinarily obtainable from Louisiana firms, Louisiana Revenue Statute Ann., §38:2256. Permissible to purchase supplies not ordinarily obtainable from Louisiana firms from applicable non-resident firms, however Louisiana firms shall be given opportunity to furnish supplies and given preference.

Public Contracts: Preference given to supplies, material, or equipment produced or offered by Louisiana citizens, Louisiana Revenue Statute Ann., §38:2184. Cost and quality being equal, preference to supplies, material, or equipment produced or offered by Louisiana citizens. Public Contracts: Preference for products produced or manufactured in Louisiana, Louisiana Revenue Statute Ann., §38:2251 and Source Selection: Preference for all types of products produced, manufactured, assembled, grown, or harvested in Louisiana, Louisiana Revenue Statute Ann., §39:1595. Preferences to bidders whose Louisiana business workforce is comprised of a minimum of 50% of Louisiana residents.

Subsection (B) For purchases of agricultural or forestry products, including meat, seafood, produce, eggs, paper or paper products, preference given as long as product meets Louisiana product criteria; product is equal to or better in quality; and cost does not exceed by more than 10% the cost of other products.

Subsection (D) For purchases of meat and meat products which are further processed in Louisiana under the grading and certification service of the Louisiana Department of Agriculture and Forestry, preference given if equal in quality to other meat and meat products and cost does not exceed by more than 7.0% cost of other products.

Subsection (E) For purchases of domesticated or wild catfish which are processed in Louisiana but grown outside Louisiana, preference given if equal in quality and cost does not exceed by more than 7.0% cost of catfish processed outside Louisiana.

Subsection (G) For purchases of produce processed in Louisiana but grown outside Louisiana, preference given if equal in quality and cost does not exceed by more than 7.0% cost of produce processed outside Louisiana.

Subsection (H) Except as otherwise provided in this Section, for purchases of materials, supplies, or equipment which are Louisiana products, preference given if equal in quality; cost of such items does not exceed cost by more than 10% of the cost of other items manufactured,

processed, produced, or assembled outside the state; and vendor agrees to sale price equal to lowest bid offered.

Preferences do not apply to Louisiana products whose source is a clay which is mined or originates in Louisiana, and which is manufactured, processed or refined in Louisiana for sale as an expanded clay aggregate form different than its original state; do not affect preferences applicable to brick manufacturers; do not apply to fire fighting or rescue equipment; and do not apply to treated wood poles and piling.

Furthermore, provisions do not apply to drainage district or sewerage and water board located in a municipality with population in excess of 500,000 wherein the cost of products produced or manufactured in the state of Louisiana does not exceed by more than 5.0% the cost of products which are equal in quality to products produced or manufactured outside of the state in purchases of one million dollars or more, as provided by Acts 880 and 693 of the 1985 Regular Session of the Louisiana Legislature.

Retail: Preference for items purchased from Louisiana retailers, Louisiana Revenue Statute Ann., §39:1595.5. When purchasing items at retail, purchase shall be from retail dealer located in Louisiana as long as equal in quality and cost does not exceed by more than 10% cost of items from retail dealer located outside state.

Rodeos and Livestock Shows: Preference in awarding contracts for certain services, Louisiana Revenue Statute Ann., §39:1595.3. For services to organize or administer rodeos and livestock shows, where state-owned facilities used to house or contain such activities, preference given in-state vendors if services equal in quality and does not exceed cost by more than 10% services available from outside state.

Purchasing: Preference for milk and dairy products produced or processed in Louisiana, Louisiana Revenue Statute Ann., §2251.1. When purchasing milk, all state and local government entities shall purchase milk produced or processed in Louisiana as long as equal in quality and cost does not exceed by more than 10% cost of milk from outside state.

Purchasing: Preference for steel rolled in Louisiana, Louisiana Revenue Statute Ann., §39:1595.6 and Louisiana Revenue Statute Ann., §38:2251.2. When purchasing steel, all state and local government entities shall purchase steel rolled in Louisiana as long as equal in quality and cost does not exceed by more than 10% cost of items from steel mill located outside state. Provisions do not apply when sufficient quantities of Louisiana rolled steel are not available.

Competitive Sealed Bidding: Tie bids, Louisiana Administrative Code Title 34, §529(B)(1). Preference to resident business in tie bid if no sacrifice or loss of quality.

Small Purchase Procedures: Governor Bobby Jindal, Louisiana Executive Order No. BJ 08-67 (Aug. 22, 2008). Pursuant to Louisiana Revenue Statute Ann., §39:1596 authorizing the governor to establish procedures for procurement of small purchases, Louisiana businesses should be utilized to the greatest extent possible when soliciting prices. Soliciting three quotations on procurement not exceeding \$5,000 may be waived when purchasing from Louisiana domiciled business when prices are equal or better than 2 other price comparisons.

#### LOUISIANA RECIPROCAL PREFERENCE

Public Works: Preference in letting contracts for public work, Louisiana Revenue Statute Ann., §38:2225. Application of reciprocal preference for contractors bidding on public work.

Source Selection: Preference in awarding contracts, Louisiana Revenue Statute Ann., §39:1595.1. Application of reciprocal preference for contract by any public entity. Does not apply to contracts for construction, maintenance, or repair of highways and streets.

Source Selection: Preference in letting contracts for public work, Louisiana Revenue Statute Ann., §39:1595.2. Application of reciprocal preference.

Transportation Department: Preference in letting contracts for public works, Louisiana Revenue Statute Ann., §48:255.6. Application of reciprocal preference for projects of Department of Transportation and Development.

#### MAINE

##### MAINE RESIDENT BIDDER PREFERENCE

Labor: Local residents preferred; exception, Maine Revenue Statute Ann. Title 26, §1301. Preference to workmen and bidders who are residents of Maine for contracts for constructing, altering, repairing, furnishing or equipping buildings or public works.

Purchasing: Bids, awards and contracts, Maine Revenue Statute Ann., Title. 5, §1825-B(8). Tie bid awarded to in-state bidders.

##### MAINE RECIPROCAL PREFERENCE

Purchasing: Bids, awards and contracts, Maine Revenue Statute Ann. Title 5, §1825-B(9). Application of reciprocal preference.

#### MARYLAND

##### MARYLAND RESIDENT BIDDER PREFERENCE

Procurement: Locally grown food products, Maryland Code Ann., State Finance And Procurement Code, §14-407. State facilities and schools shall give a purchasing price preference of not more than 5.0% to bidders providing "locally grown food" (defined as food grown in the state) which meets all bid specifications.

##### MARYLAND RECIPROCAL PREFERENCE

Procurement: Resident bidders; resident offerors Maryland Code Ann., State Finance And Procurement Code, §14-401; COMAR 21.05.01.04.-Application of reciprocal preference.

#### MASSACHUSETTS

##### MASSACHUSETTS RESIDENT BIDDER PREFERENCE

Massachusetts General Laws Annotated, Part I, Title II, Chapter 7, §22 - Preference in tie bids for supplies and materials manufactured and sold within the State of Massachusetts. An additional preference may be applied for supplies and materials manufactured and sold in cities and towns of Massachusetts that are designated as depressed areas as defined by the Department of Labor of the United States.

Massachusetts General Laws Annotated, Part I, Title II, Chapter 7 §23B - Preference for products grown in or produced from products grown in Massachusetts. State agencies or authorities purchasing agricultural products shall prefer products grown in Massachusetts or products produced using products grown in Massachusetts. Purchasers shall purchase agricultural products grown in Massachusetts unless the price is more than 10% higher than out of state grown products.

#### MICHIGAN

##### MICHIGAN RESIDENT BIDDER PREFERENCE

Counties: County purchasing, Michigan Comp. Laws, §45.85. Other things being equal, supplies offered by bidders with established local business in county have preference.

Purchasing: Purchases of supplies, Michigan Comp. Laws, §18.1261(1). All other things being equal, preference given to products manufactured or services offered by Michigan-based firms.

##### MICHIGAN RECIPROCAL PREFERENCE

Purchasing: Bidders for state contracts; preference, Michigan Comp. Laws, §18.1268. Application of reciprocal preference.

## MINNESOTA

### MINNESOTA RESIDENT BIDDER PREFERENCE

Building and Construction: Contracts; award, Minnesota Statute Ann., §16C.28(5). State's contract preferences are not cumulative.

Small Business: Preference procurements from economically disadvantaged small businesses, Minnesota §1230.1830. For commodities and services, economically disadvantaged small businesses are awarded up to 6.0% preference. For construction projects, economically disadvantaged small businesses are awarded up to 4.0% preference.

Procurement: Designation of procurements from small businesses, Minnesota Statute Ann., §16C.16(7). For specified goods or services, may award up to 6.0% preference to targeted small businesses. "Small business" is limited to those with their principal place of business in Minnesota. For construction contracts, may award up to 4.0% preference to small businesses located in economically disadvantaged area.

Small Business: Preference procurements from economically disadvantaged small businesses, Minnesota §1230.1830. For commodities and services, economically disadvantaged small businesses are awarded up to 6.0% preference. For construction projects, economically disadvantaged small businesses are awarded up to 4.0% preference.

### MINNESOTA RECIPROCAL PREFERENCE

Procurement: Acquisitions, Minnesota Statute Ann., §16C.06(7). Application of reciprocal preference.

## MISSISSIPPI

### MISSISSIPPI RESIDENT BIDDER PREFERENCE

Motor Vehicle: Certain motor vehicle purchases, Mississippi Code Ann., §31-7-18. Authorization to accept the lowest bid received from motor vehicle dealer domiciled within county of governing authority for certain motor vehicles and price not greater than 3% over factory invoice.

Printing, Stationery and Office Supplies: Definiteness of bids and contracts, Mississippi Code Ann., §19-13-111. Where bids equal in all respects, preference given to citizens of Mississippi.

### MISSISSIPPI RECIPROCAL PREFERENCE

Contractors: Resident contractor preference, Mississippi Code Ann., §31-7-47. Application of reciprocal preference in letting of public contracts.

Engineers and Land Surveyors: Supervision of public works by engineer, Mississippi Code Ann., §73-13-45. Application of reciprocal preference for public contracts for professional engineering services.

Public Contracts: Bidding process and requirements, Mississippi Code Ann., §31-3-21(3). Application of reciprocal preference in letting of public contracts.

## MISSOURI

### MISSOURI RESIDENT BIDDER PREFERENCE

Counties: Preference in bids (second class counties), Missouri. Ann. Statute, §50.780. Preference to merchants and dealers within the county may be given by county commissioners, provided the price is not above that offered elsewhere.

Higher Education: Preference for Missouri products, Missouri Code Register Ann., Title 6, §250-3.020(1)(D). University of Missouri-Preference given to Missouri firms, corporations or individuals.

State Purchases: Preference to Missouri products and firms, Missouri. Ann. Statute, §34.070. Preference given to Missouri firms, corporations or individuals, when quality is equal or better and delivered price is same or less.

State Purchases: Missouri businesses, performance of jobs or services, preference, when, Missouri. Ann. Statute, §34.073. In letting contracts for performance of job or service, preference given to Missouri firms, corporations, or individuals, or entities that maintain Missouri offices or places of business, when quality is equal or better and price is same or less.

### MISSOURI RECIPROCAL PREFERENCE

State Purchases: Missouri contractors, public works, preference, when, exceptions, Missouri. Ann. Statute, §34.076. Application of reciprocal preference for contract for public works or product.

## MONTANA

### MONTANA RECIPROCAL PREFERENCE

Public Contracts: State contracts to lowest bidder-reciprocity, Montana Code Ann., §18-1-102. Application of reciprocal preference for purchase of goods and for construction, repair, and public works of all kinds.

State Printing: Printing, binding, and stationery work, Montana Code Ann., §18-7-107. Application of reciprocal preference for all printing, binding, and stationery work for the state of Montana.

## NEBRASKA

### NEBRASKA RESIDENT BIDDER PREFERENCE

Business Assistance Division: Contracts, Nebraska Revenue Statute, §81-1276. Division to give preference to entities based in or operating in Nebraska.

Nebraska Arts Council: Artists; how chosen, Nebraska Revenue Statute, §82-323. Council shall give preference to regional artists.

Awards: Tie bids and preference, 9 Nebraska Administrative Code, §4-003. Nebraska vendors given preference in tie bids.

Blind and Visually Impaired, Commission for: In-state providers, 192 Nebraska Administrative Code, §1-005.05. Preference given to Nebraska service providers and businesses; restrictions on out-of-state vendors.

### NEBRASKA RECIPROCAL PREFERENCE

Public Lettings: Resident bidder, defined; preference, Nebraska Revenue Statute, §73-101.01. Application of reciprocal preference.

Awards: Tie bids and preference, 9 Nebraska Administrative Code, §4-003. Application of reciprocal preference.

## NEVADA

### NEVADA RESIDENT BIDDER PREFERENCE

Procedures for State Purchasing: preference for Nevada goods, commodities or dealers, Nevada Revenue Statute Ann., §333.300. If lowest responsive bids are from out of state bidders, preference given to bidders providing goods manufactured in the state or supplied by a dealer in the state.

### NEVADA RECIPROCAL PREFERENCE



State Purchasing: Inverse preference imposed on certain bidders resident outside State of Nevada, Nevada Revenue Statute Ann., §333.336. Application of reciprocal preference.

#### NEW HAMPSHIRE

No preferences to in state bidders.

#### NEW JERSEY

##### NEW JERSEY RECIPROCAL PREFERENCE

Public Works and Printing: Bidder with principal place of business in another state with laws or regulations causing disadvantage in another state, New Jersey Statute Ann., §52:32-1.4. Application of reciprocal preference. Vendors: Preference laws; out-of-state vendors, New Jersey Administrative Code, §17:12-2.13. Application of reciprocal preference.

#### NEW MEXICO

##### NEW MEXICO RESIDENT BIDDER PREFERENCE

Procurement: Application of preferences, New Mexico Statute, §13-1-21. Application of 5.0% preference for bids from resident businesses and resident manufacturers; application of 10% preference for resident businesses and resident manufacturers providing recycled content goods over virgin content goods provided by non-residents. Section does not apply to purchase of buses, use of federal funds for specific purchases, or purchases over \$5 million.

New York Exemption: Equal procurement access for New York businesses, New Mexico Statute, §13-1-21.2. New York state business enterprises treated as New Mexico resident businesses or resident manufacturers for all procurement preference purposes.

Professional Services: Architects; engineer; landscape architects; surveyor; selection process, New Mexico Statute, §13-1-120. Selection committee may consider amount of design work that will be produced by a New Mexico Business within this state and proximity to or familiarity with the area in which the project is located.

Public Works: Contracts, New Mexico Statute, §13-4-1. Award all contracts for construction of public works or for repair, reconstruction, including highway reconstruction, demolition or alteration thereof, to resident contractor whenever practicable.

Public Works: Resident contractor defined; application of preference, New Mexico Statute, §13-4-2. Application of 5.0% preference for resident contractor in public works contracts.

Public Works: Use of New Mexico materials, New Mexico Statute, §13-4-1. Preference given in public works contracts to materials produced, grown, processed or manufactured in New Mexico by citizens or residents of New Mexico or provided or offered by a New York state business enterprise, where materials are deemed satisfactory for intended use. State procurement officials may ignore preference if resident businesses appear to be engaged in price fixing to the detriment of the state.

Public Works: Use of New Mexico timber in public buildings required, New Mexico Statute, §13-4-2. In the construction of a public building, state agencies and all political subdivisions of the state are required to use New Mexico timber when the required species of lumber is grown in the state. Agencies may not write specifications for such projects to avoid application of discriminate against lumber produced in New Mexico.

Residency: Resident business and manufacturer certification, New Mexico Statute, §13-1-22. Resident business or manufacturer must qualify with state purchasing agent to receive preferences.

Telecommunications: Relay system enabling impaired individuals to communicate, New Mexico Statute, §63-9F-6. Application of 5% preference for resident bidder.

Procurement: Statutory preferences, New Mexico Code, §1.4.1.25. Statutory preferences applied in determining low bidder-preferences for resident businesses, resident manufacturers, New York state business enterprises, and resident construction contractors.

#### NEW YORK

##### NEW YORK RESIDENT BIDDER PREFERENCE

State Purchasing: Special provisions for purchase of available New York food products, New York State Finance Law, §165(4). When letting contracts for purchase of food, Commissioner of economic development may require provisions in solicitations that mandate that all or some of the required food products are grown, produced or harvested in New York state, or that any processing of such food products take place in facilities located within New York state.

##### NEW YORK RECIPROCAL PREFERENCE - "SANCTIONS ON NONRESIDENT BIDDERS"

State Purchasing: Purchasing restrictions-Special provisions relating to retaliating against other jurisdictions which discriminate against New York state enterprises in their procurement of products and services, New York State Finance Law, §165(6). Commissioner of economic development shall develop list of "discriminatory jurisdictions" that have procurement laws which punish New York firms bidding on public contracts in the jurisdiction. New York state agencies shall not enter into contracts with vendors whose principal place of business is on the list of "discriminatory jurisdictions."

New York State Office of General Services Procurement Services Group, Appendix A, Standard Clauses for New York State Contracts, Clause 21. Reciprocity and Sanctions Provisions (June, 2006). Published list of "discriminatory jurisdictions" includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii (as of last update-May 15, 2002).

#### NORTH CAROLINA

##### NORTH CAROLINA RESIDENT BIDDER PREFERENCE

Purchases and Contracts: Preference given to North Carolina products and citizens, North Carolina General Statute Ann., §143-59(a). Preference given as far as practicable to products or services furnished by or through citizens of North Carolina, provided there is no loss in price or quality.

##### NORTH CAROLINA RECIPROCAL PREFERENCE

Purchases and Contracts: Reciprocal preferences, North Carolina General Statute Ann., §143-59(b). Application of reciprocal preference for contracts valued over \$25,000.

Procurement of Architectural, Engineering, and Surveying Services: Declaration of public policy, North Carolina General Statute Ann., §143-64.31(a1). Resident firms providing architectural, engineering, surveying, or construction management services are granted a preference over nonresident firms, in the same manner, on the same basis, and to the extent that a preference is granted in awarding contracts for these services by the other state to its resident firms over firms resident in the State of North Carolina. "resident firm" defined as one that has paid unemployment taxes or income taxes in North Carolina and whose principal place of business is located in the state.

#### NORTH DAKOTA

##### NORTH DAKOTA RECIPROCAL PREFERENCE

Procurement: Preference to North Dakota bidders, sellers, and contractors, North Dakota Cent. Code, §44-08-01. Application of reciprocal preference.

Atmospheric Resource Board: Application of reciprocal preference.

Evaluating Bids: Application of preference for North Dakota vendors, North Dakota Administrative Code, §4-12-11-02. Application of reciprocal preference.

OHIO

#### OHIO RESIDENT BIDDER PREFERENCE

Contract Bidding: preference for U.S. and Ohio Products; bordering states, Ohio Revenue Code Ann., §125.09. Preference for Ohio products-bidders with a significant Ohio economic presence qualify for award on same basis as if products were produced in Ohio. Non-Ohio business restricted from bidding on printing contracts if home state excludes Ohio businesses from bidding on state printing contracts.

Contract Award, Ohio Revenue Code Ann., §125.09. Products produced or mined in Ohio and meeting contract requirements given preference unless price is deemed excessive or the product quality is disproportionately inferior.

Printing: Printing to be done within state; exception for special paper, Ohio Revenue Code Ann., §125.56. All printing to be executed within Ohio except for printing contracts requiring special, security paper. Preference given to Ohio bidders in printing contracts requiring special, security paper as long as the price is not a price that exceeds by more than 5% the lowest price submitted on a non-Ohio bid.

Local Entities: Model system of preference, Ohio Administrative Code, §123:5-1-11. Bidders with significant Ohio economic presence qualify for award of contract on same basis as products produced in Ohio. Preference to Ohio bids or bidders from border states, provided border state imposes no greater restrictions than contained in this rule. "Ohio bid" defined as means a bid received from a bidder offering Ohio products or a bidder demonstrating significant Ohio economic presence.

Purchasing: Implementation of domestic Ohio bid preference, Ohio Administrative Code, §123:5-1-06. Domestic Ohio Bid preference with respect to supply and service contracts, other than construction contracts. A preference is awarded to an "Ohio bid" as long as the price does not exceed by more than 5% the lowest price submitted on a non-Ohio bid. Preference is awarded to Ohio bids or bidders who are located in a border state, provided that the border state does not impose a greater restriction than contained in the Ohio Revised Code, §125.09 and §125.11.

Preferences: Procedure for Application of preferences, Ohio Department of Administrative Services, General Services Division, Domestic & In-State Preferences, PUR-003 (rev. Nov. 1, 2006). List of preferences and order of application for specified bid situations.

#### OHIO RECIPROCAL PREFERENCE

Contract Bidding: preference for U.S. and Ohio Products; bordering states, Ohio Revenue Code Ann., §125.09(C)(4). Vendors from border states that impose no greater restrictions on Ohio bidders in their state than Ohio imposes on non-resident bidders are treated as Ohio bidders.

Public Improvements: Preference to Ohio contractors, Ohio Revenue Code Ann., §153.012. Application of reciprocal preference in favor of contractors who have their principal place of business in Ohio, for construction, public improvement, including highway improvement, contracts.

Local Entities: Preference for public improvement contracts, Ohio Administrative Code, §123:5-1-11(D). Preference to contractor having principal place of business in Ohio on a reciprocal basis.

OKLAHOMA

#### OKLAHOMA RESIDENT BIDDER PREFERENCE

Counties and County Officers; Hospitals: Contracts-Bids-Notice-Preference, Oklahoma Statute Ann. Title 19, §788(c). When quality and prices equal, preference given to materials produced in Oklahoma, and construction contractors domiciled, having and maintaining offices in and being citizen taxpayers of Oklahoma.

Public Works: Public buildings - Home products, Oklahoma Statute Ann. Title 61, §9. Preference given to materials mined, quarried, manufactured or procured in Oklahoma, provided that the materials can be procured at no greater expense than like materials of equal quality from outside the state.

Public Works: Oklahoma labor and materials in construction or repair of state institutions, Oklahoma Statute Ann. Title 61, §9. All contracts that expend state funds for construction or repair of state institutions shall require employment of Oklahoma labor and materials if available and quality equal and price no higher than out-of-state labor or materials.

