
TEXAS REGISTER

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Steven Rickman
8th Grade



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

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TEXAS REGISTER

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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 463-5561 in Austin. For out-of-town callers our toll-free number is 800-226-7199. Or request a copy by email: Subadmin@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/>

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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.

Proclamation 41-3019

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, the 79th Regular Session of the Texas Legislature, convened in January of 2005 in accordance with Article III, Section 5 of the Texas Constitution and Section 301.001 of the Texas Government Code; and

WHEREAS, during that session, the legislature approved nine joint resolutions by a vote of two-thirds of all the members of each House pursuant to Article XVII, Section 1 of the Texas Constitution; and

WHEREAS, pursuant to the terms of those resolutions and in accordance with the Texas Constitution, the Legislature has set the date of the election for voting on those nine propositions to be November 8, 2005; and

WHEREAS, Section 3.003 of the Texas Election Code requires the election to be ordered by proclamation of the Governor;

NOW, THEREFORE, I, RICK PERRY, GOVERNOR OF THE STATE OF TEXAS, by the authority vested in me by the Constitution and Statutes of the State of Texas, do hereby order a special election to be held throughout the State of Texas on the FIRST TUESDAY AFTER THE FIRST MONDAY IN NOVEMBER, the same being the EIGHTH day of NOVEMBER, 2005; and,

NOTICE THEREOF IS HEREBY GIVEN to the COUNTY JUDGE of each county who is directed to cause said election to be held in the county on such date for the purpose of adopting or rejecting the constitutional amendments proposed by the nine joint resolutions, as submitted by the 79th Legislature, Regular Session, of the State of Texas.

Pursuant to Sections 274.001 and 274.002 of the Texas Election Code, the propositions for each joint resolution will appear as follows:

PROPOSITION 1

"The constitutional amendment creating the Texas rail relocation and improvement fund and authorizing grants of money and issuance of obligations for financing the relocation, rehabilitation, and expansion of rail facilities."

PROPOSITION 2

"The constitutional amendment providing that marriage in this state consists only of the union of one man and one woman and prohibiting this state or a political subdivision of this state from creating or recognizing any legal status identical or similar to marriage."

PROPOSITION 3

"The constitutional amendment clarifying that certain economic development programs do not constitute a debt."

PROPOSITION 4

"The constitutional amendment authorizing the denial of bail to a criminal defendant who violates a condition of the defendant's release pending trial."

PROPOSITION 5

"The constitutional amendment allowing the legislature to define rates of interest for commercial loans."

PROPOSITION 6

"The constitutional amendment to include one additional public member and a constitutional county court judge in the membership of the State Commission on Judicial Conduct."

PROPOSITION 7

"The constitutional amendment authorizing line-of-credit advances under a reverse mortgage."

PROPOSITION 8

"The constitutional amendment providing for the clearing of land titles by relinquishing and releasing any state claim to sovereign ownership or title to interest in certain land in Upshur County and in Smith County."

PROPOSITION 9

"The constitutional amendment authorizing the legislature to provide for a six-year term for a board member of a regional mobility authority."

The Secretary of State shall take notice of this proclamation and shall mail a copy of this order immediately to every County Judge of this state and all appropriate writs will be issued and all proper proceedings will be followed to the end that said election may be held and its result proclaimed in accordance with law.

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 2nd day of September, 2005.

Rick Perry, Governor

Attested by: Roger Williams, Secretary of State

TRD-200504277



Proclamation 41-3020

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of the State of Texas, do hereby certify that Hurricane Katrina, a disaster in sister states, has created a temporary housing emergency in the State of Texas.

THEREFORE, in accordance with the Emergency Disaster Proclamation issued by me on September 1, 2005, and with the authority vested in me by Section 418.020 of the Texas Government Code, I do hereby suspend collection of the state and local hotel and motel taxes under Sections 156, 351 and 352 of the Texas Tax Code from the victims of Hurricane Katrina.