Public Works: Preference for Oklahoma labor and materials in certain construction, Oklahoma Statute Ann. Title 61, §10. Construction or repair of institutions require use of Oklahoma labor and materials if available and quality equal and price no higher than out-of-state labor or materials.

#### OKLAHOMA RECIPROCAL PREFERENCE

Public Works: Preference to Oklahoma domiciled contractors, Oklahoma Statute Ann. Title 61, §14. Application of reciprocal preference for public works projects.

Purchasing: Bidding preferences-Reciprocity, Oklahoma Statute Ann. Title 74, §85.17A. Application of reciprocal preference for state purchases.

OREGON

#### OREGON RESIDENT BIDDER PREFERENCE

Public Contracting: Preference for Oregon goods and services; nonresident bidders, Oregon Revenue Statute Ann., §279A.120(2)(a). Preference for Oregon bidders if price, fitness, availability and quality are equal.

Contract Preferences: Preference for Oregon Supplies and Services; Tie-Offers, Oregon Administrative R. §125-246-0300. Award identical offers for architectural, engineering or land surveying services, or related services to services produced in Oregon.

Department of Energy: Basic Policy, Oregon Statute Ann. Title R. §330-120-0005. In award between equally qualified bidders, preference given to residents of Oregon and resident businesses which have their home office or headquarters in Oregon.

Highway and Bridge Projects: Tie Offers, Oregon Statute Ann. Title R, §731-005-0660. If no federal funds involved, preference for bidder whose principal offices or headquarters are located in Oregon.

#### OREGON RECIPROCAL PREFERENCE

Public Contracting: Preference for Oregon goods and services; nonresident bidders, Oregon Revenue Statute Ann., §279A.120(2)(b). Application of reciprocal preference.

Construction Services: Evaluation and Award, Oregon Administrative R., §125-249-0390(6)(a). Application of reciprocal preference.

Construction Services Model Rules: Offer Evaluation and Award, Oregon Administrative R., §137-049-0390(6)(a). Application of reciprocal preference.

Contract Preferences: Reciprocal Preferences, Oregon Administrative R., §125-246-0310. Application of reciprocal preference.

Highway and Bridge Projects: Offer Evaluation and Award, Oregon Administrative R., §731-005-0650(4). Application of reciprocal preference.

Public Contracting Model Rules: Reciprocal Preferences, Oregon Administrative R., §137-046-0310. Application of reciprocal preference.

## PENNSYLVANIA

### PENNSYLVANIA RESIDENT BIDDER PREFERENCE

Allentown: Bidding Process, 339 Pennsylvania Code, §11.8-815. Resident businesses of Allentown receive 5.0% local preference, but not to exceed \$2,500 in awarding bids.

### PENNSYLVANIA RECIPROCAL PREFERENCE

Procurement: Reciprocal limitations, 62 Pennsylvania. Cons. Statute Ann., §107. Application of reciprocal preference for certain contracts for construction or supplies.

## RHODE ISLAND

### RHODE ISLAND RESIDENT BIDDER PREFERENCE

Public Works: Rhode Island foodstuffs, Rhode Island General Laws, §37-2-8. Foodstuffs grown or produced in Rhode Island by Rhode Island farmers are given preference when available and purchased at prevailing market prices.

Public Works: Selection of professionals with place of business located in Rhode Island, Rhode Island General Laws, §37-2-59.1 Preference for Rhode Island architectural, engineering, and consulting firms.

## SOUTH CAROLINA

### SOUTH CAROLINA RESIDENT BIDDER PREFERENCE

Contracts: Competitive sealed bidding, South Carolina Code Ann., §11-35-1520(9). In tie bid for contract, preference for South Carolina firms or South Carolina produced or manufactured products.

Highway Public Works: Allocation of state source highway funds for construction and renovation projects to firms owned and controlled by disadvantaged ethnic minorities or women, South Carolina Code Ann., §12-28-2930(F). Preference given to South Carolina contractor if bid not more than 2.5% of out-of-state bid.

Procurement Code; Architect/Engineer, Construction Management, Land Surveying: Preference for resident design services, South Carolina Code Ann., §11-35-3215. When qualifications are equal, South Carolina resident design service (architect, engineer or surveyor) provider must be selected.

Procurement Code; Methods of Source Selection: Resident vendor preference, South Carolina Code Ann., §11-35-1524. Vendors who are Residents of South Carolina or whose products are made, manufactured, or grown in South Carolina receive 7.0% preference. Resident vendors bidding South Carolina products receive additional 3.0% preference. Does not apply to competitive sealed proposals, vehicle purchases, commodities valued at more than \$30,000 per unit, or awards less than \$10,000.

## SOUTH DAKOTA

## SOUTH DAKOTA RESIDENT BIDDER PREFERENCE

Forestry: Preference to native trees and South Dakota dealers, South Dakota Codified Laws, §41-20-10. South Dakota Department of Agriculture purchases of seeds or trees, preference given to trees and tree seeds grown in, and dealers from South Dakota.

Residential Preference in Public Contracts; Milk: Awarding of contract to licensed processor, South Dakota Codified Laws, §5-19-1.2. Any South Dakota licensed processor bidding any milk or milk product under a competitive bid contract shall receive the bid contract if his bid is equal to, or within five percent or less, of any other bidder. Processor defined as any person who operates a South Dakota grade A milk plant where milk and milk products are collected, handled, processed, stored, pasteurized, and packaged.

Residential Preference in Public Contracts: Restrictions on subcontracting to nonresidents, South Dakota Codified Laws, §5-19-5. Awarded vendors (whether resident or nonresident), may not subcontract more than twenty percent of the work covered by public contracts to nonresident subcontractors, provided that resident subcontractors are available and at competitive prices.

Purchases and Printing: Award where identical low bids submitted, South Dakota Codified Laws, §5-23-12.2. If two or more competitive sealed bids submitted are identical in price and product quality, award shall be made to resident bidder.

Purchases and Printing: Preference to resident bidders, South Dakota Codified Laws, §5-23-13. Preference given to bidders with principal place of business in the State of South Dakota and to goods manufactured in South Dakota, whenever the price, quality, and service are substantially equal. In computing relative price, the cost of transportation, if any, including delivery to the institution or department shall be considered.

### SOUTH DAKOTA RECIPROCAL PREFERENCE

Public Property: Residential preference in contracts for public works, South Dakota Codified Laws, §5-19-3. Application of reciprocal preference to public works contracts.

Purchases and Printing: Preference for resident bidders, South Dakota Codified Laws, §5-23-21.2. Application of reciprocal preference in state contracting.

## TENNESSEE

### TENNESSEE RESIDENT BIDDER PREFERENCE

Meat Products: Tennessee meat producers; purchasing preference, Tennessee Code Ann., §12-3-809. Preference given in state purchasing to meat producers located within Tennessee as long as terms, conditions and quality are equal.

Meat Products Purchased by Public Education Institutions: Purchasing preference, Tennessee Code Ann., §12-3-810. Preference given in school purchasing to meat producers located within Tennessee as long as terms, conditions and quality are equal.

Preference to in-state coal mining companies, Tennessee Code Ann., §12-3-811. Preference in public purchasing to coal mined in the state of Tennessee if such coal is available at a delivered price which is equal to or less than coal mined outside the state of Tennessee.

Preference to in-state natural gas producers, Tennessee Code Ann., §12-3-812. Preference in public purchasing to natural gas produced in the state of Tennessee if such natural gas is available at a delivered price which is equal to or less than gas mined outside the state of Tennessee, with transportation costs taken into account.

Public Contracts: Purchasing goods and procuring services; preference for Tennessee products, Tennessee Code Ann., §12-4-121. Preference given to Tennessee bidders if cost and quality are equal for purchases of goods, including agricultural products. Preference given to Tennessee bidders for procuring services if services meet state requirements, quality and cost.

Procurement: Award-tie bids, Tennessee Comp. R. & Regs. §0690-3-1-.08(5). In case of tie bid, first preference given to in-state business.

#### TENNESSEE RECIPROCAL PREFERENCE

Public Contracts: Reciprocal preferences, Tennessee Code Ann., §12-4-802. Application of reciprocal preference for public construction projects.

#### UTAH

##### UTAH RESIDENT BIDDER PREFERENCE

General Government: Tie Bids - Preference for providers of state products, Utah Code Ann., §63G-6-426. In the event of tie bids, provider of products from within the state shall be selected if quality is equal to or greater than out of state provider, is suitable for use by the procuring agency, and the supplier can provide the goods in sufficient quantity.

Procurement: Tie bids, Utah Administrative Code, §33-3-113(d). Procedures which may be used to discourage tie bids include award to Utah resident bidder.

##### UTAH RECIPROCAL PREFERENCE

General Government: Preference for providers of state products, Utah Code Ann., §63G-6-404. Application of reciprocal preference for goods, supplies, materials, etc.

General Government: Preference for resident contractors, Utah Code Ann., §63G-6-405. Application of reciprocal preference for contractors.

#### VERMONT

##### VERMONT RESIDENT BIDDER PREFERENCE

Insurance: Preference to Vermont companies, agents, Vermont Statute Ann. Title 29, §1402. In the purchase of insurance, preference given to Vermont-domiciled companies and independent agents licensed in and resident in Vermont.

Public Property and Supplies: Requisition for supplies and materials, Vermont Statute Ann. Title 29, Chapter 40, §903(c). If a company located in Vermont and employing citizens of the state bids on a contract and the item is purchased from an out of state provider, Commissioner of General Services must record the reason for not selecting the Vermont based bidder, which shall be a public record.

Public Property and Supplies: Art in State Buildings; use of funds, Vermont Statute Ann. Title 29, Chapter 2, §46. In acquisitions and commissions for art in public buildings, priority shall be given to Vermont artists.

#### VIRGINIA

##### VIRGINIA RESIDENT BIDDER PREFERENCE

Local Government Procurement: Preference for local products and firms, Virginia Code Ann., §2.2-4328. The governing body of a county, city or town may, in the case of a tie bid, give preference to goods, services and construction produced locally.

Procurement: Preference for Virginia products and firms, 11 Virginia Administrative Code, §5-20-430(A). In case of tie bid, preference given to goods, services and construction provided by Virginia persons, firms or corporations.

Procurement: Preference for Virginia products with recycled content and for Virginia firms, Virginia Code Ann., §2.2-4324(A). In case of tie bid, preference given to goods or services or construction provided by Virginia persons, firms or corporations otherwise the tie shall be decided by lot.

Procurement: Preference for Virginia coal used in state facilities, Virginia Code Ann., §2.2-4325. In determining the award of any contract for coal to be purchased for use in state facilities with state funds, coal mined in Virginia shall be purchased so long as its bid price is not more than four percent greater than coal mined elsewhere.

##### VIRGINIA RECIPROCAL PREFERENCE

Procurement: Preference for Virginia products with recycled content and for Virginia firms, Virginia Code Ann., §2.2-4324(B). Application of reciprocal preference.

#### WASHINGTON

##### WASHINGTON RESIDENT BIDDER PREFERENCE

Procurement: Preferential purchase, Washington Revenue Code Ann., §43.19.1911(7). In determining the lowest responsible bidder, the agency shall consider any preferences provided by law to Washington vendors and to §43.19.704 providing reciprocal preferences.

Public Printer: Public printing for state agencies and municipal corporations, Washington Revenue Code Ann., §43.78.130. All printing, binding, and stationery work done for any state agency, county, city, town, port district, or school district in the state shall be done within the state, except where sources outside the state can perform work of equal quality and in-state bids are excessive or otherwise not competitive.

##### WASHINGTON RECIPROCAL PREFERENCE

Procurement: In-state preference clauses, Washington Revenue Code Ann., §43.19.700. Requiring application of reciprocal preference.

Procurement: Rules for reciprocity in bidding, Washington Revenue Code Ann., §43.19.704. Requiring adoption of rules concerning application of reciprocity. Regulation

Procurement: In-state preference bids, Washington Administrative Code, §236-48-085. Application of reciprocal preference.

#### WEST VIRGINIA

##### WEST VIRGINIA RESIDENT BIDDER PREFERENCE

Purchasing: Preference for resident vendors, West Virginia Code Ann., §5A-3-37. For purchase of commodities or printing:

(1) 2.5% preference for resident vendor who has resided in West Virginia continuously for 4 years immediately preceding bid; 2.5% preference for partnership, association or corporation resident vendor which has maintained its headquarters or principal place of business within West Virginia continuously for 4 years immediately preceding bid; 2.5% preference for corporation nonresident vendor which has an affiliate or subsidiary which employs a minimum of 100 state residents and which has maintained its headquarters or principal place of business within West Virginia continuously for 4 years immediately preceding the date of bid.

(2) 2.5% preference for resident vendor if on average at least 75% of employees working on project are residents of West Virginia who have resided in state continuously for 2 years immediately preceding bid.

(3) 2.5% preference for nonresident vendor which has an affiliate or subsidiary which maintains its headquarters or principle place of business within West Virginia and which employs a minimum of 100 state residents if on average at least 75% of employees working on project

are residents of West Virginia who have resided in state continuously for 2 years immediately preceding bid.

(4) 5% preference for vendor meeting requirements of subsections (1) and (2) or (1) and (3).

(5) 3.5% preference for resident vendor who is veteran and resided in West Virginia continuously for the 4 years immediately preceding date of bid.

(6) 3.5% preference for resident vendor who is veteran if on average at least 75% of employees working on project are residents of West Virginia who have resided in state continuously for 2 years immediately preceding bid.

Local Educational Agencies: Resident Vendor Preference, West Virginia Code R., §126-202, Purchasing Policies & Procedures Manual for Local Educational Agencies, 17. Local Educational Agencies (LEAs) may establish by local board policy procedures for granting preference to resident vendors for purchase of commodities and printing. Vendor preference cannot exceed 5.0% of lowest bid.

Preferences: Commodities and printing, West Virginia Code R., §110-12C-4, §110-12C-3. 2.5% preference for resident vendor or partnership, association or corporation residing, or maintaining its principal place of business, in West Virginia continuously for 4 years immediately preceding date of bid. 5% preference for vendor satisfying above criteria and certifying that on average at least 60% of the bidder's employees have been residents of West Virginia continuously for 2 years immediately preceding submission of bid.

#### WEST VIRGINIA RECIPROCAL PREFERENCE

Purchasing: Preference for resident vendors; reciprocal preference, West Virginia Code Ann., §5A-3-37a. Application of reciprocal preference for purchase of commodities or printing, except where West Virginia Code Ann., §5A-3-37 applies.

Purchasing: Awards-vendor preference, West Virginia Code R., §148-1-6(6.4.4). Application of reciprocal preference for purchases of commodities and printing made upon competitive bid.

#### WISCONSIN

##### WISCONSIN RESIDENT BIDDER PREFERENCE

Art: Fine arts in state buildings, Wisconsin Statute Ann., §44.57(4)(a). In purchases of art for installation in state buildings, preference given to artists who are residents of Wisconsin.

##### Regulations

Art Program: Application, Wisconsin Administrative Code, AB, §4.05. Preference given to Wisconsin artists.

Bidding: Basis for awards as a result of bidding, Wisconsin Administrative Code, §8.03(4). In case of tie bids, award shall be made to Wisconsin suppliers, in preference to out-of-state suppliers.

#### WISCONSIN RECIPROCAL PREFERENCE

Engineering: Construction project contracts, Wisconsin Statute Ann., §16.855(1). Application of reciprocal preference.

Purchasing: Buy on low bid, exceptions, Wisconsin Statute Ann., §16.75(1)(a)2. Application of reciprocal preference.

#### WYOMING

##### WYOMING RESIDENT BIDDER PREFERENCE

Art in Public Building: Department of commerce to acquire works of art, Wyoming Statute Ann., §16-6-803. Preference to Wyoming artists.

Public Printing: Preference for resident bidders, Wyoming Statute Ann., §16-6-301. Preference for resident printing bidder if bid is not more than 10% higher than lowest nonresident bid.

Public Works: Resident contractors; preference limitation with reference to lowest bid or qualified response, Wyoming Statute Ann., §16-6-102. Preference for resident if bid is not more than 5% higher than that of lowest nonresident bid.

Public Works: Resident contractors; limitation on subcontracting, Wyoming Statute Ann., §16-6-103. Successful resident bidder may not subcontract more than 30% of work under state contract to nonresident contractors.

Public Works: Preference for Wyoming labor and materials, Wyoming Statute Ann., §16-6-104. Resident Wyoming workers and materials of equal quality and desirability shall be specified in state contracts awarded under §16-6-102.

Public Works: Preference for Wyoming materials and agricultural products, Wyoming Statute Ann., §16-6-105. Preference in contracts of up to \$5 million of up to 5.0% for articles manufactured or grown in the state, so long as equal in quality.

Preference for State Laborers: Required resident labor on public works projects, Wyoming Statute Ann., §16-6-203. In any public works construction or improvement project, only Wyoming laborers may be used unless not available or not qualified to perform the work.

Purchasing: Preferential policy, Wyoming Regulations Chapter 14, §6. Preference for Wyoming contractors if bid is not more than 5.0% higher than lowest nonresident bid.

Preferences: Printing preference, Wyoming Regulations Chapter 6, §2. Preference to resident if bid is not more than 10% higher than lowest nonresident bid.

Art: Role of the committee, Wyoming Regulations Chapter 1, §4. Preference to Wyoming artists.

**Reciprocity and Resident Bidder Preference Chart**

<b>State</b>	<b>Resident Bidder Preference</b>	<b>Reciprocal Preference</b>	<b>Statutory Cites</b>
Alabama	Yes	Yes	Code of Alabama, Title 23, Chapter 1, Article 2, Section 23-1-51(a)  Code of Alabama, Title 39, Chapter 3, Section 39-3-5  Code of Alabama, Title 41, Chapter 16, Article 2, Sections 41-16-20, 41-16-27(c), 41-16-27(f), 41-16-50(a), 41-16-57(b)
Alaska	Yes	Yes	Alaska Statutes, Title 35, Chapter 27, Section 35.27.020  Alaska Statutes, Title 36, Chapter 30, Article 05  Alaska Statutes, Title 36, Chapter 30, Article 322  Alaska Statutes, Title 36, Chapter 30, Section 36.30.324-36.30.332  Alaska Statutes, Title 36, Chapter 30, Article 2, Section 36.30.170; Article 3, Section 36.30.250  Alaska Administrative Code, Title 2, Section 12.260
Arizona	Yes	No	Arizona Rev'd Statutes Ann. Section 34-242 and 34-243
Arkansas	Yes	No	West's Arkansas Code Annotated, Title 13, Chapter 8, Subchapter 2, Section 13-8-206(c)(2)  West's Arkansas Code Annotated, Title 19, Chapter 11, Subchapter 2, Sections 19-11-259(b) and 260; Subchapter 3, Sections 19-11-304, 19-11-305; Subchapter 8, Section 19-11-803
California	Yes	Yes	West's Annotated California Codes, Government Code, Title 1, Division 5, Chapter 4, Article 3, Section 4361; Chapter 10.5, Sections 4530 - 4535.3; Division 7, Chapter 12.8, Section 7084; Chapter 12.97, Section 7118  West's Annotated California Codes, Government Code, Title 2, Division 3, Part 5.5, Chapter 6.5, Article 1, Sections 14835-14843; Sections 14837, 14838; Part 10B, Chapter 2.1, Section 15813.3

<b>State</b>	<b>Resident Bidder Preference</b>	<b>Reciprocal Preference</b>	<b>Statutory Cites</b>
(California continued)			West's Annotated California Codes, Public Contract Code, Division 2, Part 1, Chapter 6, Section 6107  California Code of Regulations, Title 2, Sections 1896.6, 1896.8, 1896.12, 1896.31, 1896.32, 1896.34, 1896.35, 1896.6107, 1896.101, 1896.102, 1896.104, 1896.105
Colorado	Yes	Yes	West's Colorado Revised Statutes Annotated, Title 8, Article 18, Sections 8-18-101(b), 8-18-103; Article 19, Sections 8-19-101, 8-19-102.5  West's Colorado Revised Statutes Annotated, Title 24, Article 30, Part 14, Section 24-30-1403; Article 103, Part 2, Section 24-103-202.5  West's Colorado Revised Statutes Annotated, Title 43, Article 1, Part 14, Section 43-1-1406  Code of Colorado Regulations, 100 Department of Personnel and Administration, 101 Division of Finance and Procurement, 1 CCR 101-9 Procurement Rules, Article 111, R-24-111-102-02(b)
Connecticut	Yes	No	General Statutes of Connecticut, Title 4A, Chapter 58, Section 4a-59(c)
Delaware	Yes	No	Delaware Code Annotated, Title 29, Part VI, Chapter 69, Subchapter IV, Section 6962(d)(4)(b)
Florida	Yes	Yes	West's Florida Statutes Annotated, Title XVIII, Chapter 255, Section 255.04  West's Florida Statutes Annotated, Title XIX, Chapter 283, Section 283.35; Chapter 287, Section 287.082, 287.084, 287.087, 287.092  Florida Administrative Code Annotated, Rules 25-25.009(5) and 60A-1.011
Georgia	Yes	Yes	West's Code of Georgia Annotated, Title 8, Chapter 5, Section 8-5-5  West's Code of Georgia Annotated, Title 50, Chapter 5, Article 3, Part 1, Sections 50-5-60(a) and (b), 50-5-60.4, 50-5-61, 50-5-62
Hawaii	Yes	Yes	Hawaii Revised Statutes, Title 9, Chapter 103D, Part X, Sections 103D-1002-1004, 103D-1006  Hawaii Revised Statutes, Title 13, Chapter 201, Part I, Section 201-4