As further provided in Section 418.020 of the Texas Government Code, this Proclamation shall remain in effect for a period of not more than 60 days. This Proclamation shall apply to victims of Hurricane Katrina for any length of stay, regardless of their time of arrival in this State.

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 2nd day of September, 2005.

Rick Perry, Governor

Attested by: Roger Williams, Secretary of State

TRD-200504278



Proclamation 41-3021

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, Section 411.173(b) of the Government Code of the State of Texas directs that the governor shall negotiate an agreement with any other state that provides for the issuance of a license to carry a concealed handgun under which a license issued by the other state is recognized in this state, or shall issue a proclamation that a license issued by the other state is recognized in this state, if the attorney general of the State of Texas determines that a background check of each applicant for a license issued by that state is initiated by state or local authorities or an agent of the state or local authorities before the license is issued; and

WHEREAS, Section 411.173(b) of the Government Code of the State of Texas defines "background check" as a search of the National Crime Information Center database and the Interstate Identification Index maintained by the Federal Bureau of Investigation; and

WHEREAS, the governor has received a statement of finding from the attorney general that the State of Missouri performs background checks pursuant to Mo. Rev. Stat. §571.101.5 and that those checks meet the requirements of Tex. Govt. Code §411.173(b); and

WHEREAS, the State of Texas is therefore authorized to recognize a valid concealed carry endorsement on a driver's license or a non-driver's license from the State of Missouri;

NOW, THEREFORE, I, Rick Perry, Governor of Texas, do hereby proclaim that the State of Texas shall give full faith and credit to valid concealed carry endorsement on a Missouri driver's or non-driver's license as long as Missouri license holders comply with all laws, rules, and regulations of the State of Texas governing concealed carry, including age restrictions and type of weapons permitted.

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 6th day of September, 2005.

Rick Perry, Governor

Attested by: Roger Williams, Secretary of State

TRD-200504279



Proclamation 41-3022

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, Section 411.173(b) of the Government Code of the State of Texas directs that the governor shall negotiate an agreement with any other state that provides for the issuance of a license to carry a concealed handgun under which a license issued by the other state is recognized in this state, or shall issue a proclamation that a license issued by the other state is recognized in this state, if the attorney general of the State of Texas determines that a background check of each applicant for a license issued by that state is initiated by state or local

authorities or an agent of the state or local authorities before the license is issued; and

WHEREAS, Section 411.173(b) of the Government Code of the State of Texas defines "background check" as a search of the National Crime Information Center database and the Interstate Identification Index maintained by the Federal Bureau of Investigation; and

WHEREAS, the governor has received a statement of finding from the attorney general that the State of South Dakota performs background checks pursuant to S.D. Codified Laws Ann. §23-7-7 and that those checks meet the requirements of Tex. Govt. Code §411.173(b); and

WHEREAS, the State of Texas is therefore authorized to recognize a valid permit from the State of South Dakota;

NOW, THEREFORE, I, Rick Perry, Governor of Texas, do hereby proclaim that the State of Texas shall give full faith and credit to a valid permit to carry a concealed pistol issued by the State of South Dakota as long as South Dakota permit holders comply with all laws, rules, and regulations of the State of Texas governing concealed carry, including age restrictions and type of weapons permitted.

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 6th day of September, 2005.

Rick Perry, Governor

Attested by: Roger Williams, Secretary of State

TRD-200504280



Proclamation 41-3023

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of Texas, do hereby certify that Hurricane Rita poses a threat of imminent disaster along the Texas Coast beginning September 20, 2005.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby proclaim the existence of such threat and direct that all necessary measures both public and private as authorized under Section 418.015 of the code be implemented to meet that threat.

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

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 20th day of September, 2005.

Rick Perry, Governor

Attested by: Roger Williams, Secretary of State

TRD-200504281



Proclamation 41-3024

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of the State of Texas, do hereby certify that Hurricane Rita poses a threat of imminent disaster along the Texas

Coast, and will create a temporary housing emergency in the State of Texas.