State	Resident Bidder Preference	Reciprocal Preference	Statutory Cites
(Hawaii continued)			Weil's Code of Hawaii Rules, Chapter 3-124, Subchapter 1, Section 3-124-5; Subchapter 2, Section 3-124-12; Subchapter 3, Sections 3-124-17, 3-124-18; Subchapter 5, Sections 3-124-34, 3-124-35; Subchapter 7, Section 3-124-55; Subchapter 8, Section 3-124-64
Idaho	Yes	Yes	Idaho Code Annotated, Title 60, §§60-101, 60-103; Title 67, Chapter 23, Sections 67-2348, 67-2349; Chapter 57, Section 67-5718  Idaho Administrative Code, Rule 38.05.01.082
Illinois	Yes	Yes	West's Smith-Hurd Illinois Compiled Statutes Annotated, Chapter 30, Act 500, Article 45, Section 500/45-10, 500/45-50 Act 520, Section 520/2  Illinois Administrative Code, Title 44, Subtitle A, Chapter I, Part 1, Section 1.4510  Illinois Administrative Code, Title 44, Subtitle B, Chapter I, Part 500, Section 500.1110(a) and (c)  Illinois Administrative Code, Title 44, Subtitle B, Chapter I, Part 500, Section 555/1
Indiana	Yes	No	West's Annotated Indiana Code, Title 4, Article 13.6, Chapter 6, Sections 4-13.6-6-2.5, 4-13.6-6-2.7  West's Annotated Indiana Code, Title 5, Article 22, Chapter 14, Section 5-22-14-1; Chapter 15, Sections 5-22-15-20, 5-22-15-20.5, 5-22-15-23  Governor Mitchell E. Daniels, Jr., Indiana Executive Order No. 05-05 (Jan. 10, 2005)
Iowa	Yes	Yes	West's Iowa Code Annotated, Title I, Subtitle 4, Chapter 8A, Subchapter III, Part 2, Section 311-12 and -15  West's Iowa Code Annotated, Title II, Subtitle 3, Chapter 73A, Section 73A.21, Section 73.16  West's Iowa Code Annotated, Title VII, Subtitle 7, Chapter 304A, Division II, Section 304A.13  Iowa Administrative Code, Department of Administrative Services [11], Chapter 105, Rule 11-105.5(8A)



<b>State</b>	<b>Resident Bidder Preference</b>	<b>Reciprocal Preference</b>	<b>Statutory Cites</b>
(Iowa continued)			Iowa Administrative Code, Transportation [761], Chapter 20, Rule 761-20.4(307), 20.4(6)(b)
Kansas	Yes	Yes	Kansas Statutes Annotated, Chapter 75, Article 37, Sections 75-3740, 75-3740a
Kentucky	Yes	Yes	Baldwin's Kentucky Revised Statutes Annotated, Title VI, Chapter 45A, Section 645, 54A.873()(1) and (2)
Louisiana	Yes	Yes	West's Louisiana Revised Statutes Annotated, Title 27, Chapter 5, Part VI, Section 246  West's Louisiana Revised Statutes Annotated, Title 38, Chapter 10, Part I, Section 2184; Part II, Section 2225; Part IV, Sections 2251, 2253, 2255, 2256  West's Louisiana Revised Statutes Annotated, Title 39, Chapter 17, Part III, Subpart B, Sections 1594.H, 1595, 1595.1, 1595.2, 1595.3, 1595.5, 1595.6  West's Louisiana Revised Statutes Annotated, Title 48, Chapter 1, Part XIII. Subpart B, Section 255.6  Louisiana Administrative Code, Government Contracts, Procurement and Property Control, Title 34, Part I, Subpart 1, Chapter 5, Section 529(B)(1)  Governor Bobby Jindal, Louisiana Executive Order No. BJ 2008-67 (Aug. 22, 2008)
Maine	Yes	Yes	Maine Revised Statutes Annotated, Title 5, Part 4, Chapter 155, Subchapter I-A, Section 1825-B(8) and (9)  Maine Revised Statutes Annotated, Title 26, Chapter 15, Section 1301
Maryland	Yes	Yes	West's Annotated Code of Maryland, State Finance and Procurement, Division II, Title 14, Subtitle 4, Sections 14-401 and 14-407  West's Annotated Code of Maryland, Article 24, Title 8, Section 8-102  Code of Maryland Regulations 21.05.01.04
Massachusetts	No	No	Massachusetts General Laws Annotated, Part I, Title II, Chapter 7, §22 and §23B
Michigan	Yes	Yes	Michigan Compiled Laws Annotated, Chapter 18, Article 2, Sections 18.1261(1), 18.1268; Chapter 45, Section 45.85

<b>State</b>	<b>Resident Bidder Preference</b>	<b>Reciprocal Preference</b>	<b>Statutory Cites</b>
Minnesota	Yes	Yes	Minnesota Statutes Annotated, Administration and Finance, Chapter 16C, Sections 16C.06, 16C.16(7), 16C.28(5)  Minnesota Rule 1230.1830
Mississippi	Yes	Yes	West's Annotated Mississippi Code, Title 19, Chapter 13, Section 19-13-111  West's Annotated Mississippi Code, Title 31, Chapter 3, Section 31-3-21(3); Chapter 7, Sections 31-7-18, 31-7-47  West's Annotated Mississippi Code, Title 72, Chapter 13, Section 73-13-45
Missouri	Yes		Vernon's Annotated Missouri Statutes (West), Title IV, Chapter 34, Sections 34.070, 34.073, 34.076  Vernon's Annotated Missouri Statutes (West), Title VI, Chapter 50, Section 50.780  Missouri Code of State Regulations Annotated, Department of Higher Education, Title 6, Division 250, Chapter 3, Section 250-3.020(1)(D)
Montana	No	Yes	Montana Code Annotated, Title 18, Chapter 1, Part 1, Section 18-1-102; Chapter 7, Part 1, Section 18-7-107
Nebraska	Yes	Yes	Revised Statutes of Nebraska, Chapter 73, Article 1, Section 73-101.01  Revised Statutes of Nebraska, Chapter 81, Article 12, Section 81-1276  Revised Statutes of Nebraska, Chapter 82, Article 3, Section 82-323  Nebraska Administrative Code, Title 9, Chapter 4, Section 003  Nebraska Administrative Code, Title 192, Chapter 1, Section 005.05
Nevada	No	Yes	Nevada Revised Statutes, Title 27, Chapter 333, Sections 333-300 and 333.336
New Hampshire	No	No	Not Applicable
New Jersey	No	Yes	New Jersey Statutes Annotated, Title 52, Subtitle 5, Chapter 32, Section 52:32-1.4  New Jersey Administrative Code, Section 17:12-2.13
New Mexico	Yes	No	New Mexico Statutes, Chapter 13, Article 1, Sections 13-1-21, 13-1-21.2, 13-1-22, 13-1-120; Article 4, Sections 13-4-1, 13-4-2

<b>State</b>	<b>Resident Bidder Preference</b>	<b>Reciprocal Preference</b>	<b>Statutory Cites</b>
(New Mexico continued)			New Mexico Statutes, Chapter 63, Article 9F, Section 63-9F-6  Code of New Mexico Rules, Section 1.4.1.25
New York	Specific law penalizing nonresident bidders from certain states	Specific law penalizing nonresident bidders from certain states	McKinney's Consolidated Laws of New York Annotated (West), State Finance Law, Chapter 56, Article XI, Sections 165(4) and 165(6)  Appendix A, Standard Clauses for New York State Contracts, 21. Reciprocity and Sanctions Provisions (June 2006)
North Carolina	Yes	Yes	West's North Carolina General Statutes Annotated, Chapter 143, Sections 143-59 and 143-64.31(a1)
North Dakota	No	Yes	North Dakota Century Code, Title 44, Chapter 44-08, Section 44-08-01  North Dakota Administrative Code, Chapter 4-12-11, Section 4-12-11-02; Chapter 89-07-02, Section 89-07-02-26
Ohio	Yes	Yes	Baldwin's Ohio Revised Code Annotated, Title I, Chapter 125, Sections 125.09, 125.11, 125.56, 153.012  Baldwin's Ohio Administrative Code 123:5-1-06, 123:-5-1-11  Ohio Department of Administrative Services, General Services Division, Domestic & In-State Preferences, PUR-003 (rev. Nov. 1, 2006)
Oklahoma	Yes	Yes	Oklahoma Statutes Annotated, Title 19, Chapter 17, Section 788(c)  Oklahoma Statutes Annotated, Title 61, Sections 9, 10, 14  Oklahoma Statutes Annotated, Title 74, Chapter 4, Section 85.17A
Oregon	Yes	Yes	West's Oregon Revised Statutes Annotated, Title 26, Chapter 279A, Section 279A.120  Oregon Administrative Rules 125-246-0300, 125-246-0310, 125-249-0390, 137-046-0310, 137-049-0390(6)(a), 330-120-0005, 731-005-0650, 731-005-0660
Pennsylvania	Yes	Yes	Purdon's Pennsylvania Consolidated Statutes Annotated, Title 62, Part I, Chapter 1, Section 107  Pennsylvania Code, Title 339, Part II, Chapter 11, Art. VIII, Section 11.8-815

<b>State</b>	<b>Resident Bidder Preference</b>	<b>Reciprocal Preference</b>	<b>Statutory Cites</b>
Rhode Island	Yes	No	General Laws of Rhode Island, Title 37, Chapter 2, Sections 37-2-8 and 37-2-59.1
South Carolina	Yes	No	Code of Laws of South Carolina, Title 11, Chapter 35, Article 5, Subarticle 3, Sections 11-35-1520, 11-35-1524, 11-25-3215  Code of Laws of South Carolina, Title 12, Chapter 28, Article 29, Section 12-28-2930(F)
South Dakota	Yes	Yes	South Dakota Codified Laws, Title 5, Chapter 5-19, Sections 5-19-1.2, 5-19-3, 5-19-5; Chapter 5-23, Sections 5-23-12.2, 5-23-13, 5-23-21.2  South Dakota Codified Laws, Title 41, Chapter 41-20, Section 41-20-10.
Tennessee	Yes	Yes	West's Tennessee Code Annotated, Title 12, Chapter 3, Part 8, Sections 12-3-809, 12-3-810-812; Chapter 4, Part 1, Section 12-4-121; Part 8, Section 12-4-802  Official Compilation Rules & Regulations of the State of Tennessee, Department of General Services, Purchasing Division, Chapter 0690-3-1, Rule 0690-3-1-.08(5)
Utah	Yes	Yes	West's Utah Code Annotated, Title 63, Chapter 56, Part 4, Sections 63(G)-6-404 and 405 and 63(G)-6-426  Utah Administrative Code Rule 33-3-113(d)
Vermont	Yes	No	Vermont Statutes Annotated, Title 29, Part 2, Chapter 2, Section 46, Chapter 40, Section 903(c), Chapter 55, Section 1402
Virginia	Yes	Yes	West's Annotated Code of Virginia, Title 2.2, Subtitle II, Part B, Chapter 43, Article 2, Sections 2.2-4324, 2.2-4325, 2.2-4328  Virginia Administrative Code, Title 11, Section 5-20-430(A)
Washington	Yes	Yes	Revised Code of Washington Annotated (West), Title 43, Chapter 43.19, Sections 43.19.700, 43.19.704, 43.19.1911(7), 43.78.130  Washington Administrative Code, Title 236, Chapter 236-48, Section 236-48-085
West Virginia	Yes	Yes	West's Annotated Code of West Virginia, Chapter 5A, Article 3, Sections 5A-3-37, 5A-3-37a  West Virginia Code of State Rules, Title 110, Series 12C, Sections 110-12C-3, 110-12C-4

State	Resident Bidder Preference	Reciprocal Preference	Statutory Cites
(West Virginia continued)			West Virginia Code of State Rules, Title 126, Series 202, Purchasing Policies & Procedures Manual for Local Educational Agencies, 17  West Virginia Code of State Rules, Title 148, Series 1, Section 148-1-6 (6.4.4)
Wisconsin	Yes	Yes	West's Wisconsin Statutes Annotated, Chapter 16, Subchapter IV, Section 16.75; Subchapter V, Section 16.855  West's Wisconsin Statutes Annotated, Chapter 44, Subchapter III, Section 44.57  Wisconsin Administrative Code, Arts Board, Chapter 4, Section 4.05  Wisconsin Administrative Code, Department of Administration, Chapter 8, Section 8.03(4)
Wyoming	Yes	No	Wyoming Statutes Annotated, Title 16, Chapter 6, Article 1, Sections 16-6-102-105 and 16-6-203; Article 3, Section 16-6-301; Article 8, Section 16-6-803  Weil's Code of Wyoming Rules, Chapter 1, Section 4; Chapter 6, Section 2; Chapter 14, Section 6

TRD-200905460  
Ashley Harden  
General Counsel  
Comptroller of Public Accounts  
Filed: November 23, 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, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/30/09 - 12/06/09 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup>/credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/30/09 - 12/06/09 is 18% for Commercial over \$250,000.

<sup>1</sup>Credit for personal, family or household use.

<sup>2</sup>Credit for business, commercial, investment or other similar purpose.

TRD-200905466  
Leslie L. Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner  
Filed: November 24, 2009

◆ ◆ ◆  
**Notice of Rate Ceilings**

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, 303.008, 303.009, 304.003, and 346.101, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/07/09 - 12/13/09 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup>/credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/07/09 - 12/13/09 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009<sup>3</sup> for the period of 01/01/10 - 03/31/10 is 18% for Consumer/Agricultural/Commercial/credit through \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009 for the period of 01/01/10 - 03/31/10 is 18% for Commercial over \$250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 01/01/10 - 03/31/10 is 18% for Consumer/Agricultural/Commercial/credit through \$250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 01/01/10 - 03/31/10 is 18% for Commercial over \$250,000.

The retail credit card quarterly rate as prescribed by §303.009<sup>1</sup> for the period of 01/01/10 - 03/31/10 is 18% for Consumer/Agricultural/Commercial/credit through \$250,000.

The lender credit card quarterly rate as prescribed by §346.101 Texas Finance Code<sup>1</sup> for the period of 01/01/10 - 03/31/10 is 18% for Consumer/Agricultural/Commercial/credit through \$250,000.

The standard annual rate as prescribed by §303.008 and §303.009<sup>4</sup> for the period of 01/01/10 - 03/31/10 is 18% for Consumer/Agricultural/Commercial/credit through \$250,000.

The standard annual rate as prescribed by §303.008 and §303.009 for the period of 01/01/10 - 03/31/10 is 18% for Commercial over \$250,000.

The retail credit card annual rate as prescribed by §303.009<sup>1</sup> for the period of 01/01/10 - 03/31/10 is 18% 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 Consumer/Agricultural/Commercial/credit through \$250,000.

The judgment ceiling as prescribed §304.003 for the period of 12/01/09 - 12/31/09 is 5.00% for Commercial over \$250,000.

<sup>1</sup>Credit for personal, family or household use.

<sup>2</sup>Credit for business, commercial, investment or other similar purpose.

<sup>3</sup>For variable rate commercial transactions only.

<sup>4</sup>Only for open-end credit as defined in §301.002(14), Texas Finance Code.

TRD-200905521

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: December 1, 2009

## Texas Council for Developmental Disabilities

### Request for Proposals

The Texas Council for Developmental Disabilities (TCDD) announces the availability of funds for one project that will demonstrate how appropriate supports may help individuals with developmental disabilities to complete post-secondary education necessary to achieve their employment goals.

The Council has approved funds of up to \$75,000 per year for up to 5 years for one project under this Request for Proposal (RFP) announcement. Funds available for this project are provided by the U.S. Department of Health and Human Services, Administration on Developmental Disabilities, pursuant to the Developmental Disabilities Assistance and Bill of Rights Act. Funding for the project is dependant on the results of an independent review process established by TCDD and the availability of funds. **Continuation funding for subsequent years will not be automatic**, but will be based on a review of the project's accomplishments and other items. Non-federal matching funds of at least 10% of total project costs are required for projects in federally designated poverty areas. Non-federal matching funds of at least 25% of total project costs are required for projects in other areas.

Additional information concerning this RFP or more information about TCDD may be obtained through TCDD's Web site at <http://www.txddc.state.tx.us>. All questions pertaining to this RFP

should be directed to Joanna Cordry, Planning Coordinator, at (512) 437-5410 or e-mail [Joanna.Cordry@tcdd.state.tx.us](mailto:Joanna.Cordry@tcdd.state.tx.us).

The application packet may be obtained on TCDD's Web site or by requesting a copy in writing by U.S. mail, fax, or e-mail from Barbara Booker at the Texas Council for Developmental Disabilities, 6201 E. Oltorf, Suite 600, Austin, TX 78741-7509; fax number (512) 437-5434; e-mail address [Barbara.booker@tcdd.state.tx.us](mailto:Barbara.booker@tcdd.state.tx.us). Applications must be requested in writing unless downloaded from the Internet.

**Deadline:** Two hard copies, one with the original signatures, must be submitted. All proposals must be received by TCDD not later than 4:00 p.m., Central Standard Time, Wednesday, March 3, 2010, or, if mailed, postmarked prior to midnight on the date specified above. Proposals may be delivered by hand or mailed to TCDD at 6201 East Oltorf, Suite 600, Austin, TX 78741-7509 to the attention of Barbara Booker. Faxed proposals cannot be accepted. TCDD also requests that applicants send an electronic copy at the same time the hard copies are submitted. Electronic copies should be addressed to [Barbara.booker@tcdd.state.tx.us](mailto:Barbara.booker@tcdd.state.tx.us).

### Proposals will not be accepted after the due date.

**Grant Proposers' Workshops:** The Texas Council for Developmental Disabilities will conduct telephone conferences or workshop(s) to help potential applicants understand the grant application process and this specific RFP. In addition, answers to frequently asked questions will be posted on the TCDD Web site. Please check the TCDD Web site at <http://www.txddc.state.tx.us> for a schedule of conference calls or workshops for this RFP.

TRD-200905529

Roger Webb

Executive Director

Texas Council for Developmental Disabilities

Filed: December 1, 2009

## Texas Commission on Environmental Quality

Amended Notice of Receipt of Application and Intent to Obtain a Municipal Solid Waste Limited Scope Permit Amendment

PERMIT NO. 956B

APPLICATION City of Edinburg, Department of Solid Waste Management, P.O. Box 1079, Edinburg, Hidalgo County, Texas 78540-1079, has applied to the Texas Commission on Environmental Quality (TCEQ) for a municipal solid waste limited scope permit amendment to their current Type I landfill permit. The applicant is requesting Site Entrance relocation from Encinitos Road to Jasman Road to share facilities with the adjacent Type IV landfill and to improve safety. The facility is located at 900 Encinitos Road, Edinburg, Hidalgo County, Texas 78539. The TCEQ received the application on August 27, 2009. The permit amendment application is available for viewing and copying at the Edinburg City Hall, 415 West University Drive, Edinburg, Hidalgo County, Texas 78539.

ADDITIONAL NOTICE. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting on this application. The purpose

of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

**OPPORTUNITY FOR A CONTESTED CASE HEARING.** After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

**TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST:** your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and, the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

**MAILING LIST.** If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

**AGENCY CONTACTS AND INFORMATION.** All written public comments and requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 or electronically at [www.tceq.state.tx.us/about/comments.html](http://www.tceq.state.tx.us/about/comments.html). If you need more information about this permit application or the permitting process, please call TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. Si desea información en Español, puede llamar al

1-800-687-4040. General information about TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

Further information may also be obtained from City of Edinburg at the address stated above or by calling Ms. Myra Ayala Garza, City Secretary, Mr. Ramiro L. Gomez, Jr., Director of Solid Waste Management at (956) 381-1851.

TRD-200905539  
LaDonna Castañuela  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: December 2, 2009



#### Enforcement Orders

A default order was entered regarding Joseph Piazza dba Exxon Northgate, Docket No. 2005-1711-MLM-E on November 19, 2009 assessing \$10,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gary Shiu, Staff Attorney at (713) 422-8916, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Double Diamond Utilities Co., Docket No. 2008-0036-MLM-E on November 19, 2009 assessing \$20,721 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin 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 WTG Jameson, L.P., Docket No. 2008-0979-AIR-E on November 19, 2009 assessing \$57,705 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, Staff Attorney at (512) 239-0629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Joe E. Panagopoulos dba Metro Materials, Docket No. 2008-1188-MSW-E on November 19, 2009 assessing \$8,625 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.

A default order was entered regarding Bill Bearden dba Ovilla Road Citgo, Docket No. 2008-1444-PST-E on November 19, 2009 assessing \$10,221 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip Goodwin, Staff Attorney at (512) 239-0675, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Dow Chemical Company, Docket No. 2008-1555-IHW-E on November 19, 2009 assessing \$97,500 in administrative penalties with \$19,500 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.

A default order was entered regarding Aamson Enterprises Inc dba Cullen Food Mart, Docket No. 2008-1815-PST-E on November 19, 2009 assessing \$12,305 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Becky Combs, Staff Attorney at (512) 239-6939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Steve Clabaugh dba Discount Materials, Docket No. 2008-1818-MSW-E on November 19, 2009 assessing \$6,643 in administrative penalties with \$800 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 Larry O'Neill dba Lazy Acres Trailer Park, Docket No. 2008-1829-PWS-E on November 19, 2009 assessing \$6,286 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-5846, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding A-1 Lufkin Rental Center, Inc. A-1 Johnny Portable Toilets, Docket No. 2009-0112-MLM-E on November 19, 2009 assessing \$3,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sharesa 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 KBL Management, Inc., Docket No. 2009-0126-PWS-E on November 19, 2009 assessing \$7,018 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy Mitchell, Staff Attorney at (512) 239-0736, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Affiliated Foods, Inc., Docket No. 2009-0128-AIR-E on November 19, 2009 assessing \$3,000 in administrative penalties with \$600 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ConocoPhillips Company, Docket No. 2009-0129-AIR-E on November 19, 2009 assessing \$304,126 in administrative penalties with \$60,825 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 Jose Antonio Camacho, Docket No. 2009-0251-LII-E on November 19, 2009 assessing \$744 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari Gilbreth, Staff Attorney at (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Andre C. Cormier, Docket No. 2009-0270-LII-E on November 19, 2009 assessing \$341 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mike Fishburn, Staff Attorney at (512) 239-0635, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Humberto Saldaña, Docket No. 2009-0345-LII-E on November 19, 2009 assessing \$262 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mike Fishburn, Staff Attorney at (512) 239-0635, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding River City Ready Mix, Inc., Docket No. 2009-0362-WQ-E on November 19, 2009 assessing \$6,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari Gilbreth, Staff Attorney at (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EL MODENO GARDENS, INC., P&E Groot Family Trust, and SEVILLE FARMS, INC., Docket No. 2009-0459-WQ-E on November 19, 2009 assessing \$12,500 in administrative penalties with \$2,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding INEOS Americas LLC, Docket No. 2009-0490-AIR-E on November 19, 2009 assessing \$12,120 in administrative penalties with \$2,424 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3420, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southern Union Gas Services, Ltd., Docket No. 2009-0592-AIR-E on November 19, 2009 assessing \$22,794 in administrative penalties with \$4,558 deferred.