THEREFORE, in accordance with the Emergency Disaster Proclamation issued by me on September 20, 2005, and with the authority vested in me by Section 418.020 of the Texas Government Code, I do hereby suspend collection of the state and local hotel and motel taxes under Sections 156, 351 and 352 of the Texas Tax Code from the victims of Hurricane Rita.

As provided in Section 418.020 and unless further extended, this Proclamation shall remain in effect for a period of not more than 14 days. This Proclamation shall apply to victims of Hurricane Rita for any length of stay, regardless of their time of arrival in this State.

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 20th day of September, 2005.

Rick Perry, Governor

Attested by: Roger Williams, Secretary of State

TRD-200504235



THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at <http://www.oag.state.tx.us>. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Request for Opinions

RQ-0393-GA

Requestor:

Mr. C. Tom Clowe Jr., Chair
Texas Lottery Commission
Post Office Box 16630
Austin, Texas 78761-6630

Re: Whether the Texas Lottery Commission may award a prize to a person who is at least 18 years of age but not yet 21 years of age (RQ-0393-GA)

Briefs requested by October 22, 2005

RQ-0394-GA

Requestor:

Mr. J. Kevin Ward, Executive Administrator
Texas Water Development Board
Post Office Box 13231
Austin, Texas 78711-3231

Re: Conflict between two statutes relating to water and sewer services in economically distressed areas (RQ-0394-GA)

Briefs requested by October 22, 2005

RQ-0395-GA

Requestor:

The Honorable Mike Stafford
Harris County Attorney
1019 Congress, 15th Floor
Houston, Texas 77002

Re: Voting procedures by the board of managers of a hospital district (RQ-0395-GA)

Briefs requested by October 26, 2005

RQ-0396-GA

Requestor:

Mr. Carl Reynolds
Administrative Director
Office of Court Administration
Post Office Box 12066
Austin, Texas 78711-2066

Re: Payment of uncollected fines, fees and court costs by defendants who have been administratively released from community supervision (RQ-0396-GA)

Briefs requested by October 26, 2005

RQ-0397-GA

Requestor:

The Honorable Jerry Patterson
Commissioner
Texas General Land Office
Post Office Box 12873
Austin, Texas 78711-2873

Re: Whether income from the sale and lease of lands of the Permanent School Fund may be used for the purchase of school textbooks (RQ-0397-GA)

Briefs requested by October 23, 2005

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

TRD-200504317
Stacey Schiff
Deputy Attorney General
Office of the Attorney General
Filed: September 28, 2005



TEXAS ETHICS

COMMISSION

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

Advisory Opinion Request

AOR-528 The Texas Ethics Commission has been asked whether a legislator whose personal business and district office are housed in a building owned by the legislator may use political funds to reimburse himself or herself for the portion of the space used for the legislative office. Is the answer to the question any different if a Limited Partnership owns the building and the legislator is a limited partner of that limited partnership? Is there any other ethically acceptable manner for the legislator or his family to recoup the cost of providing space for a state employee in his personal business office other than by leasing from an unrelated owner?

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305,

Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 36, Penal Code; and (8) Chapter 39, Penal Code.

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

TRD-200504287

Natalia Luna Ashley

General Counsel

Texas Ethics Commission

Filed: September 26, 2005



EMERGENCY RULES

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

TITLE 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 283. LICENSING REQUIREMENTS FOR PHARMACISTS

22 TAC §283.6

The Texas State Board of Pharmacy adopts on an emergency basis amendments to §283.6 concerning Preceptor Requirements and finds that it is not practical to provide the usual 30 days' prior notice and hearing. The Texas State Board of Pharmacy recognizes that an extraordinary demand for preceptors may exist for pharmacist-interns coming to Texas as a result of Hurricane Katrina.