Information concerning any aspect of this order may be obtained by contacting Kirk Schoppe, Enforcement Coordinator at (512) 239-0489, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of San Benito, Docket No. 2009-0626-MWD-E on November 19, 2009 assessing \$21,790 in administrative penalties with \$4,358 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Valley View, Docket No. 2009-0629-MWD-E on November 19, 2009 assessing \$15,470 in administrative penalties with \$3,094 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.



An agreed order was entered regarding DCP Midstream, LP, Docket No. 2009-0647-AIR-E on November 19, 2009 assessing \$2,460 in administrative penalties with \$492 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 George Sprague dba George's Tire Shop, Docket No. 2009-0685-WQ-E on November 19, 2009 assessing \$3,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-1873, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding El Paso Surgery Centers, L.P. dba Surgical Center of El Paso, Docket No. 2009-0706-PST-E on November 19, 2009 assessing \$3,556 in administrative penalties with \$711 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 Cypress Springs Special Utility District, Docket No. 2009-0718-PWS-E on November 19, 2009 assessing \$820 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 Tjitte Tuinier dba Allrounder Dairy and Allrounder Dairy 2, Docket No. 2009-0724-AGR-E on November 19, 2009 assessing \$15,083 in administrative penalties with \$3,016 deferred.

Information concerning any aspect of this order may be obtained by contacting Evette Alvarado, Enforcement Coordinator at (512) 239-2573, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Land O'Lakes Purina Feed LLC, Docket No. 2009-0733-AIR-E on November 19, 2009 assessing \$3,360 in administrative penalties with \$672 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Davis Gas Processing, Inc., Docket No. 2009-0734-AIR-E on November 19, 2009 assessing \$36,085 in administrative penalties with \$7,217 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TOTAL PETROCHEMICALS USA, INC., Docket No. 2009-0749-AIR-E on November 19, 2009 assessing \$20,000 in administrative penalties with \$4,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-

3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding W-TEK, INC., Docket No. 2009-0760-IHW-E on November 19, 2009 assessing \$18,340 in administrative penalties with \$3,668 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 Ameriforge Corporation, Docket No. 2009-0766-IWD-E on November 19, 2009 assessing \$7,980 in administrative penalties with \$1,596 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DCP Midstream, LP, Docket No. 2009-0809-AIR-E on November 19, 2009 assessing \$10,139 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3420, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Excalibur Collision Center, Inc., Docket No. 2009-0810-AIR-E on November 19, 2009 assessing \$1,000 in administrative penalties with \$200 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 Juan Gervacio Gonzalez, Docket No. 2009-0811-LII-E on November 19, 2009 assessing \$1,325 in administrative penalties with \$265 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 City of Karnes City, Docket No. 2009-0814-MWD-E on November 19, 2009 assessing \$9,030 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 WTG Jameson, LP, Docket No. 2009-0820-AIR-E on November 19, 2009 assessing \$5,322 in administrative penalties with \$1,064 deferred.

Information concerning any aspect of this order may be obtained by contacting Kirk Schoppe, Enforcement Coordinator at (512) 239-0489, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Edinburg, Docket No. 2009-0821-AIR-E on November 19, 2009 assessing \$1,280 in administrative penalties with \$256 deferred.

Information concerning any aspect of this order may be obtained by contacting Kirk Schoppe, Enforcement Coordinator at (512) 239-0489,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Petroleum Group LLC dba TPG 255 05, Docket No. 2009-0835-PST-E on November 19, 2009 assessing \$3,750 in administrative penalties with \$750 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 ANACONDA DISPOSAL LLC, Docket No. 2009-0838-MSW-E on November 19, 2009 assessing \$2,500 in administrative penalties with \$500 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 Sunoco Partners Marketing & Terminals L.P., Docket No. 2009-0844-AIR-E on November 19, 2009 assessing \$50,125 in administrative penalties with \$10,025 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 Spanky's Wrecker Service Incorporated dba Spanky's Wrecker, Docket No. 2009-0863-PST-E on November 19, 2009 assessing \$5,250 in administrative penalties with \$1,050 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Weatherford U.S., L.P., Docket No. 2009-0865-IWD-E on November 19, 2009 assessing \$20,615 in administrative penalties.

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 DCP Midstream, LP, Docket No. 2009-0875-AIR-E on November 19, 2009 assessing \$12,300 in administrative penalties with \$2,460 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Easher Corporation, Docket No. 2009-0880-IWD-E on November 19, 2009 assessing \$3,060 in administrative penalties with \$612 deferred.

Information concerning any aspect of this order may be obtained by contacting Carlie Konkol, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron Phillips Chemical Company LP, Docket No. 2009-0893-AIR-E on November 19, 2009 assessing \$6,994 in administrative penalties with \$1,398 deferred.

Information concerning any aspect of this order may be obtained by contacting Kirk Schoppe, Enforcement Coordinator at (512) 239-0489, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Halliburton Energy Services, Inc., Docket No. 2009-0923-IWD-E on November 19, 2009 assessing \$8,520 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 MEL STEVENSON & ASSOCIATES, INC. dba Spec Building Materials, Docket No. 2009-0928-PST-E on November 19, 2009 assessing \$8,373 in administrative penalties with \$1,674 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 Exxon Mobil Corporation, Docket No. 2009-0958-AIR-E on November 19, 2009 assessing \$16,800 in administrative penalties with \$3,360 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 Rio Water Supply Corporation, Docket No. 2009-0972-PWS-E on November 19, 2009 assessing \$2,450 in administrative penalties with \$490 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JUMA PALLETS, INC., Docket No. 2009-0977-MLM-E on November 19, 2009 assessing \$3,188 in administrative penalties with \$637 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding B & S Enterprise, Inc. dba Chevron Food Mart, Docket No. 2009-0984-PST-E on November 19, 2009 assessing \$3,750 in administrative penalties with \$750 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.

An agreed order was entered regarding North American Steel Corporation, Docket No. 2009-0993-AIR-E on November 19, 2009 assessing \$4,000 in administrative penalties with \$800 deferred.

Information concerning any aspect of this order may be obtained by contacting Kirk Schoppe, Enforcement Coordinator at (512) 239-0489, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding King-Cottle Water Supply Corporation, Docket No. 2009-0996-PWS-E on November 19, 2009 assessing \$277 in administrative penalties with \$55 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kingsbridge Municipal Utility District, Docket No. 2009-1003-PWS-E on November 19, 2009 assessing \$1,500 in administrative penalties with \$300 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 City of Canadian, Docket No. 2009-1021-MWD-E on November 19, 2009 assessing \$4,400 in administrative penalties with \$880 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Celeste, Docket No. 2009-1044-MWD-E on November 19, 2009 assessing \$10,400 in administrative penalties with \$2,080 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 Magnolia Independent School District, Docket No. 2009-1048-MWD-E on November 19, 2009 assessing \$4,920 in administrative penalties with \$984 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kidane Mariam dba Hatcher Convenience Store, Docket No. 2009-1098-PST-E on November 19, 2009 assessing \$6,140 in administrative penalties with \$1,228 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hays Consolidated Independent School District, Docket No. 2009-1124-EAQ-E on November 19, 2009 assessing \$750 in administrative penalties with \$150 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding James Construction Group, L.L.C., Docket No. 2009-1134-WR-E on November 19, 2009 assessing \$710 in administrative penalties with \$142 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 EASTEX HARDY PROPERTIES, LLC. dba Diamond Foods, Docket No. 2009-1147-PST-E on November 19, 2009 assessing \$2,118 in administrative penalties with \$423 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Upper Leon River Municipal Water District, Docket No. 2009-1148-PWS-E on November 19, 2009 assessing \$267 in administrative penalties with \$53 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 Watson, Incorporated, Docket No. 2009-1171-AIR-E on November 19, 2009 assessing \$1,070 in administrative penalties with \$214 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Frognot Water Supply Corporation, Docket No. 2009-1174-PWS-E on November 19, 2009 assessing \$262 in administrative penalties with \$52 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 Luella Special Utility District, Docket No. 2009-1175-PWS-E on November 19, 2009 assessing \$280 in administrative penalties with \$56 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 Wright City Water Supply District, Docket No. 2009-1262-PWS-E on November 19, 2009 assessing \$424 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.

A field citation was entered regarding Doug Holder, Docket No. 2009-1480-OSI-E on November 19, 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 Oscar de Luna, Docket No. 2009-1516-WOC-E on November 19, 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 RVR INVESTMENTS INC. dba Kwik Way Food Store 201, Docket No. 2009-1559-PST-E on November 19, 2009 assessing \$3,500 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding Mary's Automotive Inc. dba Mary's Service Center, Docket No. 2008-0776-PST-E on November 18, 2009 assessing \$6,850 in administrative penalties.

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.

TRD-200905540

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: December 2, 2009



Notice of Meeting on January 21, 2010, at the Iowa City Hall, Located at 12003 County Road 65, Iowa Colony, Brazoria County, Texas, Concerning the Force Road Oil and Vacuum Truck Company Proposed State Superfund Site

The purpose of the meeting is to obtain public input and information concerning the proposal to delete the Force Road Oil and Vacuum Truck Company proposed state Superfund site (the Site) from the state Superfund registry.

The executive director (ED) of the Texas Commission on Environmental Quality (TCEQ or commission) is issuing a notice of intent to delete the Site from its proposed-for-listing status on the state registry. The state registry is the list of state Superfund sites which may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment. The commission is proposing this deletion because the Site has been accepted into the Voluntary Cleanup Program, pursuant to 30 TAC §335.344(c)(5).

The Site, including all land, structures, appurtenances, and other improvements, is approximately 28 acres located at 1722 County Road 573 (Alloy Road), northwest of Iowa Colony in Brazoria County, Texas. The Site also includes any areas where hazardous substances have come to be located as a result, either directly or indirectly, of releases of hazardous substances from the Site.

The approximately 28-acre site consists of two tracts of land divided by a road at the end of County Road 573. The north tract consists of 16 acres of undeveloped land. The 12-acre tract of land south of the road was formerly used as a wastewater disposal and oil recovery facility from 1971 to 1983. The waste oil was received from industrial plants and service stations.

Site operations primarily involved the use of five surface impoundments for the separation of waste brought to the Site. Upon entering the facility, tank trucks were unloaded into Pond 1. This pond acted as the primary site for the separation of oil and wastewater. After separation, the oil was pumped off to one of the aboveground storage tanks (ASTs) and the wastewater was pumped through a series of two more ponds (Ponds 2 and 3) in which additional gravity separation occurred. Separated oil from each of these ponds was pumped into the aboveground tanks. The fourth surface impoundment was an "L" shaped waste management unit identified as the Sludge Pond (Pond 4). This pond was used to store oily wastes that were too thick to use as road oil. The Evaporation Pond (Pond 5) was the last and largest holding

pond in the series of ponds at the site. After entering this pond, the wastewater was evaporated using a spray system. An impoundment was also constructed to temporarily store wastewater while the Evaporation Pond was under construction. The Temporary Holding Pond exists as a shallow depression on the west side of the Site.

The only other structures remaining on the south tract are three ASTs, three underground storage tanks (USTs), and remnants of a metal pump house/storage shed. The ASTs are located along the northern portion of the former operations area. Two of the ASTs are estimated to be 20,000 gallons in size, and the third is estimated to be 12,000 gallons. These tanks are now empty. The USTs consist of buried railroad cars used to store various wastes. The total capacity of each UST is approximately 10,000 gallons. The tops of these tanks are exposed, and large openings have been cut in the tops of the tanks; however, no waste remains within the USTs.

On May 15, 2009, the Force Road Task Force submitted a Voluntary Cleanup Program application for the Site. On July 9, 2009, the TCEQ accepted the Site into the Voluntary Cleanup Program. The Force Road Task Force has proposed to remediate the former wastewater disposal and oil recovery facility to meet Remedy Standard B of the Texas Risk Reduction Program. The proposed site remediation includes: (1) removing and recycling the three empty ASTs; (2) abandoning the three empty USTs in place in accordance with 30 TAC §334.55(c); (3) removing the pump house/storage shed by recycling the sheet metal and placing the other building materials in the area to be capped; (4) dewatering Ponds 1 - 5, and treating (onsite with activated carbon or similar media) the water to the applicable standards prior to discharging the water to a ditch or disposing the water offsite at a permitted facility; (5) excavating affected sediment from Pond 5 and placing it in Ponds 1 - 4; (6) in-situ stabilizing the waste and affected sediment in Ponds 1 - 4 (using lime, fly ash, Portland cement or similar stabilizing agents); (7) constructing an engineered cap over Ponds 1 - 4 and the soil protective concentration level exceedence (PCLE) zones adjacent to Ponds 1 - 4; (8) constructing a security fence to include the capped area and groundwater plume management zone (PMZ); (9) filing an institutional control for the engineered cap and groundwater PMZ; and (10) two years of quarterly groundwater monitoring to demonstrate that the PCLE zones remain stable or shrinking and will permanently remain within the groundwater PMZ. Proposed post-response action care activities include: (1) monitoring and maintenance of the engineered cap for 30 years; and (2) three years of semi-annual groundwater monitoring to confirm the PCLE zones are permanently contained in the PMZ and post-response action care monitoring of groundwater is no longer necessary in accordance with 30 TAC §350.33(i).

The Site has been accepted into the TCEQ Voluntary Cleanup Program and is, therefore, eligible for deletion from the state registry as provided by 30 TAC §335.344(c).

In accordance with 30 TAC §335.344(b), the commission will hold a public meeting to receive comments on this proposed deletion. This meeting will not be a contested case hearing within the meaning of Texas Government Code, Chapter 2001. The meeting will be held on January 21, 2010, at 7:00 p.m., at the Iowa Colony City Hall, 12003 County Road 65, Iowa Colony, Texas.

All persons desiring to make comments regarding the proposed deletion of the site may do so prior to or at the public meeting. All comments submitted **prior** to the public meeting must be received by 5:00 p.m. on January 20, 2010, and should be sent in writing to Mark Arthur, P.G., Project Manager, Texas Commission on Environmental Quality, Remediation Division, MC 221, P.O. Box 13087, Austin, Texas 78711-3087 (or by facsimile: (512) 239-2450). The public comment period for this action will end at the close of the public meeting of January 21, 2010.

A portion of the record for the Site including documents pertinent to the ED's proposed deletion is available for review during regular business hours at the Alvin Branch Library, 65 South Gordon Street, Alvin, Texas 77511; (281) 388-4302. The complete public file may be obtained during regular business hours at the commission's Records Management Center, Building E, First Floor, Records Customer Service, MC 199, 12100 Park 35 Circle, Austin, Texas 78753, (800) 633-9363 or (512) 239-2920. Fees are charged for photocopying file information. Parking for persons with disabilities is available on the east side of Building D, convenient to access ramps that are between Buildings D and E. Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (800) 633-9363 or (512) 239-2463. Requests should be made as far in advance as possible.

For further information about the public meeting, please call Crystal Taylor, Community Relations Liaison, at (800) 633-9363.

TRD-200905542

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: December 2, 2009



### Notice of Water Quality Applications

The following notices were issued on November 12, 2009 through November 25, 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

The Texas Commission on Environmental Quality (TCEQ) has initiated a minor amendment without renewal to the current permit TPDES Permit No. WQ0004013000 issued January 30, 2009, of the Texas Pollutant Discharge Elimination System (TPDES) permit issued to Equistar Chemicals, LP, P.O. Box D, Deer Park, Texas 77536, which operates the La Porte Plant, to replace the incorrect permit expiration date of October 1, 2008 with the correct expiration date of October 1, 2013. The current permit authorizes the discharge of process wastewater, utility wastewater, treated domestic wastewater, hydrostatic test water, firewater, service water, potable water, construction storm water, demineralized water, steam condensate, de minimus spill cleanup water, and storm water at a daily average flow not to exceed 1,920,000 gallons per day via Outfall 001; process wastewater, utility wastewater, treated domestic wastewater, hydrostatic test water, firewater, service water, potable water, construction storm water, demineralized water, steam condensate, de minimus spill cleanup water, and storm water on an intermittent and flow variable basis via Outfall 003; treated process water, utility wastewater, treated domestic wastewater, hydrostatic test water, service water, demineralized water, de minimus spill cleanup water, steam condensate, and storm water at a daily average flow not to exceed 1,811,000 million gallons per day via Outfall 004; storm water, groundwater infiltration (continuous flow), raw water, fire water, wastewaters from the Decene Terminal, hydrostatic test water, firewater, potable water, demineralized water, steam condensate, and de minimus spill cleanup water on an intermittent and flow variable basis via Outfall 005; and storm water, raw water, fire water, hydrostatic test water, service water, potable water, construction storm water, demineralized water, steam condensate, and de minimus spill cleanup water on

an intermittent and flow variable basis via Outfall 006. The facility is located at 1515 Miller Cutoff Road, approximately one-mile north of the intersection of Miller Cutoff Road and State Highway 225, Harris County, Texas.

The City of Conroe has applied for a renewal of TPDES Permit No. WQ0013766001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 65,000 gallons per day. The facility is located 0.5 miles northeast of Lake Conroe Dam and 0.75 miles west of Longmire Road in Montgomery County, Texas.

The City of Seminole has applied for a renewal of TPDES Permit No. WQ0010278001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The facility is located adjacent to and south of U.S. Highway 180, approximately 1.5 miles east of the intersection of U.S. Highways 180 and 385 in Gaines County, Texas.

City of Archer City has applied for a renewal of TPDES Permit No. WQ0010393002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 165,000 gallons per day. The facility is located approximately 3/4 mile northeast of the intersection of State Highway 25 and State Highway 79 in Archer County, Texas 76351.

The City of Austin has applied for a renewal of TPDES Permit No. WQ0010543012, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 75,000,000 gallons per day. The facility is located between Onion Creek and the Colorado River, approximately 2 miles west of their confluence, approximately 2 miles east of the Farm-to-Market Road 973 crossing of the Colorado River and 2 miles north of State Highway 71 in Travis County, Texas 78617.

Texas Lehigh Cement Company LP has applied for a renewal of TCEQ Permit No. WQ0011976001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 2,700 gallons per day via surface irrigation of three acres of non-public access company-owned landscape. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately one mile west of Interstate Highway 35, at a point approximately two miles south of Buda, at 701 Cement Plant Road, in Hays County, Texas 78610.

Murvaul Water Supply Corporation, which proposes to operate Murvaul Plant, has applied for a new permit, the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004875000 will authorize the discharge of filter backwash water at a daily average flow not to exceed 6,000 gallons per day via Outfall 001. The facility is located approximately 60 feet after the intersection of County Road 183 and Lake Shore Drive on the east side of Panola County, Texas.

City of Wolfe City has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0010383002, which authorizes the discharge of filter backwash effluent from a water treatment plant at a daily average flow not to exceed 90,000 gallons per day. The facility is located 3/4 mile east of the City of Wolfe City on Farm-to-Market Road 1563, south of the Western City Reservoir in Hunt County, Texas 75496.

City of Victoria and Guadalupe-Blanco River Authority have applied for a renewal of TPDES Permit No. WQ0010466001, which authorizes the discharge of treated domestic wastewater effluent at an annual average flow not to exceed 2,500,000 gallons per day. The facility is located on the east bank of the Guadalupe River, midway between Wharf Street and Peachtree Street, approximately 1.7 miles southwest of the intersection of U.S. Highways 59, 77 and 87 in the City of Victoria in Victoria County, Texas 77901.

City of Blossom has applied for a renewal of TPDES Permit No. WQ0010715002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located approximately 3,000 feet southwest of the intersection of U.S. Highway 82 and Farm-to-Market Road 1502, approximately 4,000 feet east of the intersection of Farm-to-Market Roads 194 and 196 in Lamar County, Texas 75416.

City of Redwater has applied for a renewal of TPDES Permit No. WQ0010926001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 140,000 gallons per day. The facility is located at 210 Elm Street, approximately 800 feet east of Farm-to-Market Road 991 from a point located approximately 3,100 feet south of the intersection of Farm-to-Market Road 991 with St. Louis Southwestern Railway, south of the City of Redwater in Bowie County, Texas 75573.

SWWC Utilities, Inc. has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0011931001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The facility is located at 16600 Edgemere Drive, Pflugerville, on the westerly bank of Gilleland Creek; approximately 5,800 feet northwest of the intersection of Pflugerville Loop and Farm-to-Market Road 1825 in Travis County, Texas 78660.

Millennium Rail, Inc. has applied for a renewal of TPDES Permit No. WQ0012390001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 5,000 gallons per day. The facility is located approximately 1000 feet south of Farm-to-Market Road 1998, approximately 3500 feet east of the intersection of Farm-to-Market Roads 1998 and 2199 in Harrison County, Texas 75688.

Trinity River Authority of Texas has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0013457001 to remove the requirements of the completion of the 11,500,000 gallons per day facilities at Interim II and Final phases of Outfall 001 of the existing permit. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 11,500,000 gallons per day. The facility is located at 1687 U.S. Highway 377 north of Roanoke, approximately 1.5 miles north-northeast of the intersection of State Highway 114 and U.S. Highway 377 in Denton County, Texas 76262.

La Joya Independent School District has applied for a new permit, Proposed TCEQ Permit No. WQ0013523013, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 35,000 gallons per day via public access subsurface drip irrigation system with a minimum area of 10 acres. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site will be located 2,400 feet south and 1,300 feet east of the intersection of Farm-to-Market Road 2221 and Texan Road in Hidalgo County, Texas 78574. The disposal area will be located 2,400 feet south and 600 feet east of the intersection of Farm-to-Market Road 2221 and Texan Road in Hidalgo County, Texas 78574.

Quadvest, L.P. has applied for a renewal of TPDES Permit No. WQ0014029001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility is located approximately 2,600 feet north of State Highway 242, approximately 2.2 miles east of the intersection of State Highway 242 and Farm-to-Market Road 1314, approximately 10 miles southeast of the City of Conroe in Montgomery County, Texas 77302.

City of Austin has applied for a renewal of TPDES Permit No. WQ0014036001 which authorizes the discharge of treated domestic

wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility will be located approximately 0.75 mile south of State Highway 71 and approximately 8 miles east of the intersection of State Highway 71 and U.S. Highway 183 in Travis County, Texas 78617.

B & B Investments, Inc. has applied for a renewal of TPDES Permit No. WQ0014230001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day. The facility will be located approximately 0.5 mile south of the intersection of Farm-to-Market Road 359 and Church Road in Waller County, Texas 77441.