The amendment is adopted on an emergency basis due to the imminent peril to public health, safety and welfare caused by pharmacist-interns in Texas as a result of Hurricane Katrina.

The emergency amendment to §283.6 provides procedures and requirements to allow a preceptor in a Texas College of Pharmacy internship program to supervise up to two interns.

The amendment is adopted on an emergency basis under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. In addition, the new rule is adopted on an emergency basis pursuant to Texas Government Code §2001.034, which authorizes the adoption of a rule on an emergency basis without prior notice and comment based upon a determination of imminent peril to the public health, safety or welfare.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code; Chapter 2001, Texas Government Code.

§283.6. Preceptor Requirements.

- (a) Preceptors shall be pharmacists whose license to practice pharmacy in Texas is current and not on inactive status with the board.
- (b) Preceptors are required to be approved and certified by the board. A preceptor shall publicly display the preceptor certificate with his/her license to practice pharmacy and the license renewal certificate.
- (c) For certification as a preceptor a pharmacist must:
 - (1) have at least:

- (A) one year of experience in the type of internship practice setting; or

- (B) six months of residency training if the pharmacy resident is in a program accredited by the American Society of Health System Pharmacists;

- (2) have completed:

- (A) for initial certification, three hours of preceptor training provided by an ACPE approved provider within the previous two years. Such training shall be:

- (i) developed by a Texas college of pharmacy; or

- (ii) approved by:

- (I) a committee comprised of the Texas colleges of pharmacy; or

- (II) the board; or

- (B) to continue certification, three hours of preceptor training provided by an ACPE approved provider within the preceptor pharmacist's current license renewal period. Such training shall be:

- (i) developed by a Texas college of pharmacy; or

- (ii) approved by:

- (I) a committee comprised of the Texas colleges of pharmacy; or

- (II) the board; and

- (3) meet the requirements of subsection (e) of this section.

- (d) A preceptor may supervise only one pharmacist-intern at any given time. Texas Colleges of Pharmacy may request a different preceptor to pharmacist-intern ratio during the board's annual review and approval of their college based, structured internship program. Any such ratio shall apply only to the internship experience acquired as a part of the college based, structured internship program. In an emergency caused by a natural or manmade disaster or any other exceptional situation that causes an extraordinary demand for preceptors, the executive director of the board, in his/her discretion, may allow a preceptor in a Texas College of Pharmacy internship program to supervise up to two interns. The executive director shall notify the Texas Colleges of Pharmacy of the length of time a preceptor may supervise up to two interns.

- (e) No pharmacist may serve as a preceptor if his or her license to practice pharmacy has been the subject of an order of the board imposing any penalty set out in the Act, §565.051, during the period he or she is serving as a preceptor or within the three-year period immediately preceding application for approval as a preceptor. Provided, however, a pharmacist who has been the subject of such an order of the board may petition the board, in writing, for approval to act as a preceptor. The board may consider the following items in approving a pharmacist's petition to act as a preceptor:

- (1) the type and gravity of the offense for which the pharmacist's license was disciplined;
- (2) the length of time since the action that caused the order;
- (3) the length of time the pharmacist has previously served as a preceptor;
- (4) the availability of other preceptors in the area;
- (5) the reason(s) the pharmacist believes he/she should serve as a preceptor;
- (6) a letter of recommendation from a Texas College of Pharmacy if the pharmacist will be serving as a preceptor for a Texas College of Pharmacy; and
- (7) any other factor presented by the pharmacist demonstrating good cause why the pharmacist should be allowed to act as a preceptor.

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

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Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8028



CHAPTER 291. PHARMACIES

SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.13

The Texas State Board of Pharmacy adopts on an emergency basis new §291.13 concerning Emergency Remote Pharmacy License and finds that it is not practical to provide the usual 30 days' prior notice and hearing. The Texas State Board of Pharmacy recognizes that emergency remote pharmacies are needed at emergency shelters to provide pharmaceutical services to evacuees of Hurricane Katrina in order to prevent imminent peril to the public health, safety, and welfare.

The section is adopted on an emergency basis due to the imminent peril to public health, safety and welfare caused by extraordinary demand for pharmaceutical services by evacuees in Texas shelters as a result of Hurricane Katrina. The agency also determined that the remote pharmacies were necessary to provide pharmaceutical services to the public and that the existing types of pharmacy licenses were not appropriate for that practice setting.

The emergency new rule §291.13 provides procedures and requirements for the Board to grant the holder of a Class A (Community), Class C (Institutional) or Class D (Clinic) pharmacy the authority to operate a pharmacy and provide pharmacy services at a remote location.

The new rule is adopted on an emergency basis under §§551.002, 554.051, and 560.053 of the Texas Pharmacy

Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §560.053 as authorizing the agency to adopt rules for establishing additional pharmacy classifications. In addition, the new rule is adopted on an emergency basis pursuant to Texas Government Code §2001.034, which authorizes the adoption of a rule on an emergency basis without prior notice and comment based upon a determination of imminent peril to the public health, safety or welfare.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code; Chapter 2001, Texas Government Code.

§291.13. Emergency Remote Pharmacy License.

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

(1) Emergency remote pharmacy--a pharmacy not located at the same Texas location as a home pharmacy at which pharmacy services are provided during an emergency situation.

(2) Emergency situation--an emergency caused by a natural or manmade disaster or any other exceptional situation that causes an extraordinary demand for pharmacy services.

(3) Home pharmacy--a currently licensed Class A (Community), Class C (Institutional), or Class D (Clinic) pharmacy that is providing emergency pharmacy services through an emergency remote pharmacy.

(b) Emergency remote pharmacy license. In an emergency situation, the board may grant a holder of a Class A (Community), Class C (Institutional), or Class D (Clinic) pharmacy license, the authority to operate a pharmacy and provide pharmacy services at an alternate location. The following is applicable for the emergency remote pharmacy.

(1) The emergency remote pharmacy will not be issued a separate pharmacy license, but shall operate under the license of the home pharmacy. To qualify for an emergency remote pharmacy license, the applicant must submit an application including the following information:

(A) license number, name, address, and phone number of the home pharmacy;

(B) name, address, and phone number of the emergency remote pharmacy;

(C) name and Texas pharmacist license number of the pharmacist-in-charge of the home pharmacy and of the pharmacist-in-charge of the emergency remote pharmacy; and

(D) any other information required by the board.

(2) The board will notify the home pharmacy of the approval of an emergency remote pharmacy license.

(3) The emergency remote pharmacy license shall be valid for a period as determined by the board not to exceed six months. The executive director of the board, in his/her discretion, may renew the remote license for an additional six months, if the emergency situation still exists and the holder of the license shows good cause for emergency remote pharmacy to continue operation.

(4) The emergency remote pharmacy shall have a written contract or agreement with the home pharmacy which outlines the services to be provided and the responsibilities and accountabilities of the remote and home pharmacy in fulfilling the terms of the contract or agreement in compliance with federal and state laws and regulations.

(5) The home pharmacy shall designate a pharmacist to serve as the pharmacist-in-charge of the emergency remote pharmacy.

(6) The emergency remote pharmacy shall comply with the rules for the class of pharmacy under which the home pharmacy is licensed. A Class A pharmacy shall comply with the rules under Subchapter B of this chapter titled Community Pharmacy (Class A). A Class C pharmacy shall comply with the rules under Subchapter D of this chapter titled Institutional Pharmacy (Class C). A Class D pharmacy shall comply with the rules under Subchapter E of this chapter titled Clinic Pharmacy (Class D).

(7) The records of services provided at the emergency remote pharmacy shall be maintained at the home pharmacy for a period of two years from the date of provision of the service. Such records shall be produced by the pharmacy within 48 hours, if requested by an authorized agent of the Texas State Board of Pharmacy, Department of Public Safety, or Drug Enforcement Administration.