Presbyterian Mo Ranch Assembly has applied for a renewal of TCEQ Permit No. WQ0014603001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day via surface irrigation of 15 acres of public access grassland. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately 10 miles west of the City of Hunt, at the crossing of the North Fork Guadalupe River and Farm-to-Market Road 1340 in Kerr County, Texas 78024.

Greatwood Hospitality, Inc. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014955001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 12,500 gallons per day. The facility was previously permitted under TPDES Permit No. WQ0014067001 which expired July 1, 2004. The facility is located at 20825 Southwest Freeway, Sugarland, in Fort Bend County, Texas 77479.

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](http://www.TCEQ.state.tx.us). Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200905538

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: December 2, 2009

## Texas Ethics Commission

### List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5780 or (800) 325-8506.

#### **Deadline: Lobby Activities Report due August 10, 2009**

Joellen Duckett, 700 Lavaca St., Ste. 930, Austin, Texas 78701

David Dunn, 700 Lavaca St., Ste. 930, Austin, Texas 78701

Todd M. Smith, 2204 Hazeltine Lane, Austin, Texas 78747-1206

Amanda Thomas, 700 Lavaca St., Ste. 930, Austin, Texas 78701

#### **Deadline: Lobby Activities Report due September 10, 2009**

David Dunn, 700 Lavaca St., Ste. 930, Austin, Texas 78701

Amanda Thomas, 700 Lavaca St., Ste. 930, Austin, Texas 78701

TRD-200905461

David A. Reisman  
Executive Director  
Texas Ethics Commission  
Filed: November 23, 2009

◆ ◆ ◆  
**Texas Facilities Commission**

**Request for Proposals #303-0-10756**

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission (HHSC), announces the issuance of Request for Proposals (RFP) #303-0-10756. TFC seeks a five (5) or ten (10) year lease of approximately 20,248 square feet of office space in San Antonio, Bexar County, Texas.

The deadline for questions is December 18, 2009 and the deadline for proposals is January 11, 2010 at 3:00 p.m. The award date is March 17, 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=86288](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=86288).

TRD-200905546  
Kay Molina  
General Counsel  
Texas Facilities Commission  
Filed: December 2, 2009

◆ ◆ ◆  
**Texas Department of Insurance**

**Company Licensing**

Application to change the name of SUA INSURANCE COMPANY to CASTLEPOINT NATIONAL INSURANCE COMPANY, a foreign fire and casualty company. The home office is in Chicago, Illinois.

Application to change the name of NORTHEAST INVESTORS TITLE INSURANCE COMPANY to NATIONAL INVESTORS TITLE INSURANCE COMPANY, a foreign title company. The home office is in Columbia, South Carolina.

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-200905544  
Gene C. Jarmon  
General Counsel and Chief Clerk  
Texas Department of Insurance  
Filed: December 2, 2009

◆ ◆ ◆  
**Correction of Error**

The Texas Department of Insurance proposed new rules, 28 TAC §§26.501, 26.502, 26.511 - 26.517, 26.521, 26.522, 26.531 - 26.538, 26.551 - 26.553, and 26.561 - 26.564, in the November 20, 2009, issue of the *Texas Register* (34 TexReg 8181). A list of errors in the proposal and the corrected text follows:

Page 8182, first column, fourth paragraph: "Proposed new §26.515 set forth. . . ."

Correction: "Proposed new §26.515 sets forth. . . ."

Page 8182, second column, first paragraph: "Proposed new §26.521 also provides that a qualifying small employer may not have provided group health insurance covering any of their employees. . . ."

Correction: "Proposed new §26.521 also provides that a qualifying small employer may not have provided group health insurance covering any of its employees. . . ."

Page 8187, §26.521(e): "(e) Qualifying small employers must, in accordance with the Insurance Code §1508.051 and §1508.063. . . ."

Correction: "(e) Qualifying small employers must, in accordance with the Insurance Code §1508.051 and §1508.053. . . ."

Page 8187, §26.521(e)(3): "(3) At least one eligible employee earning annual wages . . . United States Department of Health and Human Services as adjusted by the commissioner. . . ."

Correction: "(3) At least one eligible employee earning annual wages . . . United States Department of Health and Human Services, or as adjusted by the commissioner. . . ."

Page 8189, §26.535(b)(2): "(2) an annual per-individual and per-family maximum financial requirement. . . ."

Correction: "(2) an annual maximum financial requirement. . . ."

Page 8189, §26.535(c)(1): "(1) meet the small employer participation provisions of §26.521(a) - (e)(1) and (g) - (k) of this subchapter. . . ."

Correction: "(1) meet the small employer participation provisions of §26.521(a), (b), (d), (e)(1) and (g) - (k) of this subchapter. . . ."

TRD-200905488

◆ ◆ ◆  
**Open Meeting Notice**

The Commissioner of Insurance will hold a Public Meeting under Docket No. 2708 on December 16, 2009 in Room 100 of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. The Meeting will open at 8:30 a.m.

The purpose of the Meeting is to introduce the newly appointed Board of Directors of the Texas Windstorm Insurance Association (Association) and to provide information regarding the responsibilities of the Board of Directors.

House Bill 4409 of the 81st Texas Legislature, Regular Session, amended Chapter 2210 of the Texas Insurance Code and among other changes abolishes the current Board of Directors of the Association effective December 31, 2009. The amended Insurance Code directs the Commissioner of Insurance to appoint a new Board of Directors for the Association not later than December 31, 2009. The members of the new Board of Directors take office January 1, 2010.

The Agenda for the Public Meeting is as follows:

**AGENDA**

- I. Welcome/Overview, Introduction, & Protocols
- II. Board Organization
- III. Strategic Mission
- IV. Inspections and Waivers
- V. Form and Rate Filings
- VI. Office of Public Insurance Counsel Role

VII. Consumer Protection Complaints Process

VIII. Market Overview and Trends

IX. Expectations and Key Objectives Going Forward

TRD-200905522

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: December 1, 2009



### Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application to change the name of HARRINGTON BENEFIT SERVICES, INC., to HARRINGTON HEALTH SERVICES, INC., a foreign third party administrator. The home office is in Wilmington, Delaware.

Application to change the name of MULTINATIONAL UNDERWRITERS, LLC, to HCC MEDICAL INSURANCE SERVICES, LLC, a foreign third party administrator. The home office is in Milwaukee, Wisconsin.

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 David Moskowitz, 333 Guadalupe Street, M/C 305-2E, Austin, Texas 78701.

TRD-200905547

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: December 2, 2009



## Texas Department of Licensing and Regulation

### Public Notice - Updated Criminal Conviction Guidelines

The Texas Commission of Licensing and Regulation ("Commission") provides this public notice that, at their meeting held November 17, 2009, the Commission adopted the Texas Department of Licensing and Regulation's ("Department") updated Criminal Conviction Guidelines pursuant to Texas Occupations Code, §53.025(a). These guidelines describe the process by which the Department determines whether a criminal conviction renders an applicant an unsuitable candidate for the license, or whether a conviction warrants revocation or suspension of a license previously granted. The guidelines present the general factors that are considered in all cases and the reasons why particular crimes are considered to relate to each type of license issued by the Department.

House Bill 2591, Acts of the 81st Texas Legislature, Regular Session, 2009, amended Texas Occupations Code, Chapter 1152 relating to the regulation of property tax consultants and added a new subchapter regarding prohibited acts by property tax consultants. Based on the changes to the statute regarding the prohibition on using deceptive business practices in the solicitation of business, the Department has updated the guidelines to include crimes involving fraud, breach of fiduciary duty, and deceptive business practices.

The Department presented the updated guidelines applicable to property tax consultants to the Property Tax Consultants Advisory Council

at their meeting of October 22, 2009, and received a recommendation of approval.

A copy of the updated Criminal Conviction Guidelines is posted on the Department's website and may be downloaded at [www.license.state.tx.us](http://www.license.state.tx.us). You may also contact the Enforcement Division at (512) 539-5600 or by email at [enforcement@license.state.tx.us](mailto:enforcement@license.state.tx.us) to obtain a copy of the updated guidelines.

TRD-200905478

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: November 24, 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 (commission) received an application on November 25, 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; Add City of Briarcliff, Project Number 37712 before the Public Utility Commission of Texas.

The requested amendment is to expand the service area footprint to include the city limits of Briarcliff, 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) (800) 735-2989. All inquiries should reference Project Number 37712.

TRD-200905528

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: December 1, 2009



### Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on November 25, 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; Add Stonebridge Ranch/McKinney, Texas, Project Number 37713 before the Public Utility Commission of Texas.

The requested amendment is to expand the service area footprint to include Stonebridge Ranch, McKinney, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text tele-



phone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) (800) 735-2989. All inquiries should reference Project Number 37713.

TRD-200905527  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: December 1, 2009

◆ ◆ ◆  
**Notice of Application to Relinquish a Service Provider  
Certificate of Operating Authority**

On November 25, 2009, nii communications, ltd. filed an application with the Public Utility Commission of Texas (Commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60240. Applicant intends to relinquish its certificate.

The Application: Application of nii communications, ltd. to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 37709.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than December 16, 2009. Hearing and speech-impaired individuals with text telephones (TTY) may contact the Commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 37709.

TRD-200905526  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: December 1, 2009

◆ ◆ ◆  
**Notice of Application to Relinquish a Service Provider  
Certificate of Operating Authority**

On November 25, 2009, Cleartel Telecommunications, Inc. filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60167. Applicant intends to relinquish its certificate.

The Application: Application of Cleartel Telecommunications, Inc. to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 37710.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than December 16, 2009. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 37710.

TRD-200905525  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: December 1, 2009

◆ ◆ ◆  
**Public Notice of Request for Comment on Strawman Rule**

The staff of the Public Utility Commission of Texas (commission) request comments regarding a new strawman rule, §25.499, relating to Retail Electric Service Using an Advanced Payment Arrangement. Project Number 35533, *PUC Rulemaking Relating to Prepaid Service* has been assigned to this proceeding.

The strawman rule will be filed in Central Records under Project Number 35533 by Friday, December 11, 2009. The commission requests interested persons file written comments on this strawman rule.

Responses may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 before 3:00 p.m. CST, on Tuesday, January 12, 2010, and reply comments may be filed before 3:00 p.m. CST, on Tuesday, January 19, 2010. All responses should reference Project Number 35533.

Questions concerning the comments or this notice should be referred to Shawnee Claiborn-Pinto, Competitive Services Division, (512) 936-7388. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200905541  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: December 2, 2009

◆ ◆ ◆  
**Teacher Retirement System of Texas**

**Report of Fiscal Transactions, Accumulated Cash and Securities, and Rate of Return on Assets and Actuary's Certification of Actuarial Valuation and Actuarial Present Value of Future Benefits**

Section 825.108(a) of the Government Code requires the Teacher Retirement System of Texas (TRS) to publish a report in the *Texas Register* no later than December 15 of each year containing the following information: (1) the retirement system's fiscal transactions for the preceding fiscal year; (2) the amount of the system's accumulated cash and securities; and (3) the rate of return on the investment of the system's cash and securities during the preceding fiscal year.

In addition, §825.108(b) of the Government Code requires TRS to publish a report in the *Texas Register* no later than March 1 of each year containing the balance sheet as of August 31 of the preceding school year and containing an actuarial valuation of the system's assets and liabilities, including the extent to which the system's liabilities are unfunded.

TRS publishes the following reports as required by subsections (a) and (b) of §825.108 of the Government Code:

# Statement of Fiduciary Net Assets

AUGUST 31, 2009

(With Comparative Totals for Pension and Other Employee Benefit Trust Funds for August 31, 2008)

EXHIBIT I

	FIDUCIARY FUND TYPES	
	PENSION AND OTHER EMPLOYEE BENEFIT TRUST FUNDS	
	Pension Trust Fund	Health Benefits Trust Fund Retired Plan
<b>ASSETS</b>		
<b>Cash:</b>		
Cash in State Treasury	\$ 819,859,004	\$ 849,770,247
Cash in Bank	124,042,211	
Cash on Hand	2,152,196	
<b>TOTAL CASH</b>	<b>\$ 946,053,411</b>	<b>\$ 849,770,247</b>
<b>Receivables:</b>		
Sale of Investments	\$ 339,937,324	\$
Interest and Dividends	245,842,715	1,248,212
Member and Retiree Reporting Entities	79,987,993	38,413,843
Other	49,945,344	8,510,352
Due from State's General Fund	484,129	5,389,708
Due from Employees Retirement System of Texas	75,155,068	26,201,993
	791,929	
<b>TOTAL RECEIVABLES</b>	<b>\$ 792,144,502</b>	<b>\$ 79,764,108</b>
<b>Investments:</b>		
Short-Term	\$ 8,996,775,374	\$
Equities	43,046,546,588	
Fixed Income	16,577,616,180	
Alternative Investments	17,314,897,399	
Derivative Investments	302,282,839	
Pooled Investments	1,474,814,193	
<b>TOTAL INVESTMENTS</b>	<b>\$ 87,712,932,573</b>	<b>\$ -0-</b>
Invested Securities Lending Collateral	\$ 21,852,868,153	\$
<b>Capital Assets:</b>		
Land	\$ 1,658,310	\$
Building, Capital Projects, Leasehold Improvements and Equipment, at Cost, Net of Accumulated Depreciation/Amortization	28,831,028	
<b>TOTAL CAPITAL ASSETS</b>	<b>\$ 30,489,338</b>	<b>\$ -0-</b>
<b>TOTAL ASSETS</b>	<b>\$111,334,487,977</b>	<b>\$ 929,534,355</b>

**FIDUCIARY FUND  
TYPES**

**TOTAL - PENSION AND OTHER  
EMPLOYEE BENEFIT TRUST FUNDS**

2009	2008	Agency Funds
\$ 1,669,629,251	\$ 1,003,788,682	\$ 3,312
124,042,211	199,793,684	
2,152,196	3,358,224	
<b>\$ 1,795,823,658</b>	<b>\$ 1,206,940,590</b>	<b>\$ 3,312</b>
\$ 339,937,324	\$ 63,134,327	\$
247,090,927	320,965,696	
118,401,836	110,204,053	
58,455,696	47,927,136	
5,873,837	10,500,360	
101,357,061	130,736,292	
791,929	733,184	
<b>\$ 871,908,610</b>	<b>\$ 684,201,048</b>	<b>\$ -0-</b>
\$ 8,996,775,374	\$ 17,374,423,868	\$
43,046,546,588	50,917,099,622	
16,577,616,180	20,619,077,668	
17,314,897,399	15,118,758,132	
302,282,839	(415,383,006)	
1,474,814,193	975,618,115	
<b>\$ 87,712,932,573</b>	<b>\$ 104,589,594,399</b>	<b>\$ -0-</b>
<b>\$ 21,852,868,153</b>	<b>\$ 19,347,275,331</b>	<b>\$</b>
\$ 1,658,310	\$ 1,658,310	\$
28,831,028	26,297,396	
<b>\$ 30,489,338</b>	<b>\$ 27,955,706</b>	<b>\$ -0-</b>
<b>\$112,264,022,332</b>	<b>\$ 125,855,967,074</b>	<b>\$ 3,312</b>

(to next page)

# Statement of Fiduciary Net Assets

AUGUST 31, 2009

(With Comparative Totals for Pension and Other Employee Benefit Trust Funds for August 31, 2008)

(concluded)

EXHIBIT I

	FIDUCIARY FUND TYPES	
	PENSION AND OTHER EMPLOYEE BENEFIT TRUST FUNDS	
	Pension Trust Fund	Health Benefits Trust Fund Retired Plan
<b>LIABILITIES</b>		
Accounts Payable	\$ 6,734,844	\$ 509,972
Accounts Payable-External Manager Fees	16,754,738	
Benefits Payable	549,796,590	
Health Care Claims Payable		128,716,328
Reinstatement Installment Receipts	21,126,610	
Investments Purchased Payable	159,557,070	
Securities Lending Collateral	21,915,032,131	
Due to Employees Retirement System of Texas	5,025,029	
Compensable Absences Payable	5,102,778	159,663
Deferred Rent	2,386,505	
Funds Held for Others		
<b>TOTAL LIABILITIES</b>	<b>\$ 22,681,516,295</b>	<b>\$ 129,385,963</b>
<b>NET ASSETS HELD IN TRUST FOR PENSION/OTHER POST- EMPLOYMENT BENEFITS</b>	<b>\$ 88,652,971,682</b>	<b>\$ 800,148,392</b>

---

FIDUCIARY FUND  
TYPES

---

TOTAL - PENSION AND OTHER  
EMPLOYEE BENEFIT TRUST FUNDS

---

2009	2008	Agency Funds
\$ 7,244,816	\$ 4,761,321	\$
16,754,738	1,374,018	
549,796,590	520,209,568	
128,716,328	123,324,862	
21,126,610	28,152,145	
159,557,070	182,710,162	
21,915,032,131	19,347,275,331	
5,025,029	4,531,950	
5,262,441	4,290,847	
2,386,505		
		3,312
<hr/>	<hr/>	<hr/>
\$ 22,810,902,258	\$ 20,216,630,204	\$ 3,312
<hr/>	<hr/>	<hr/>
\$ 89,453,120,074	\$ 105,639,336,870	\$ -0-
<hr/>	<hr/>	<hr/>

# Statement of Changes in Fiduciary Net Assets

FOR THE FISCAL YEAR ENDED AUGUST 31, 2009 (With Comparative Totals for August 31, 2008)

EXHIBIT II

	PENSION AND OTHER EMPLOYEE BENEFIT TRUST FUNDS	
	Pension Trust Fund	Health Benefits Trust Fund Retired Plan
<b>ADDITIONS:</b>		
<b>Contributions:</b>		
Member	\$ 2,107,057,870	\$ 173,856,344
State - General Fund	1,481,843,941	245,611,097
State - Federal Funds/Private Grants	275,182,487	21,860,202
Reporting Entities	412,728,096	149,562,613
Health Care Premiums		329,723,191
<b>TOTAL CONTRIBUTIONS AND PREMIUMS</b>	<b>\$ 4,276,812,394</b>	<b>\$ 920,613,447</b>
<b>Investment Income:</b>		
From Investing Activities:		
Net Depreciation in Fair Value of Investments	\$ (16,030,794,035)	\$
Interest	776,676,251	17,482,143
Dividends	1,108,384,911	
<b>TOTAL INVESTING ACTIVITIES INCOME (LOSS)</b>	<b>\$ (14,145,732,873)</b>	<b>\$ 17,482,143</b>
Less: Investing Activity Expenses	(68,990,517)	
<b>NET INCOME (LOSS) FROM INVESTING ACTIVITIES</b>	<b>\$ (14,214,723,390)</b>	<b>\$ 17,482,143</b>
From Securities Lending Activities:		
Securities Lending Income	\$ 371,868,589	\$
Securities Lending Expenses:		
Borrower Rebates	(93,966,133)	
Management Fees	(35,047,788)	
Net Income from Securities Lending Activities	\$ 242,854,668	\$ -0-
<b>TOTAL NET INVESTMENT INCOME (LOSS)</b>	<b>\$ (13,971,868,722)</b>	<b>\$ 17,482,143</b>
<b>Other Additions:</b>		
Reinstatement of Contribution Refunds	\$ 37,880,721	\$
Reinstatement Fees	36,661,692	
Legislative Appropriations for Excess Benefits	1,553,381	
Miscellaneous Revenues	3,899	
On Behalf Fringe Benefits Paid by the Federal Government		61,530,735
On Behalf Fringe Benefits Paid by the State		95,929
<b>TOTAL OTHER ADDITIONS</b>	<b>\$ 76,099,693</b>	<b>\$ 61,626,664</b>
<b>TOTAL ADDITIONS</b>	<b>\$ (9,618,956,635)</b>	<b>\$ 999,722,254</b>

**TOTAL - PENSION AND OTHER  
EMPLOYEE BENEFIT TRUST FUNDS**

2009	2008
\$ 2,280,914,214	\$ 2,163,707,900
1,727,455,038	1,685,067,990
297,042,689	272,095,738
562,290,709	495,197,110
329,723,191	328,505,433
<u>\$ 5,197,425,841</u>	<u>\$ 4,944,574,171</u>
\$(16,030,794,035)	\$ (7,992,472,030)
794,158,394	1,835,245,865
1,108,384,911	1,397,529,103
<u>\$(14,128,250,730)</u>	<u>\$ (4,759,697,062)</u>
(68,990,517)	(29,330,150)
<u>\$(14,197,241,247)</u>	<u>\$ (4,789,027,212)</u>
\$ 371,868,589	\$ 929,696,098
(93,966,133)	(682,745,643)
(35,047,788)	(33,642,743)
<u>\$ 242,854,668</u>	<u>\$ 213,307,712</u>
\$(13,954,386,579)	\$ (4,575,719,500)
\$ 37,880,721	\$ 44,045,625
36,661,692	43,161,749
1,553,381	1,646,494
3,899	3,596
61,530,735	59,486,239
95,929	91,945
<u>\$ 137,726,357</u>	<u>\$ 148,435,648</u>
<u>\$(8,619,234,381)</u>	<u>\$ 517,290,319</u>

(to next page)

# Statement of Changes in Fiduciary Net Assets

FOR THE FISCAL YEAR ENDED AUGUST 31, 2009 (With Comparative Totals for August 31, 2008)  
(concluded)

EXHIBIT II

	PENSION AND OTHER EMPLOYEE BENEFIT TRUST FUNDS	
	Pension Trust Fund	Health Benefits Trust Fund Retired Plan
<b>DEDUCTIONS:</b>		
Benefits	\$ 6,342,010,323	\$
Refunds of Contributions	266,695,076	
Health Care Claims		885,132,865
Health Care Claims Processing Administrative Expenses, Net of Investing Activity Expenses	28,310,448	40,364,063
Excess Benefits	1,553,381	2,916,259
<b>TOTAL DEDUCTIONS</b>	<b>\$ 6,638,569,228</b>	<b>\$ 928,413,187</b>
<b>Net Increase (Decrease)</b>	<b>\$ (16,257,525,863)</b>	<b>\$ 71,309,067</b>
<b>NET ASSETS HELD IN TRUST FOR PENSION/OTHER POST- EMPLOYMENT BENEFITS - BEGINNING OF YEAR</b>	<b>\$104,910,497,545</b>	<b>\$ 728,839,325</b>
<b>NET ASSETS HELD IN TRUST FOR PENSION/OTHER POST- EMPLOYMENT BENEFITS - END OF YEAR</b>	<b>\$ 88,652,971,682</b>	<b>\$ 800,148,392</b>



---

**TOTAL - PENSION AND OTHER  
EMPLOYEE BENEFIT TRUST FUNDS**

---

<b>2009</b>	<b>2008</b>
\$ 6,342,010,323	\$ 6,450,520,672
266,695,076	278,002,614
885,132,865	833,509,538
40,364,063	36,747,710
31,226,707	29,123,198
1,553,381	1,646,494
<hr/>	<hr/>
\$ 7,566,982,415	\$ 7,629,550,226
\$ (16,186,216,796)	\$ (7,112,259,907)
<hr/>	<hr/>
\$105,639,336,870	\$112,751,596,777
<hr/> <hr/>	<hr/> <hr/>
\$ 89,453,120,074	\$105,639,336,870

# Statement of Net Assets

PROPRIETARY FUNDS

AUGUST 31, 2009 (With Comparative Totals for August 31, 2008)

EXHIBIT III

	Enterprise Funds	
	Major Fund	Nonmajor Fund
	TRS-ActiveCare	403(b) Certification Program
<b>ASSETS</b>		
<b>Current Assets:</b>		
<b>Cash:</b>		
Cash in State Treasury	\$ 486,766,302	\$ 362,131
<b>TOTAL CASH</b>	<b>\$ 486,766,302</b>	<b>\$ 362,131</b>
<b>Short-Term Investments</b>	<b>\$ -0-</b>	<b>\$ -0-</b>
<b>Accounts Receivable:</b>		
Investment Interest	\$ 788,428	\$ 462
Health Care Premiums	56,584,741	
ARRA Cobra Premiums	170,219	
<b>TOTAL ACCOUNTS RECEIVABLE</b>	<b>\$ 57,543,388</b>	<b>\$ 462</b>
<b>TOTAL ASSETS</b>	<b>\$ 544,309,690</b>	<b>\$ 362,593</b>
<b>LIABILITIES</b>		
<b>Current Liabilities:</b>		
Accounts Payable	\$ 365,378	\$ 7,333
Premiums Payable to HMOs	5,336,353	
Health Care Claims Payable	128,255,190	
Compensable Absences Payable	72,508	
<b>TOTAL CURRENT LIABILITIES</b>	<b>\$ 134,029,429</b>	<b>\$ 7,333</b>
<b>Noncurrent Liabilities:</b>		
Compensable Absences Payable	\$ 41,369	\$
<b>TOTAL LIABILITIES</b>	<b>\$ 134,070,798</b>	<b>\$ 7,333</b>
<b>NET ASSETS</b>		
Restricted for Administrative Expenses	\$	\$ 355,260
Unrestricted	410,238,892	
<b>TOTAL NET ASSETS</b>	<b>\$ 410,238,892</b>	<b>\$ 355,260</b>

---

**Total Enterprise Funds**

---

<b>2009</b>	<b>2008</b>
<u>\$ 487,128,433</u>	<u>\$ 116,016,467</u>
<u>\$ 487,128,433</u>	<u>\$ 116,016,467</u>
<u>\$ -0-</u>	<u>\$ 428,523,342</u>
<u>\$ 788,890</u>	<u>\$ 1,266,521</u>
<u>56,584,741</u>	<u>49,961,692</u>
<u>170,219</u>	
<u>\$ 57,543,850</u>	<u>\$ 51,228,213</u>
<u>\$ 544,672,283</u>	<u>\$ 595,768,022</u>
<u>\$ 372,711</u>	<u>\$ 188,024</u>
<u>5,336,353</u>	<u>5,552,472</u>
<u>128,255,190</u>	<u>113,019,499</u>
<u>72,508</u>	<u>72,187</u>
<u>\$ 134,036,762</u>	<u>\$ 118,832,182</u>
<u>\$ 41,369</u>	<u>\$ 45,514</u>
<u>\$ 134,078,131</u>	<u>\$ 118,877,696</u>
<u>\$ 355,260</u>	<u>\$ 419,702</u>
<u>410,238,892</u>	<u>476,470,624</u>
<u>\$ 410,594,152</u>	<u>\$ 476,890,326</u>

# Statement of Revenues, Expenses, and Changes in Fund Net Assets

PROPRIETARY FUNDS

FOR THE FISCAL YEAR ENDED AUGUST 31, 2009 (With Comparative Totals for August 31, 2008)

EXHIBIT IV

	Enterprise Funds	
	Major Fund	Nonmajor Fund
	TRS-ActiveCare	403(b) Certification Program
<b>OPERATING REVENUES:</b>		
Health Care Premiums	\$1,172,011,048	\$
Administrative Fees	187,813	
ARRA Cobra Reimbursements	170,219	
Certification Fees		6,000
Product Registration Fees		9,000
<b>TOTAL OPERATING REVENUES</b>	<b>\$1,172,369,080</b>	<b>\$ 15,000</b>
<b>OPERATING EXPENSES:</b>		
Health Care Claims	\$1,122,646,958	\$
Health Care Claims Processing	60,934,432	
Premium Payments to HMOs	64,820,440	
Administrative Expenses	1,861,949	88,000
<b>TOTAL OPERATING EXPENSES</b>	<b>\$1,250,263,779</b>	<b>\$ 88,000</b>
<b>OPERATING INCOME (LOSS)</b>	<b>\$ (77,894,699)</b>	<b>\$ (73,000)</b>
<b>NONOPERATING REVENUES:</b>		
Investment Income	\$ 11,597,992	\$ 8,558
On Behalf Fringe Benefits Paid by the State	64,975	
<b>TOTAL NONOPERATING REVENUES</b>	<b>\$ 11,662,967</b>	<b>\$ 8,558</b>
<b>Change in Net Assets</b>	<b>\$ (66,231,732)</b>	<b>\$ (64,442)</b>
<b>TOTAL NET ASSETS - BEGINNING</b>	<b>\$ 476,470,624</b>	<b>\$ 419,702</b>
<b>TOTAL NET ASSETS - ENDING</b>	<b>\$ 410,238,892</b>	<b>\$ 355,260</b>

---

**Total Enterprise Funds**

---

<b>2009</b>	<b>2008</b>
\$ 1,172,011,048	\$1,096,537,022
187,813	186,844
170,219	
6,000	30,000
9,000	180,000
<hr/>	<hr/>
\$ 1,172,384,080	\$1,096,933,866
\$ 1,122,646,958	\$ 952,156,339
60,934,432	54,583,499
64,820,440	68,204,743
1,949,949	2,022,258
<hr/>	<hr/>
\$ 1,250,351,779	\$1,076,966,839
\$ (77,967,699)	\$ 19,967,027
\$ 11,606,550	\$ 21,183,977
64,975	61,894
<hr/>	<hr/>
\$ 11,671,525	\$ 21,245,871
\$ (66,296,174)	\$ 41,212,898
\$ 476,890,326	\$ 435,677,428
<hr/>	<hr/>
\$ 410,594,152	\$ 476,890,326
<hr/>	<hr/>

# Statement of Cash Flows

PROPRIETARY FUNDS

FOR THE FISCAL YEAR ENDED AUGUST 31, 2009 (With Comparative Totals for August 31, 2008)

EXHIBIT V

	Enterprise Funds	
	Major Fund	Nonmajor Fund
	TRS-ActiveCare	403(b) Certification Program
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Receipts from Health Care Premiums	\$ 1,165,530,400	\$
Receipts from Long-Term Care Administrative Fees	187,813	
Receipts from Certification/Product Registration Fees		15,000
Payments for Administrative Expenses	(1,749,846)	(96,667)
Payments for Health Care Claims	(1,107,449,363)	
Payments for Health Care Claims Processing	(60,896,335)	
Payments for HMO Premiums	(65,036,559)	
<b>NET CASH PROVIDED (USED) BY OPERATING ACTIVITIES</b>	<b>\$ (69,413,890)</b>	<b>\$ (81,667)</b>
Interest Received	\$ 12,074,969	\$ 9,212
<b>NET CASH PROVIDED BY INVESTING ACTIVITIES</b>	<b>\$ 12,074,969</b>	<b>\$ 9,212</b>
Net Increase (Decrease) in Cash	\$ (57,338,921)	\$ (72,455)
CASH AND CASH EQUIVALENTS - SEPTEMBER 1	\$ 544,105,223	\$ 434,586
CASH AND CASH EQUIVALENTS - AUGUST 31	\$ 486,766,302	\$ 362,131
<b>RECONCILIATION OF OPERATING INCOME (LOSS) TO NET CASH PROVIDED (USED) BY OPERATING ACTIVITIES</b>		
Operating Income (Loss)	\$ (77,894,699)	\$ (73,000)
Adjustments to Reconcile Operating Income (Loss) to Net Cash Provided (Used) by Operating Activities:		
(Increase) in Health Care Premiums Receivable	\$ (6,793,268)	\$
Increase (Decrease) in Premiums Payable to HMOs	(216,119)	
Increase in Health Care Claims Payable	15,235,692	
Increase (Decrease) in Accounts Payable	193,353	(8,667)
Increase (Decrease) in Compensable Absences Payable	(3,824)	
On Behalf Fringe Benefits Paid by the State	64,975	
<b>Total Adjustments</b>	<b>\$ 8,480,809</b>	<b>\$ (8,667)</b>
<b>Net Cash Provided (Used) by Operating Activities</b>	<b>\$ (69,413,890)</b>	<b>\$ (81,667)</b>

---

**Total Enterprise Funds**

---

<b>2009</b>	<b>2008</b>
\$ 1,165,530,400	\$ 1,085,380,356
187,813	186,844
15,000	210,000
(1,846,513)	(1,980,609)
(1,107,449,363)	(937,231,469)
(60,896,335)	(54,533,806)
(65,036,559)	(67,442,395)
<hr/>	<hr/>
\$ (69,495,557)	\$ 24,588,921
<hr/>	<hr/>
\$ 12,084,181	\$ 22,199,110
<hr/>	<hr/>
\$ 12,084,181	\$ 22,199,110
<hr/>	<hr/>
\$ (57,411,376)	\$ 46,788,031
<hr/>	<hr/>
\$ 544,539,809	\$ 497,751,778
<hr/>	<hr/>
\$ 487,128,433	\$ 544,539,809
<hr/>	<hr/>
<hr/>	<hr/>
\$ (77,967,699)	\$ 19,967,027
\$ (6,793,268)	\$ (11,049,733)
(216,119)	762,348
15,235,692	14,974,564
184,686	(154,054)
(3,824)	26,875
64,975	61,894
<hr/>	<hr/>
\$ 8,472,142	\$ 4,621,894
<hr/>	<hr/>
\$ (69,495,557)	\$ 24,588,921
<hr/>	<hr/>

EXHIBIT VI

## Balance Sheet

GOVERNMENTAL FUND

AUGUST 31, 2009 (With Comparative Totals for August 31, 2008)

	School Employee Children's Health Insurance Program Special Revenue Fund*	
	2009	2008
TOTAL ASSETS	\$ -0-	\$ -0-

TOTAL LIABILITIES AND FUND BALANCE	\$ -0-	\$ -0-
------------------------------------	--------	--------

\*This fund has activity presented on the Statement of Revenues, Expenditures, and Changes in Fund Balance.

## Statement of Revenues, Expenditures, and Changes in Fund Balance

GOVERNMENTAL FUND

FOR THE FISCAL YEAR ENDED AUGUST 31, 2009 (With Comparative Totals for August 31, 2008)

	School Employee Children's Health Insurance Program Special Revenue Fund*	
	2009	2008
<b>REVENUES:</b>		
Legislative Appropriations	\$ 13,192,708	\$ 13,120,309
<b>TOTAL REVENUES</b>	<b>\$ 13,192,708</b>	<b>\$ 13,120,309</b>
<b>EXPENDITURES:</b>		
Administrative Expenditures	\$	\$
<b>TOTAL EXPENDITURES</b>	<b>\$ -0-</b>	<b>\$ -0-</b>
Excess of Revenues Over Expenditures	\$ 13,192,708	\$ 13,120,309
<b>OTHER FINANCING SOURCES (USES):</b>		
Transfer Out to HHSC	\$ (13,192,708)	\$ (13,120,309)
<b>TOTAL OTHER FINANCING SOURCES (USES)</b>	<b>\$ (13,192,708)</b>	<b>\$ (13,120,309)</b>
<b>FUND BALANCE - BEGINNING</b>	<b>\$ -0-</b>	<b>\$ -0-</b>
<b>FUND BALANCE - ENDING</b>	<b>\$ -0-</b>	<b>\$ -0-</b>

\*The interagency contract with the Health and Human Services Commission (HHSC) for the Children's Health Insurance Program became effective September 1, 2007. Legislative appropriations were received by TRS in fiscal years 2009 and 2008 and transferred to HHSC in September 2008 and 2007, respectively.

EXHIBIT VII



# Combining Statement of Changes in Assets and Liabilities

AGENCY FUNDS

FOR THE FISCAL YEAR ENDED AUGUST 31, 2009

EXHIBIT A

	Balances September 1, 2008	Additions	Deductions	Balances August 31, 2009
<b>Employees' Savings Bond Account</b>				
<b>Assets:</b>				
Cash in State Treasury	\$ 675	\$ 5,850	\$ 6,075	\$ 450
<b>Liabilities:</b>				
Funds Held for Others	\$ 675	\$ 5,825	\$ 6,050	\$ 450
<b>Child Support Employee Deductions</b>				
<b>Assets:</b>				
Cash in State Treasury	\$	\$ 2,970	\$ 108	\$ 2,862
<b>Liabilities:</b>				
Funds Held for Others	\$	\$ 2,970	\$ 108	\$ 2,862
<b>Totals - All Agency Funds</b>				
				<b>(Exhibit I)</b>
<b>Assets:</b>				
Cash in State Treasury	\$ 675	\$ 8,820	\$ 6,183	\$ 3,312
<b>TOTAL ASSETS</b>	<b>\$ 675</b>	<b>\$ 8,820</b>	<b>\$ 6,183</b>	<b>\$ 3,312</b>
<b>Liabilities:</b>				
Funds Held for Others	\$ 675	\$ 8,795	\$ 6,158	\$ 3,312
<b>TOTAL LIABILITIES</b>	<b>\$ 675</b>	<b>\$ 8,795</b>	<b>\$ 6,158</b>	<b>\$ 3,312</b>

# Rate of Return on Assets

YEAR ENDED AUGUST 31, 2009

EXHIBIT B

	<u>Pension Trust Fund</u>	<u>Health Benefits Plans and 403(b) Program</u>
Cash and Short-Term Investments *	-4.56%	1.10%
Long-Term Investments: **		
Global Equities	-17.14%	
Stable Value	1.96%	
Real Return	-20.24%	

\* The rate of return for the Pension Trust Fund was included in Stable Value in the Annual Investment Performance Report for fiscal year ended August 31, 2009.

\*\* These asset allocation investment categories are based on the portfolio that the underlying securities are invested in. The portfolios are determined by and subject to the system's investment policy guidelines. Rates for Long-Term Investments include appreciation in market value.



Gabriel Roeder Smith & Company  
Consultants & Actuaries

5605 N. MacArthur Blvd.  
Suite 870  
Irving, TX 75038-2631

469.524.0000 phone  
469.524.0003 fax  
www.gabrielroeder.com

November 5, 2009

**BOARD OF TRUSTEES**

Teacher Retirement System of Texas  
1000 Red River Street  
Austin, TX 78701-2698

**Subject: Actuary's Certification of the Actuarial Valuation as of August 31, 2009**

We certify that the information included herein and contained in the 2009 Actuarial Valuation Report is accurate and fairly presents the actuarial position of the Teacher Retirement System of Texas (TRS) as of August 31, 2009.

All calculations have been made in conformity with generally accepted actuarial principles and practices, and with the Actuarial Standards of Practice issued by the Actuarial Standards Board. In our opinion, the results presented comply with the requirements of the Texas statutes and, where applicable, the Internal Revenue Code, ERISA, and the Statements of the Governmental Accounting Standards Board. The undersigned are independent actuaries. Mr. Carter and Mr. Newton are members of the American Academy of Actuaries, and are also Enrolled Actuaries. All are experienced in performing valuations for large public retirement systems.

**Actuarial Valuations**

The primary purpose of the valuation report is to determine the adequacy of the current State contribution rate through measuring the resulting funding period, to describe the current financial condition of the System, and to analyze changes in the System's condition. In addition, the report provides information required by the System in connection with Governmental Accounting Standards Board Statement No. 25 (GASB No. 25), and it provides various summaries of the data.

Valuations are prepared annually, as of August 31 of each year, the last day of the System's plan and fiscal year.

**Financing Objective of the Plan**

Contribution rates are established by Law that, over time, are intended to remain level as a percent of payroll. The employee and State contribution rates have been set by Law and are intended to provide for the normal cost plus the level percentage of payroll required to amortize the unfunded actuarial accrued liability over a period not in excess of 31 years.

**Progress Toward Realization of Financing Objective**

The actuarial accrued liability, the unfunded actuarial accrued liability (UAAL), and the calculation of the resulting funding period illustrate the progress toward the realization of financing objectives. Based on this actuarial valuation as of August 31, 2009, the System's under-funded status has increased to \$21.6 billion from \$11.5 billion as of August 31, 2008. This increase in the UAAL is due to a loss on the actuarial value of assets of the System.

This valuation shows a normal cost equal to 10.42% of pay. The State set its contribution rate to 6.40% of pay as of September 1, 2009, which combined with the member contribution rate of 6.40% of pay provides a total contribution rate of 12.80% of pay. Therefore, there is 2.38% of pay available to amortize the UAAL. If payroll grows as expected, the contributions provided by this portion of the contribution rate are insufficient to amortize the current unfunded actuarial accrued liabilities of the System over any period of time (i.e. the funding period is never). Further, if the current assumptions are met (the trust earns an average 8.0% per annum) and the current 6.40% member and 6.40% State contribution rates continue, the fund is projected to remain solvent until the year 2058, after which the funding would return to a pay-as-you-go status. Therefore, for the current benefit structure to be sustainable, it is likely an increase in the contribution requirement will be needed.

The actuarial valuation report as of August 31, 2009 reveals that while the System has an unfunded liability in excess of \$21 billion, it still has a funded ratio (the ratio of actuarial assets to actuarial accrued liability) of 83.1%. However, because of the significant shortfall in investment income in FY2009, the System is now deferring net investment losses of \$17.7 billion compared to the last valuation when the System was deferring \$5.3 billion in net investment losses. Therefore, in the absence of actuarial gains in the future, the funded status of the System should decline as these deferred investment losses are recognized.

However, there has been a significant recovery since the February 28<sup>th</sup> update. As of the update, the UAAL was \$40.4 billion and the funded ratio was 67.7%. The increase from a 67.7% funded ratio to the current 83.1% is almost as dramatic as the decrease from the prior valuation. This illustrates the unique volatility during the past 24 months.

The System earned a negative (13.5)% return on a dollar-weighted market value of assets basis for the plan year ending August 31, 2009. The System experienced a loss on the actuarial value of assets of \$10.3 billion and a gain on the actuarial liabilities of \$0.3 billion for a total experience related loss of \$10.0 billion.

We normally only recognize 20% of a given year's investment income excess/(shortfall) in the valuation. However, with the sharp decline in the market value of assets this year, the preliminary actuarial value of assets was outside the 80%-120% market value corridor. Therefore, the actuarial value of assets was decreased until it was equal to 120% of the market value of assets. This resulted in the additional recognition of \$5.4 billion in investment losses in this valuation (or more than ½ of the actuarial loss on assets).

In the absence of significant actuarial gains in the near future, the contribution rate needed to amortize the UAAL over 30 years will increase over the next few valuation cycles.

**Plan Provisions**

The plan provisions used in the actuarial valuation are described in Table 21 of the valuation report. This valuation would reflect any changes to plan provisions as enacted by the 81<sup>st</sup> Texas Legislature, but there were no material changes passed by the legislature. Therefore, there have been no changes to the benefit provisions of the System since the prior valuation.

**Disclosure of Pension Information**

Effective for the fiscal year ending August 31, 1996, the Board of Trustees adopted compliance with the requirements of Governmental Accounting Standards Board (GASB) Statement No. 25. The required disclosure information is included in the body of the valuation report.

**Actuarial Methods and Assumptions**

The actuarial methods and assumptions have been selected by the Board of Trustees of the Teacher Retirement System of Texas based upon our analysis and recommendations. These assumptions and methods are detailed in Table 22 of the valuation report. The Board of Trustees has sole authority to determine the actuarial assumptions used for the plan. The actuarial methods and assumptions are based on a study of actual experience for the four year period ending August 31, 2007 and were adopted on April 11, 2008. There have been no changes to these assumptions since the prior valuation.

The results of the actuarial valuation are dependent on the actuarial assumptions used. Actual results can and almost certainly will differ, as actual experience deviates from the assumptions. Even seemingly minor changes in the assumptions can materially change the liabilities, calculated contribution rates and funding periods. The actuarial calculations are intended to provide information for rational decision making.

In our opinion, the actuarial assumptions used are appropriate for purposes of the valuation and are internally consistent and reasonably related to the experience of the System and to reasonable expectations. The actuarial assumptions and methods used in this report comply with the parameters for disclosure that appear in GASB 25.

**Data**

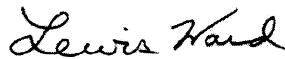
In preparing the August 31, 2009 actuarial valuation, we have relied upon member and asset data provided by the Teacher Retirement System of Texas. We have not subjected this data to any auditing procedures, but have examined the data for reasonableness and for consistency with prior years' data.

The schedules shown in the actuarial section and the trend data schedules in the financial section of the TRS financial report include selected actuarial information prepared by TRS staff. Six year historical information included in these schedules was based upon our work. For further information please see the full actuarial valuation report.