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

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Texas State Board of Pharmacy

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CHAPTER 295. PHARMACISTS

22 TAC §295.6

The Texas State Board of Pharmacy adopts on an emergency basis new §295.6 concerning Emergency Temporary Pharmacist License and finds that it is not practical to provide the usual 30 days' prior notice and hearing. The Texas State Board of Pharmacy recognizes that additional pharmacists not previously licensed to practice pharmacy in Texas are needed on an emergency basis to provide pharmaceutical services to evacuees of Hurricane Katrina in order to prevent imminent peril to the public health, safety, and welfare.

The section is adopted on an emergency basis due to the imminent peril to public health, safety and welfare caused by extraordinary demand for pharmaceutical services by evacuees in Texas as a result of Hurricane Katrina.

The emergency new rule §295.6 provides procedures and requirements for the Board to grant a pharmacist who holds a license to practice pharmacy in another state an emergency temporary pharmacist license to practice in Texas.

The new rule is adopted on an emergency basis under §§551.002, 554.051, and 558.155 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to

protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §558.155 as authorizing the agency to issue temporary pharmacist licenses. In addition, the new rule is adopted on an emergency basis pursuant to Texas Government Code §2001.034, which authorizes the adoption of a rule on an emergency basis without prior notice and comment based upon a determination of imminent peril to the public health, safety or welfare.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code; Chapter 2001, Texas Government Code.

§295.6. Emergency Temporary Pharmacist License.

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

(1) Emergency situation--an emergency caused by a natural or manmade disaster or any other exceptional situation that causes an extraordinary demand for pharmacist services.

(2) Sponsoring pharmacy--a pharmacy licensed by the Board in which the emergency temporary pharmacist will practice.

(3) State--One of the 50 United States of America, the District of Columbia, and Puerto Rico.

(b) Emergency Temporary Pharmacist license. In an emergency situation, the board may grant a pharmacist who holds a license to practice pharmacy in another state an emergency temporary pharmacist license to practice in Texas. The following is applicable for the emergency temporary pharmacist license.

(1) An applicant for an emergency temporary pharmacist license under this section must:

(A) hold a current pharmacist license in another state and that license and other licenses held by the applicant in any other state may not be suspended, revoked, canceled, surrendered, or otherwise restricted for any reason; and

(B) be sponsored by a pharmacy with an active license in Texas.

(2) To qualify for an emergency temporary pharmacist license, the applicant must submit an application including the following information:

(A) name, address, and phone number of the applicant;

(B) name and license number of the pharmacist-in-charge of the sponsoring pharmacy;

(C) name and license number of the sponsoring pharmacy; and

(D) any other information the required by the board.

(3) An emergency temporary pharmacist license shall be valid for a period as determined by the board not to exceed six months. The executive director of the board, in his/her discretion, may renew the license for an additional six months, if the emergency situation still exists.

(4) The board will notify the sponsoring pharmacy of the approval of an emergency temporary pharmacist license.

(c) Limitations on practice. A holder of an emergency temporary pharmacist license:

(1) may only practice in the sponsoring pharmacy; and

(2) must notify the board in writing, prior to beginning employment in another sponsoring pharmacy.

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

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Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

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22 TAC §295.9

The Texas State Board of Pharmacy adopts on an emergency basis amendments to §295.9 concerning Inactive License and finds that it is not practical to provide the usual 30 days' prior notice and hearing. The Texas State Board of Pharmacy recognizes that additional pharmacists are needed to provide pharmaceutical services to evacuees of Hurricane Katrina in order to prevent imminent peril to the public health, safety, and welfare.

The amendment is adopted on an emergency basis due to the imminent peril to public health, safety and welfare caused by extraordinary demand for pharmaceutical services by evacuees in Texas as a result of Hurricane Katrina.