Respectfully submitted,  
Gabriel, Roeder, Smith & Company



W. Michael Carter, FSA, EA, MAAA  
Senior Consultant



Lewis Ward  
Consultant



Joseph P. Newton, FSA, EA, MAAA  
Senior Consultant

Gabriel Roeder Smith & Company



Gabriel Roeder Smith & Company  
Consultants & Actuaries

5605 N. MacArthur Blvd.  
Suite 870  
Irving, TX 75038-2631

469.524.0000 phone  
469.524.0003 fax  
www.gabrielroeder.com

---

November 5, 2009

**BOARD OF TRUSTEES**  
Teacher Retirement System of Texas  
1000 Red River Street  
Austin, TX 78701-2698

**Subject: GASB 43 Actuarial Valuation as of August 31, 2009 for TRS-Care**

Submitted in this report are the results of an Actuarial Valuation of the liabilities associated with the employer financed retiree health benefits provided through TRS-Care, a benefit program designed to provide post retirement medical benefits for certain members of the Teacher Retirement System of Texas (TRS). The date of the valuation was August 31, 2009. This report was prepared at the request of TRS.

The actuarial calculations were prepared for purposes of complying with the requirements of Statements 43 and 45 of the Governmental Accounting Standards Board (GASB). The calculations reported herein have been made on a basis consistent with our understanding of these accounting standards. Determinations of the liability associated with the benefits described in this report for purposes other than satisfying the financial reporting requirements of TRS-Care and participating employers may produce significantly different results.

The valuation was based upon information, furnished by TRS, concerning retiree health benefits, members' census, and financial data. Data was checked for internal consistency but was not otherwise audited. Certain demographic and economic assumptions are identical to the set of demographic and economic assumptions adopted by the Board based on the 2008 Experience Study of TRS. Assumptions applicable only to TRS-Care have not changed since the prior report, and they are disclosed in the assumptions section of this report.

To the best of our knowledge, this report is complete and accurate and was made in accordance with generally recognized actuarial methods.

One or more of the undersigned are members of the American Academy of Actuaries and meet the Qualification Standards of the Academy of Actuaries to render the actuarial opinion herein.

Respectfully submitted,

William J. Hickman  
*Senior Consultant*

Joseph P. Newton, FSA, MAAA  
*Senior Consultant*

# Actuarial Present Value of Future Benefits

PENSION TRUST FUND

ACTUARIAL VALUATION - AUGUST 31, 2009 (With Comparative Totals for August 31, 2008)

	2009	2008
<b>Present Value of Benefits Presently Being Paid:</b>		
Service Retirement Benefits	\$ 53,709,973,268	\$ 51,453,985,083
Disability Retirement Benefits	879,916,286	874,471,160
Death Benefits	766,356,875	754,788,755
Present Survivor Benefits	198,255,242	195,511,577
<b>TOTAL PRESENT VALUE OF BENEFITS PRESENTLY BEING PAID</b>	<b>\$ 55,554,501,671</b>	<b>\$ 53,278,756,575</b>
<b>Present Value of Benefits Payable in the Future to Present Active Members:</b>		
Service Retirement Benefits	\$ 91,873,230,382	\$ 87,025,085,373
Disability Retirement Benefits	1,208,634,286	1,142,684,668
Termination Benefits	5,708,049,103	5,331,386,735
Death and Survivor Benefits	1,446,008,078	1,359,266,421
<b>TOTAL ACTIVE MEMBER LIABILITIES</b>	<b>\$ 100,235,921,849</b>	<b>\$ 94,858,423,197</b>
<b>Present Value of Benefits Payable in the Future to Present Inactive Members:</b>		
Inactive Vested Participants Retirement Benefits	\$ 1,658,895,358	\$ 1,486,427,638
Death Benefits	115,999,840	106,067,772
<b>TOTAL INACTIVE VESTED BENEFITS</b>	<b>\$ 1,774,895,198</b>	<b>\$ 1,592,495,410</b>
Refunds of Contributions to Inactive Non-vested Members	\$ 279,784,905	\$ 257,432,662
Future Survivor Benefits Payable on Behalf of Present Annuitants	\$ 1,054,137,786	\$ 1,011,941,816
<b>TOTAL INACTIVE LIABILITIES</b>	<b>\$ 3,108,817,889</b>	<b>\$ 2,861,869,888</b>
<b>TOTAL ACTUARIAL PRESENT VALUE OF FUTURE BENEFITS</b>	<b>\$ 158,899,241,409</b>	<b>\$ 150,999,049,660</b>

## Summary of Cost Items

	2009	2008
Actuarial Present Value of Future Benefits	\$ 158,899,241,409	\$ 150,999,049,660
Present Value of Future Normal Costs	(30,869,937,598)	(29,242,507,363)
Actuarial Accrued Liability	\$ 128,029,303,811	\$ 121,756,542,297
Actuarial Value of Assets	(106,383,566,018)	(110,233,419,723)
<b>UNFUNDED ACTUARIAL ACCRUED LIABILITY</b>	<b>\$ 21,645,737,793</b>	<b>\$ 11,523,122,574</b>

# Actuarial Present Value of Future Benefits

HEALTH BENEFITS TRUST FUND - RETIRED PLAN

ACTUARIAL VALUATION - AUGUST 31, 2009 (With Comparative Totals for August 31, 2008)

	2009	2008
<b>Present Value of Benefits Being Paid:</b>		
Future Medical Claims	\$ 6,943,767,460	\$ 6,415,785,531
Future Rx Claims	6,975,762,195	7,682,912,536
Retiree Premiums Collected	(4,277,647,489)	(4,780,209,360)
<b>NET PRESENT VALUE OF BENEFITS FOR CURRENT RETIREES</b>	<b>\$ 9,641,882,166</b>	<b>\$ 9,318,488,707</b>
<b>Present Value of Benefits Payable in the Future to Present Active Members:</b>		
Future Medical Claims	\$ 20,759,485,903	\$ 19,813,365,411
Future Rx Claims	20,543,501,184	20,014,551,561
Retiree Premiums Collected	(12,427,826,780)	(13,724,782,116)
<b>NET PRESENT VALUE OF BENEFITS FOR FUTURE RETIREES</b>	<b>\$ 28,875,160,307</b>	<b>\$ 26,103,134,856</b>
<b>TOTAL ACTUARIAL PRESENT VALUE OF FUTURE BENEFITS</b>	<b>\$ 38,517,042,473</b>	<b>\$ 35,421,623,563</b>

## Summary of Cost Items

	2009	2008
Actuarial Present Value of Future Benefits	\$ 38,517,042,473	\$ 35,421,623,563
Present Value of Future Normal Costs	(14,159,550,909)	(13,108,725,516)
Actuarial Accrued Liability	\$ 24,357,491,564	\$ 22,312,898,047
Actuarial Value of Assets	(800,148,392)	(728,839,325)
<b>UNFUNDED ACTUARIAL ACCRUED LIABILITY</b>	<b>\$ 23,557,343,172</b>	<b>\$ 21,584,058,722</b>

These reports include the actuarial valuation of the Texas Public School Retired Employees Group Benefits Program (TRS-Care) dated August 31, 2009. This actuarial valuation was prepared for the purposes of complying with the requirements of Statements 43 and 45 of the Governmental Accounting Standards Board (GASB) and Chapter 2266 of the Government Code, including Subchapter C of that chapter relating to Other Postemployment Benefits.

TRD-200905480

Ronnie Jung

Executive Director

Teacher Retirement System of Texas

Filed: November 25, 2009



### Texas Department of Transportation

Aviation Division - Request for Proposal for Aviation Engineering Services

Montgomery 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.

Sponsor: Montgomery County. TxDOT CSJ No.: 1012CONRO. Scope of work: Extend runway 14-32, 1,500 feet; reconstruct sections of taxiways A & D, construct holding apron, mark RW 14/32, replace or relocate LOC glide slope & MALSR, drainage and grading for R/W - T/W extensions, install and extend MIRL RW 14/32, relocate PAPI-4 RW 14, construct and extend partial parallel T/W R/W 14/32, install and extend MITL, install signage and fencing, terminate FM 1484, and clear trees OFZ RW 14.

The DBE goal is set at 7%. TxDOT Project Manager is Bijan Jamalabad, P.E.

To assist in your proposal preparation the criteria, 5010 drawing, project narrative, and most recent Airport Layout Plan are available online at

[www.txdot.gov/avn/avninfo/notice/consult/index.htm](http://www.txdot.gov/avn/avninfo/notice/consult/index.htm)

by selecting "Lone Star Executive Airport."

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 January 12, 2010, 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 local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. Montgomery County's criteria for evaluating 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. For technical questions, please contact Bijan Jamalabad, Project Manager.

TRD-200905467

Jack Ingram

Associate General Counsel

Texas Department of Transportation

Filed: November 24, 2009



### Public Hearing Notice - Statewide Transportation Improvement Program

The Texas Department of Transportation (department) will hold a public hearing on Tuesday, January 26, 2010 at 10:00 a.m. at the Texas Department of Transportation, 200 East Riverside Drive, Room 1A-2, Austin, Texas to receive public comments on the December out of cycle 2010 Revisions to the Statewide Transportation Improvement Program (STIP) for FY 2008-2011. The STIP reflects the federally funded trans-

portation projects in the FY 2008-2011 Transportation Improvement Programs (TIPs) for each Metropolitan Planning Organization (MPO) in the state. The STIP includes both state and federally funded projects for the nonattainment areas of Beaumont, Dallas-Fort Worth, El Paso, and Houston. The STIP also contains information on federally funded projects in rural areas that are not included in any MPO area, and other statewide programs as listed.

Title 23, United States Code, §134 and §135 require each designated MPO and the state, respectively, to develop a TIP as a condition to securing federal funds for transportation projects under Title 23 or the Federal Transit Act (49 USC §5301, et seq.).

Section 134(j) requires an MPO to develop its TIP in cooperation with the state and affected transportation operators, to provide an opportunity for interested parties to participate in the development of the program, and further requires the TIP to be updated at least once every four years and approved by the MPO and the Governor or Governor's designee. Section 135(g) requires the state to develop a STIP for all areas of the state in cooperation with the designated MPOs and, with respect to non-metropolitan areas, in consultation with affected local officials, and further requires an opportunity for participation by interested parties as well as approval by the Governor or the Governor's designee.

In accordance with 43 TAC §15.8(d), a copy of the proposed December out of cycle 2010 Revisions to the FY 2008-2011 STIP will be available for review, at the time the notice of hearing is published, at each of the department's district offices, at the department's Transportation Planning and Programming Division offices located in Building 118, Second Floor, 118 East Riverside Drive, Austin, Texas, and on the department's website at:

[www.txdot.gov](http://www.txdot.gov)

Persons wishing to review the December out of cycle 2010 Revisions to the FY 2008-2011 STIP may do so online or contact the Transportation Planning and Programming Division at (512) 486-5033.

Persons wishing to speak at the hearing may register in advance by notifying Lori Morel, Transportation Planning and Programming Division, at (512) 486-5033 not later than Monday, January 25, 2010, or they may register at the hearing location beginning at 9:00 a.m. on the day of the hearing. Speakers will be taken in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony. Persons with disabilities who have special communication or accommodation needs or who plan to attend the hearing may contact the Government and Public Affairs Division, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-9957. Requests should be made no later than three days prior to the hearing. Every reasonable effort will be made to accommodate the needs.

Further information on the FY 2008-2011 STIP may be obtained from Lori Morel, Transportation Planning and Programming Division, 118 East Riverside Drive, Austin, Texas 78704, (512) 486-5033. Interested parties who are unable to attend the hearing may submit comments to James L. Randall, P.E., Director, Transportation Planning and Programming Division, 118 East Riverside Drive, Austin, Texas 78704. In order to be considered, all written comments must be received at the Transportation Planning and Programming office by Monday, February 1, 2010 at 4:00 p.m.





Public Notice - Advertising in Texas Department of Transportation Travel Literature and *Texas Highways* Magazine

The Texas Department of Transportation (department) is authorized by Transportation Code, Chapter 204 to publish literature for the purpose of advertising the highways of this state and attracting traffic thereto, and to include paid advertising in such literature. Title 43, Texas Administrative Code, §23.10 and §23.29 describe the policies governing advertising in department travel literature and *Texas Highways* magazine, list acceptable and unacceptable subjects for advertising in department travel literature and the magazine, and describes the procedures by which the department will solicit advertising.

As required by 43 TAC §23.10(e)(4)(A) and 43 TAC §23.29(d)(1) the department invites any entity or individual interested in advertising in department travel literature and *Texas Highways* magazine to request to be added to the department's mailing list. Written requests may be mailed to the Texas Department of Transportation, Travel Information Division, Travel Publications Section, P.O. Box 141009, Austin, Texas 78714-1009. Requests may also be made by telephone to (512) 486-5880 or sent by fax to (512) 486-5879.

The department is now accepting advertising for the 2011 edition of the *Texas State Travel Guide*, scheduled to be printed and available in January 2011, and the four quarterly issues of the *Texas Events Calendar*, beginning with the Summer 2010 calendar. The Summer 2010 calendar lists events scheduled for June, July, and August 2010. The Fall 2010 calendar lists September, October, and November 2010 events. The Winter 2010-2011 calendar lists December 2010, January 2011, and February 2011 events; and the Spring 2011 calendar lists events scheduled for March 2011, April 2011, and May 2011. The department is now accepting advertising for all monthly 2010 issues of *Texas Highways* magazine.

All entities and individuals on the mailing list will be contacted by mail sent out on January 11, 2010, and will have an opportunity to request a media kit. The media kit will contain rate card information, an order form, and samples of the respective travel literature. On and after February 11, 2010, the department will accept all insertion orders (in accordance with 43 TAC §23.10) received prior to the publication deadline on a first-come, first served basis or until all advertising space is filled. Insertion orders postmarked or received prior to February 11, 2010, for the *Texas State Travel Guide* will not be accepted.

All insertion orders will be stamped with the date they are received. Orders for premium space for the *Texas State Travel Guide* will be accepted only by mail postmarked on or after February 11, 2010. Advertisers must indicate ranked preference on all desired premium positions for the *Texas State Travel Guide*. If more than one insertion order for any premium position is received on the same day, the department will determine selection by a drawing held on February 26, 2010. Insertion orders for an inside front cover spread and inside back cover spread

will take precedence over an inside front cover and inside back cover insertion order.

The advertising due dates for the *Texas Events Calendar* vary depending on the issue involved. The publication deadline for accepting advertising space in the *Texas Events Calendar* is February 12, 2010, for the Summer 2010 issue; May 14, 2010, for the Fall 2010 issue; August 13, 2010, for the Winter 2010-2011 issue; and November 12, 2010, for the Spring 2011 issue. The deadline for accepting materials for the *Texas Events Calendar* is February 26, 2010, for the Summer 2010 issue; May 28, 2010, for the Fall 2010 issue; August 30, 2010, for the Winter 2010-2011 issue; and November 29, 2010, for the Spring 2011 issue. The publication deadline for accepting advertising space in *Texas Highways* magazine is the 27th of the third month preceding the issue date. The deadline for accepting materials for *Texas Highways* magazine is seven days after space closing. When material or space closing dates fall on a Saturday, Sunday, or on a holiday, space and/or materials are due the preceding workday.

The *Texas State Travel Guide* is designed to encourage readers to explore and travel in Texas. The guide lists cities and towns alphabetically, featuring population figures and recreational travel sites for each, along with maps and 4-color photography. The guide also includes sections listing Texas state parks, state and national forests, and hunting and fishing information. The State of Texas distributes this vacation guide to travelers in Texas and to those who request information while planning to travel in Texas.

The *Texas Events Calendar* is published quarterly, corresponding with the seasons, to provide information about events happening in Texas throughout the year. The *Texas Events Calendar* includes festivals, art exhibits, rodeos, indoor and outdoor music and theatre productions, concerts, nature tours, and more, depending on the season. The State of Texas distributes this quarterly calendar to travelers in Texas and to those who request information on events happening around the state.

*Texas Highways* magazine is a monthly publication designed to encourage recreational travel within the state and to tell the Texas story to readers around the world. Accordingly, the content of the magazine is focused on Texas vacation, recreational, travel, or tourism related subjects, shopping opportunities in Texas and for Texas related products, various outdoor events, sites, facilities, and services in the state, transportation modes and facilities in the state, and other sites, products, facilities, and services that are travel related or Texas based, and that are determined by the department to be of cultural, educational, historical, or recreational interest to *Texas Highways* readers.

The *Texas Accommodations Guide* is the state's official lodging guide and includes information on hotels/motels, condominiums, bed & breakfasts, cabin/guest homes, and guest ranches. This publication is distributed in the standard package sent to requestors seeking information about Texas and also is distributed through the 12 Travel Information Centers operated by the Texas Department of Transportation.

The rate card information for potential advertisers in the *Texas State Travel Guide*, the *Texas Events Calendar*, *Texas Highways* magazine, and the *Texas Accommodations Guide* are included in this notice.

## **TEXAS STATE TRAVEL GUIDE**

Year 2011 Rate Base: 800,000  
 Space Closing: October 5, 2010  
 Materials Due: October 12, 2010  
 First Distribution: January 2011

### **Advertising Rates**

<b>ROP:</b>	<b>Gross</b>	<b>Net*</b>
Full Page	\$22,540	\$19,159
Two Thirds (2/3) Page	\$16,102	\$13,687
Half (1/2) Page	\$13,540	\$11,509
One Third (1/3) Page	\$8,120	\$6,902
One Sixth (1/6) Page	\$5,120	\$4,352
<b>Premium Positions:</b>		
Cover 2 (Inside Front)	\$32,500	\$27,625
Cover 3 (Inside Back)	\$30,260	\$25,721
Cover 4 (Back)	\$40,595	\$34,506
Spread (Inside Front Cover Inside Back Cover)	\$55,040	\$46,784

**\*Commission:** 15% to recognized agencies providing camera-ready materials.  
**Note:** All rates are 4-color (no black and white). Run-of-book spreads are 2 times the page rate. Rates for inserts, gatefolds, multi-title frequency advertising, and other special advertising will be quoted on request. Multiple fractional ads will be priced at the equivalent page rate.  
 Umbrella Plan A: 5% discount for 1x Texas State Travel Guide, 3x Texas Highways Magazine, 2x Texas Events Calendar  
 Umbrella Plan B: 10% discount for 1x Texas State Travel Guide, 6x Texas Highways Magazine, 4x Texas Events Calendar  
 Umbrella Plan C: 10% discount for 1x Texas State Travel Guide, 12x Texas Highways Magazine, 2x Texas Events Calendar

**Payment:** Discounts apply to [www.texashighways.com](http://www.texashighways.com)  
 Cash with order or net 30 from invoice date. All orders must be paid in full by October 12, 2010.

# TEXAS EVENTS CALENDAR

## Advertising Rates/Due Dates

Year 2010/2011 Rate Base:                      90,000 Circulation: Spring, Summer, Fall  
 75,000 Circulation: Winter

Black/White	1X		2X		4X	
	Gross	Net	Gross	Net	Gross	Net
FULL PAGE	\$1,680	\$1,428	\$1,628	\$1,384	\$1,575	\$1,339
HALF PAGE	\$1,155	\$982	\$1,129	\$960	\$1,076	\$915
THIRD PAGE	\$840	\$714	\$814	\$692	\$761	\$647

4-Color	1X		2X		4X	
	Gross	Net	Gross	Net	Gross	Net
FULL PAGE	\$2,352	\$1,999	\$2,279	\$1,937	\$2,205	\$1,874
HALF PAGE	\$1,617	\$1,374	\$1,580	\$1,343	\$1,507	\$1,281
THIRD PAGE	\$1,176	\$1,000	\$1,139	\$968	\$1,066	\$906

Covers (4-Color)	1X		2X		4X	
	Gross	Net	Gross	Net	Gross	Net
COVER 2	\$3,675	\$3,124	\$3,413	\$2,901	\$3,150	\$2,678
COVER 3	\$3,150	\$2,678	\$2,888	\$2,454	\$2,625	\$2,231
COVER 4	\$4,410	\$3,749	\$4,200	\$3,570	\$3,990	\$3,392

Net rate reflects 15% commission to recognized agencies or advertisers providing camera-ready materials. Cash with order or net 30 from invoice date. All orders must be paid in full by material due date. Rates for inserts, multi-title frequency advertising, and other special advertising will be quoted on request.

### Advertising Due Dates:

<u>Issue Date</u>	<u>Space Closing</u>	<u>Materials Due</u>
Summer 2010 (Jun, Jul, Aug-2010)	Feb. 12, 2010	Feb. 26, 2010
Fall 2010 (Sep, Oct, Nov-2010)	May 14, 2010	May 28, 2010
Winter 2010-11 (Dec-2010, Jan, Feb-2011)	Aug. 13, 2010	Aug. 30, 2010
Spring 2011 (Mar, Apr, May-2011)	Nov. 12, 2010	Nov. 29, 2010

# TEXAS HIGHWAYS MAGAZINE

---

## Texas Rate Card

Four-Color	1x	3x	6x	12x	18x	24x
Full Page	\$7120	\$6764	\$6550	\$6337	\$6123	\$5910
2/3 Page	\$5880	\$5586	\$5410	\$5233	\$5057	\$4880
1/2 Page	\$4626	\$4395	\$4256	\$4117	\$3978	\$3840
1/3 Page	\$3326	\$3160	\$3060	\$2960	\$2860	\$2761
1/6 Page	\$1830	\$1739	\$1684	\$1629	\$1574	\$1519
Cover 2	\$9100	\$8645	\$8372	\$8099	\$7826	\$7553
Cover 3	\$8700	\$8265	\$8004	\$7743	\$7482	\$7221

Notes All rates are 4-color. Run-of-book spreads are 2 times Page Rate with frequency discounts applied to the cumulative total of pages scheduled. Rates for inside cover spreads, inserts, gatefolds, multi-title/frequency advertising, and other special advertising will be quoted on request. Preferred position, add 10% to all rates.

Section Guides (Holiday, Product, and Destination): \$1300 per insertion

Commission: 15% to recognized agencies providing print ready materials.  
Payment: Cash with order or net 30 from invoice date.  
Space Deadline: 27<sup>th</sup> of the third month preceding issue date.  
Materials Deadline: Seven days after space closing. When material or space closing dates fall on a Saturday, Sunday, or a holiday, space or materials are due the preceding workday.