The emergency amendment to §295.9 provides procedures and requirements to allow Texas pharmacists whose license has been inactive for no more than two years to reactivate their license prior to obtaining the required continuing education.

The amendment is adopted on an emergency basis under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. In addition, the new rule is adopted on an emergency basis pursuant to Texas Government Code §2001.034, which authorizes the adoption of a rule on an emergency basis without prior notice and comment based upon a determination of imminent peril to the public health, safety or welfare.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code; Chapter 2001, Texas Government Code.

§295.9. *Inactive License*

(a) Placing a license on inactive status. A person who is licensed by the board to practice pharmacy but who is not eligible to renew the license for failure to comply with the continuing education requirements of the Act, Chapter 559, Subchapter A, and who is not engaged in the practice of pharmacy in this state, may place the license on inactive status at the time of license renewal or during a license period as follows.

(1) To place a license on inactive status at the time of renewal, the licensee shall:

(A) complete and submit before the expiration date a pharmacist license renewal application provided by the board;

(B) state on the renewal application that the license is to be placed on inactive status and that the licensee shall not practice pharmacy in Texas while the license is inactive; and

(C) pay the fee for renewal of the license as specified in §295.5 of this title (relating to Pharmacist License or Renewal Fees).

(2) To place a license on inactive status at a time other than the time of license renewal, the licensee shall:

(A) return the current renewal certificate to the board; and

(B) submit a signed statement stating that the licensee shall not practice pharmacy in Texas while the license is inactive, and the date the license is to be placed on inactive status; and

(C) pay the fee for issuance of an amended license as specified in §295.5(d) of this title (relating to Pharmacist License or Renewal Fees).

(b) Prohibition against practicing pharmacy in Texas with an inactive license. A holder of a license that is on inactive status shall not practice pharmacy in this state. The practice of pharmacy by a holder of a license that is on inactive status constitutes the practice of pharmacy without a license.

(c) Reactivation of an inactive license.

(1) A holder of a license that is on inactive status may return the license to active status by:

(A) applying for active status on a form prescribed by the board;

(B) providing copies of completion certificates from approved continuing education programs as specified in §295.8(e) of this title (relating to Continuing Education Requirements) for the number of hours that would otherwise have been required for the renewal of the license, up to 45 hours. Approved continuing education earned within two years prior to the licensee applying for the return to active status may be applied toward the continuing education requirement; and

(C) paying the fee specified in paragraph (2) of this subsection.

(2) If the application for reactivation of the license is made at the time of license renewal, the applicant shall pay the license renewal fee specified in §295.5 of this title (relating to Pharmacist License or Renewal Fees). If the application for reactivation of the license is made at a time other than the time of license renewal, the applicant shall pay the fee for issuance of an amended license to practice pharmacy as specified in §295.5(d) of this title (relating to Pharmacist License or Renewal Fees).

(3) In an emergency caused by a natural or manmade disaster or any other exceptional situation that causes an extraordinary demand for pharmacist services, the executive director of the board, in his/her discretion, may allow pharmacists whose license has been inactive for no more than two years to reactivate their license prior to obtaining the required continuing education specified in paragraph (2) of this subsection, provided the pharmacist completes the continuing education requirement within six months of reactivation of the license. If the required continuing education is not provided within six months, the license shall return to an inactive status.

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

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Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 5. TEXAS VETERANS LAND BOARD

CHAPTER 176. VETERANS HOMES

40 TAC §176.7

The State of Texas Veterans Land Board (VLB) adopts on an emergency basis an amendment to §176.7, concerning Admission Requirements for the David Gloier Texas State Veterans Home Program (Veterans Homes).