## Web Site Advertising

Home page sponsorship: \$2,000/month (180 x 300 pixels)

Section page banners: \$500/mo (180 x 300 pixels), \$300/mo (180 x 150 pixels)

Marketplace listings: \$600/year

# TEXAS HIGHWAYS MAGAZINE

---

## National Rate Card

Four-Color	1x	3x	6x	12x	18x	24x
Full Page	\$11,867	\$11,273	\$10,917	\$10,562	\$10,205	\$9,850
2/3 Page	\$9,800	\$9,310	\$9,016	\$8,722	\$8,428	\$8,133
1/2 Page	\$7,710	\$7,325	\$7,093	\$6,682	\$6,630	\$6,400
1/3 Page	\$5,543	\$5,267	\$5,100	\$4,933	\$4,767	\$4,601
1/6 Page	\$3,050	\$2,898	\$2,807	\$2,715	\$2,623	\$2,532
Cover 2	\$15,167	\$14,408	\$13,953	\$13,498	\$13,043	\$12,588
Cover 3	\$14,500	\$13,775	\$13,340	\$12,905	\$12,470	\$12,035

Notes All rates are 4-color. Run-of-book spreads are 2 times Page Rate with frequency discounts applied to the cumulative total of pages scheduled. Rates for inside cover spreads, inserts, gatefolds, multi-title/frequency advertising, and other special advertising will be quoted on request. Preferred position, add 10% to all rates.

Section Guides (Holiday, Product, and Destination): \$2,167 per insertion

Commission: 15% to recognized agencies providing print ready materials.  
Payment: Cash with order or net 30 from invoice date.  
Space Deadline: 27<sup>th</sup> of the third month preceding issue date.  
Materials Deadline: Seven days after space closing. When material or space closing dates fall on a Saturday, Sunday, or a holiday, space or materials are due the preceding workday.

## Web Site Advertising

Home page sponsorship: \$3,333/mo. Advertisers with 6x Full Page commitment in a 12 month period will receive 3 months of home page sponsorship free on a first come, first served basis.

Section page banners: \$833/mo (180 x 300 pixels), \$500/mo (180 x 150 pixels)

Marketplace: \$1,000/year

# TEXAS ACCOMMODATIONS GUIDE

---

## Listing Fees

**Individual Property Listing Fee: \$225**

**Individual Property Listing Fee for TH&LA Members: \$125**

**Corporate Property Listing Fee: \$125**

**Corporate Property Listing Fee for TH&LA Members: \$115**

**Terms: Payee must pay on a single invoice with a minimum of 25 listings**

**TACVB Property Listing Fee: \$135**

**TACVB Property Listing Fee for TH&LA Members: \$125**

**Terms: Payee must pay on a single invoice with a minimum of 5 listings**

**Upgrades: Bold/All Cap \$25.00    2<sup>nd</sup> Color \$25.00**

TRD-200905468  
Joanne Wright  
Deputy General Counsel  
Texas Department of Transportation  
Filed: November 24, 2009



### Request for Information: Open-Road Electronic Toll Collection System

The Texas Department of Transportation (TxDOT) is seeking information that may assist in the development, deployment, and operation of an open-road electronic toll collection system on additional toll roads in the state. TxDOT is also soliciting information to determine the availability of capable developer teams that can accomplish this task. This Request (RFI) is a request for information only. It is issued solely to obtain information to assist TxDOT in its planning process and to identify firms that may be interested in participating in any future procurement.

This RFI does not constitute a Request for Qualifications (RFQ), a Request for Proposals (RFP), or other solicitation document, nor does it represent an intention to issue an RFQ or an RFP in the future. This RFI does not commit TxDOT to contract for any supply or service whatsoever, nor will any response to this RFI be considered in the evaluation of any response to a solicitation document. TxDOT will not pay for any information or administrative cost incurred in response to this RFI.

#### 1. Overview

There are currently four (4) toll roads in the state of Texas operated by TxDOT. TxDOT also anticipates that additional miles of toll roads may come on line over the next 5 years. TxDOT is dedicated to providing a safe and efficient system of tolled highways while ensuring the highest possible level of service and efficiency to its customers. TxDOT intends to provide the traveling public with the benefits of new

technologies that enable motorists to pay tolls without slowing down from highway speeds - including enhanced safety, economic savings, and reduced pollution from the higher vehicle throughput. TxDOT has a stated intention of implementing 100% open-road toll collection systems ("ORT") for all future tolled highways in the state.

ORT in Texas is anticipated to include overhead, in pavement, or roadside equipment to detect vehicles and read electronic tags mounted inside vehicles, and a computer system which automatically deducts tolls from the motorists' accounts. As in many other jurisdictions, cameras record the license plate numbers of vehicles without electronic tags - enabling motorists to avoid slowing down at tollbooths and fumbling for change. If a motorist passes through a tolling point (at either main-line locations or exit/entry ramps), the motorist will pay a set toll either through an established TxTag account or through a pay by mail process where a video toll invoice is sent to the motorist. TxDOT's "field systems" are electronically linked to the TxTag customer service center operation to facilitate transaction processing and customer interaction.

#### 2. Information requested

**Purpose** - The purpose of this RFI is to gauge industry interest in an indefinite delivery/indefinite quantity contract process.

**Objectives** - The project will include the development, implementation and testing of one or more system(s). TxDOT shall not be required to order and pay for a system from the vendor under the agreement, but shall have the right to order more than one system and shall have the option and right to change the type of system(s) from those set forth in the contract documents.

The vendor may be directed to implement zero or more systems under the agreement.

The objectives of this RFI include:

A. Identification of potential cost-effective, toll system solutions that may be available to TxDOT.

B. Identification of potential toll solutions including, but not limited to, providing all toll-related equipment and facilities, including gantries, toll cabinets, toll system equipment, protective guardrail, and classification equipment for a fully operational, all electronic toll system

C. Identification of flexible, cost-effective pricing models for the proposed solutions, including system and equipment maintenance for five years after system acceptance.

D. Areas of specific interest:

i. The vendor shall maintain its own internal professional services, construction, quality control, quality review, and quality assurance staff(s) (as applicable) which are functionally independent from other staff, so that such individuals have the authority to effect changes in design, construction and/or maintenance procedures, as the case may be, in the event of any failure to comply with the stated requirements of the technical provisions and the contract documents.

ii. TxDOT may or may not, in its sole discretion, elect to have project segments developed under the agreement. If a toll road project segment is selected for implementation under the agreement and the configuration(s) on the road segment were not previously tested, such configuration(s) will be fully tested.

I. For planning purposes, over the past five years TxDOT has had the following projects developed by its existing contractor:

-a-. Loop 49 (Tyler, Texas) - 1 mainline gantry and 4 ramp gantries consisting of two lane -- two way highway, one lane ramps

-b-. Camino Columbia Toll Road (Laredo, Texas) - 1 mainline gantry two lane - two way highway, one lane ramps

-c-. SH 45 SE Toll Road (Austin, Texas) - 1 mainline gantry and 4 ramp gantries - four lane divided highway with depressed median, two lane ramps

-d-. SH 121 Toll Road (Dallas, Texas) - 1 mainline gantry and 8 ramp gantries - Toll Management Systems (TMA) partially deployed video tolling deployed without tag readers - four lane divided highway with depressed median, two lane ramps

-e-. In the planning stage under the existing contract are:

-1-. Two more ramp projects in Austin consisting of two one lane ramps in each direction,

-2-. A toll road in Falfurrias, Texas with a mainline and seven ramp plazas

-3-. An extension of the toll facility in Tyler consisting of one mainline tolling location (two lanes, one in each direction) and two separate single lane ramp tolling locations.

II. No additional toll projects have been identified at the time of this RFI.

### 3. Functional requirements

This RFI is issued for the purpose of obtaining information that will be reviewed and evaluated by a team composed of staff from different functional areas within TxDOT. It is TxDOT's intent to analyze the responses to determine appropriate and suitable technology solutions to meet TxDOT's requirements and to potentially develop specifications for a future request for offer (RFO) or request for proposals (RFP).

The various types of toll road segments that TxDOT may elect to have developed under the agreement and the respective system design requirements are described herein. Where geometry of the roadway is described, the anticipated worst case for the tolling zone equipment has been listed.

A. Two lane -- two way highway: Two-lane wide highway with one-12 ft. lane in each direction, no divider (only paint separates opposing traffic lanes) and 10 ft. shoulders. Roadway will be striped for no passing in the vicinity of the tolling zone.

B. Super 2 highway: Three-lane highway with one-lane in each direction, alternating dedicated direction passing lane throughout (middle lane serves as passing lane in one direction only), and three-12 ft. wide traffic lanes with ten foot shoulders on each side. Roadway will be striped to prohibit vehicles from crossing to the lanes carrying vehicles in the opposed traffic direction.

C. Four lane divided highway with flush median: Two-12 ft. lanes in each direction with 10 ft. outside shoulders and 4ft. inside shoulders with a concrete traffic barrier separating opposing traffic.

D. Four lane divided highway with depressed median: Two-12 ft. lanes in each direction with 10 ft. outside shoulders and 4 ft. inside shoulders, and 40+ foot wide median separating opposing lanes of traffic.

E. Six lane divided highway with flush median: Three-12 ft. lanes in each direction with 10 ft. outside shoulders and 10ft. inside shoulders, with a concrete traffic barrier separating opposing traffic.

F. Six lane divided highway with depressed median: Three-12 ft. lanes in each direction with 10 ft. outside shoulders and 10 ft. inside shoulders, and 40+ foot wide median separating opposing lanes of traffic.

G. Reversible managed lanes (one lane wide): One-12ft. wide managed lane with a 4 ft. shoulder on one side and a ten foot shoulder on the other, a concrete traffic barrier, and either a 4 ft. or a 10 ft. wide shoulder separating the managed lane from two to four adjacent 12 ft. general-purpose traffic lanes.

H. Reversible managed lanes (two lanes wide): Two-12 ft. wide managed lanes with a 10 ft. shoulder on each side, a concrete traffic barrier, and either a 4 ft. or a 10 ft. wide shoulder separating the managed lane from two to four adjacent 12 ft. general-purpose traffic lanes.

I. Buffer-separated managed lanes (concurrent flow): One or two-12 ft. wide managed lanes separated from two to four general-purpose traffic lanes by a 4 ft. wide buffer lane with a 10 ft. shoulder on the left, and a concrete traffic barrier separating opposing directions of managed lane traffic.

J. Barrier-separated managed lanes (concurrent flow): One or two 12 ft. wide managed lanes with a 4 ft. shoulder on the left, a 10 ft. shoulder on the right, and is separated from the general-purpose lanes and opposing directions of managed lane traffic by concrete traffic barriers.

K. One lane ramps: One 14 ft. lane with a 2 ft. inside shoulder and an 8 ft. outside shoulder.

L. Two lane ramps: Two-12 ft. lanes with a 10 ft. shoulder on the right side and a 4' on the left side.

M. Two lane ramps: Two-12 ft. lanes with a 10 ft. shoulder on the right side and a 4' on the left side. One lane is tolled and the other is a free lane.

### 4. Work Task Requirements

This project shall consist of the following components:

A. Tolling zone -

i. Controller

ii. Electronic Toll Collection system (ETC)

iii. Detection and classification system

iv. Video enforcement system

- v. Overhead gantry structure
- vi. Communications equipment
- vii. Uninterrupted Power Supply (UPS)
- viii. Generator
- ix. Maintenance on-line management system
- x. Roadside cabinets
- xi. Software license
- xii. Equipment installation
- xiii. Lighting
- xiv. Integration and acceptance testing
- xv. Communication network design
- B. Construction -
  - i. Traffic control
  - ii. Gantry foundations and base
  - iii. Tolling zone/apron striping, guardrail, delineators, pavement markings, etc.
  - iv. Survey/geotechnical testing
  - v. Signing, signing structures, and installation
  - vi. Incidental construction
- C. Communications/Electrical -
  - i. Tolling zone utilities
  - ii. Communications
  - iii. Gas
  - iv. Miscellaneous
- D. Contract Administration -
  - i. Project management
  - ii. Design/development
  - iii. Documentation/as-built plans
  - iv. Miscellaneous
- E. Maintenance
  - i. Tolling zone maintenance
  - ii. Network services (operational and monitoring)
  - iii. Performance audits
- F. Mobilization, bonds, insurance and letter of credit
- G. All that is necessary - Provide any and all necessary services, equipment, and software that are required to render the system complete and fully operational as described herein. Vendor will install and debug the system until all functional requirements, business rules and system requirements are achieved.

**5. Response Format**

Please number the answers to match the question numbers below. In addition, please provide a brief (no more than 3 page) summary of your organization and your previous experience with toll road operations, toll systems, and other relevant qualifications.

Respondents are invited to provide a written summary, and any additional literature, of how best to address the functionality as described

in this RFI. The response should be organized with separate sections as follows:

1.1 Title Page

The title page should include:

(1) The following title & subtitle:

STATEWIDE OPEN-ROAD TOLL COLLECTION SYSTEM

Response to the Request for Information from

the State of Texas

(2) Company name, address, and point-of-contact name.

1.2 Company Overview

(1) Company Profile - A statement describing your company, products, services, approaches, etc. including any relevant materials, documents, white papers, websites, etc.

(2) Point-of-Contact - Identification of a single point of contact to respond to any questions regarding the response, including name, Email address, phone number and address.

1.3 Solution Description

(1) Solution Overview - An overview of the proposed solution you would anticipate providing to TxDOT should TxDOT move forward with a procurement, including a description of the business model(s) that would achieve the proposed objectives of this RFI.

(2) Solution Details - A more detailed description of how the proposed solution addresses the specifications as defined in this RFI.

1.4 Solution Approach

(1) Project Management - A statement describing your approach to project management.

(2) Requirements Gathering - A statement of your approach to discovery and documentation of the existing environment and validation of the business and technical requirements including information on tools that might be used.

(3) Estimated Timeline - Estimate of implementation timeframe for the development and implementation of the solution.

1.5 Solution Infrastructure

(1) Technical Architecture - A description of the technical architecture used in the proposed solution.

(2) Hosting - A statement of the hosting options that might be available for this solution.

(3) Service Levels - Recommended and/or proposed service levels typically associated with this solution and any specific examples of metrics that are commonly tracked to indicate the status and/or performance levels obtained.

(4) Security - A statement of the approach to securing the solution.

(5) Support - A statement of the support options that might be available for this solution.

(6) Scalability - A statement of the scaling capabilities of the proposed solution. (For example, how will the solution accommodate changes in the number of users?)

1.6 Attachments

Any relevant materials, documents, white papers, websites, etc., that help describe the products, approaches, etc. involved in the proposed solution(s).



## 6. Confidentiality/Public Information Act

All written correspondence, exhibits, photographs, reports, other printed material, tapes, electronic disks, and other graphic and visual aids submitted to TxDOT in response to this RFI are, upon their receipt by TxDOT, the property of the State of Texas, may not be returned to the submitting parties, and are subject to the Public Information Act, Chapter 552, Texas Government Code (the "Act"). Respondents should familiarize themselves with the provisions of the Act. In no event shall the State of Texas, TxDOT, or any of their agents, representatives, consultants, directors, officers or employees be liable to a respondent for the disclosure of all or a portion of the information submitted in response to this RFI.

If TxDOT receives a request for public disclosure of all or any portion of a response, TxDOT will use reasonable efforts to notify the applicable respondent of the request and give such respondent an opportunity to assert, in writing and at its sole expense, a claimed exception under the Act or other applicable law within the time period specified in the notice issued by TxDOT and allowed under the Act.

If a respondent has special concerns about information which it desires to make available to TxDOT but which it believes constitutes a trade secret, proprietary information, or other information excepted from disclosure, such respondent should specifically and conspicuously designate that information by placing **"CONFIDENTIAL" in the center header of each such page affected.** Blanket, all inclusive identifications by designation of whole pages or sections as containing proprietary information, trade secrets or confidential commercial or financial information are discouraged and may be deemed invalid. Nothing contained in this provision shall modify or amend requirements and obligations imposed on TxDOT by the Act or other applicable law, and the provisions of the Act or other laws shall control in the event of a conflict between the procedures described above and the applicable law.

TxDOT will submit a request for an opinion from the Office of the Attorney General prior to disclosing any documents designated as "confidential." The respondent shall then have the opportunity to assert its basis for non-disclosure to the Office of the Attorney General; however, it is the sole responsibility of the respondent to monitor such proceedings and make timely filings. TxDOT may, but is not obligated to make filings of its own concerning possible disclosure; however, TxDOT is under no obligation to support the positions of respondent. Under no circumstances will TxDOT be responsible or liable to a respondent or any other party as a result of disclosing any such labeled materials, whether the disclosure is deemed required by law, by an order of court, or occurs through inadvertence, mistake or negligence on the part of TxDOT or its officers, employees, contractors or consultants.

TxDOT will not advise a submitting party as to the nature or content of specific documents entitled to protection from disclosure under the Act or other Texas laws or as to the interpretation of such laws. Each respondent is advised to contact its own legal counsel concerning the effect of applicable laws to the submitting party's own circumstances.

In the event of any proceeding or litigation concerning the disclosure of any material submitted by the respondent, TxDOT will be a stakeholder retaining the material until otherwise ordered by a court or such other authority having jurisdiction with respect thereto, and the respondent shall be responsible for otherwise prosecuting or defending any action concerning the materials at its sole expense and risk; provided, however, that TxDOT reserves the right, in its sole discretion, to intervene or participate in the litigation in such manner as it deems necessary or desirable.

## 7. General Information

RFI Issuance Date: December 11, 2009

RFI Response Deadline: 5:00 PM CST on January 6, 2010

TxDOT reserves the right to modify the above anticipated schedule milestones at any time and for any reason. At its option, TxDOT may also elect to follow-up directly with respondents with more detailed questions or to clarify submissions.

Contracting Office Address:

Texas Department of Transportation - TTA Division

125 East 11th Street

Austin, TX 78701

Point of Contact:

Mr. Fred D. Woodall, P.E.

Director, Turnpike Planning and Development

Texas Department of Transportation

Texas Turnpike Authority Division

125 East 11th Street

Austin, TX 78701

(Ph): 512.936.0908

(E-mail): fwoodall@dot.state.tx.us

Please send 5 copies of your responses to this RFI to Mr. Woodall at the referenced address.

TRD-200905536

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: December 2, 2009

## Texas State University System

### Consultant Contract Award

Pursuant to the provisions of Texas Government Code, Chapter 2254, the Texas State University System Board of Regents ("Board") publishes this notice of consultant contract award. The consultant proposal request was published in the October 16, 2009, issue of the *Texas Register* (34 TexReg 7244). The selected consultant will provide consulting services relating to the Board (and its advisory search and selection committee) in its search for a chancellor.

The consultant selected for this project is Academic Search, Inc., 1825 K Street, N.W., Suite 705, Washington, DC 20006. The amount of this contract is \$70,000.00.

TRD-200905481

Fernando Gomez

Vice Chancellor and General Counsel

Texas State University System

Filed: November 25, 2009

## The University of Texas System

### Notice of Intent to Amend Existing Consulting Contract

As required by the provisions of *Texas Government Code*, Chapter 2254, prior to amending and extending its contract with Aviation Research Group, U.S., The University of Texas System extends an invitation to qualified and experienced consultants interested in providing

the Consulting Services more fully described in the November 2, 2007, issue of the *Texas Register* (32 TexReg 8060). Unless a better offer (as determined by U.T. System) is received in response to this invitation, U.T. System intends to amend the existing consulting U.T. System contract with Aviation Research Group, U.S., Incorporated.

The address of the consultant is as follows:

Aviation Research Group U.S., Inc.  
212 West 8th Street  
Cincinnati, Ohio 45202

The Consulting Services sought by the University relate to the Consulting Services currently provided by Aviation Research Group, U.S., Incorporated.

The initial award for services was based on:

- (1) Demonstrated competence, knowledge and qualification
- (2) An understanding of U.T. System operations
- (3) Reasonableness of fees for service
- (4) Ability to complete within the time constraints
- (5) Other considerations being equal, consultant whose principal place of business is in the State of Texas or who will manage the consulting contract wholly from an office in the State.

As the original posting indicated, the Chancellor made a finding that the Consulting Services are necessary.

While the University has a substantial need for the Consulting Services, the University does not currently have staff with the expertise or experience necessary and cannot obtain such Consulting Services with another State governmental entity.

The individual to contact with questions regarding the Consulting Services and hard copy submissions (3 copies per submission) should be addressed to:

Jeffery Kauffmann  
Assistant Vice Chancellor for Operations and Support Services  
702 Colorado, 3rd Floor  
Austin, Texas 78701  
Voice:(512) 499-4710  
jkauffmann@utsystem.edu

The deadline for receipt of submissions is noon Central Standard Time on January 4, 2010.

TRD-200905479  
Francie A. Frederick  
General Counsel to the Board of Regents  
The University of Texas System  
Filed: November 25, 2009

## Request for Quotes for Store/Bank Credit/Debit Card Assistance Services

On November 30, 2009 Arbor Education & Training (E&T) will release a Request for Quotes (RFQ) for Store/Bank Credit/Debit Cards for its customers in the following counties: Brazos, Burleson, Grimes, Leon, Madison, Robertson, and Washington. Arbor E&T is seeking multiple vendors qualified and experienced in providing store/bank credit/debit cards services assistance. The complete scope of required services and the proposal requirements are contained in the Request for Proposal which may be viewed and downloaded at [www.bvjobs.org](http://www.bvjobs.org).

Due Date: An original and four (4) copies of a written proposal are due to Arbor E&T at the Center for Regional Services office no later than December 21, 2009 at 4:00 p.m. CST. Faxed or email quotes are not acceptable. Quotes received after the indicated due date and time regardless of delivery method will not be accepted or considered for award.

Quotes may be hand delivered to:

ATTENTION: STORE/BANK CREDIT/DEBIT CARD ASSISTANCE QUOTES

Joy Mercer, Operations Manager  
Workforce Solutions Brazos Valley Board  
3991 East 29th St.

Bryan, Texas 77802

Quotes may be mailed to:

ATTENTION: STORE/BANK CREDIT/DEBIT CARD ASSISTANCE QUOTES

Joy Mercer, Operations Manager  
Workforce Solutions Brazos Valley Board  
P.O. Drawer 4128

Bryan, Texas 77805

Quotes received after the deadline will not be considered. Arbor E&T and Workforce Solutions Brazos Valley accept no responsibility for late quotes.

Workforce Solutions Brazos Valley is an equal opportunity employer and provides equal opportunity employment programs. Auxiliary aids are available upon request to disabled individuals.

Texas Relay: (800) 735-2989

TDD: (800) 735-2988 (Voice)

TRD-200905517  
Tom Wilkinson  
Executive Director  
Workforce Solutions Brazos Valley Board  
Filed: November 30, 2009

◆ ◆ ◆ ◆ ◆  
**Workforce Solutions Brazos Valley Board**

## 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).