The VLB adopts new §176.7(a)(3) on an emergency basis due to the imminent peril to public health, safety and welfare caused by Hurricanes Katrina and Rita. As a result of these two natural disasters it has become apparent that in cases of natural emergencies as declared by the Governor of the State of Texas or the President of the United States, as authorized by law, veterans living in states other than Texas may need immediate access to skilled nursing care facilities. These veterans would otherwise be eligible for admission as set forth in the current Admission Requirements under 40 Texas Administrative Code Chapter 176, except for the one-year residency requirement. This emergency amendment provides for the suspension of that one-year residency requirement to allow for the immediate housing of and care for these veteran residents.

The emergency adoption of §176.7(a)(3) provides an exception to the definition of veteran as provided in §176.7(a)(2). The amendment allows for the immediate admission into the Veterans Home in the instance of a declaration of a natural disaster and or emergency for out of state veterans who otherwise meet

the eligibility requirements as set for in Chapter 176. The amendment provides for permanent residency for those veterans upon the completion of an application for admission within 45 days of the declaration of the natural disaster or emergency.

The amendment is adopted on an emergency basis pursuant to the Texas Natural Resources Code §161.001(b) that provides the VLB the authority to change, by rule, the definition of "veteran" as necessary or appropriate to protect the best interest of the program. The amendment is also adopted on an emergency basis pursuant to Texas Government Code §2001.034, which authorizes the adoption of a rule on an emergency basis without prior notice and comment based upon a determination of imminent peril to the public health, safety or welfare.

§176.7. Admission Requirements.

(a) The Board finds that it protects the best interests of the State Veterans Home Program to qualify the program for all available funding from the USDVA.

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

(3) Notwithstanding paragraph (2) of this subsection, in the situation wherein the Governor of the State of Texas and/or the President of the United States, as authorized by state and federal law have issued a declaration of natural disaster or emergency, the term "veteran" means any veteran who otherwise meets the eligibility requirements of this section but has not resided in Texas continuously for at least one year immediately before applying for admission. Any veteran who qualifies for admission under this subsection may continue to reside in the State Veterans Home upon the completion of an application for admission within forty-five days of the declaration of the natural disaster or emergency.

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

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

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TRD-200504244

Trace Finley

Policy Director, General Land Office

Texas Veterans Land Board

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For further information, please call: (512) 305-8598



PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 81. ELECTIONS

SUBCHAPTER F. PRIMARY ELECTIONS

1 TAC §§81.103, 81.111, 81.112, 81.115 - 81.117, 81.119 - 81.121, 81.123, 81.125 - 81.130, 81.134, 81.135

The Office of the Secretary of State proposes amendments to §§81.103, 81.111, 81.112, 81.115 - 81.117, 81.119 - 81.121, 81.123, 81.125 - 81.130, 81.134, and 81.135, concerning primary election funding. The proposed amendments concern the financing of the 2006 primary elections with state funds, including the determination of necessary and proper expenses relating to the proper conduct of primary elections by party officials and the procedures for requesting reimbursement by the parties for such expenses.

The amendments are necessary for the proper and efficient conduct of the 2006 primary elections. It is in the public interest to establish adequate procedures to insure the best use of state funding.

Roger Williams, Secretary of State, has determined that for the first five-year period the sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Williams has determined also that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be the proper conduct of the 2006 primary elections by party officials with the aid of state money appropriated for that purpose. The amendments to §81.135 will ensure that sufficient time is provided to permit provisional ballots to be processed timely, and the local county and state canvassing of the primary elections in 2006 will occur in a timely manner. There will be no effect on small or micro-business. There will be no anticipated economic cost to the state and county chairs of the Democratic and Republican parties.

Written comments of the proposal may be submitted to the Office of the Secretary of State, Ann McGeehan, Director of Elections, P.O. Box 12060, Austin, Texas 78711. Comments must be received no later than November 7, 2005.

The amendments are proposed under the Election Code, §§31.003, 31.010, and 173.006, which provide the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Code and other election laws. It also allows the Secretary of State in performing such duties, to prepare

detailed and comprehensive written directives and instructions based on such laws. In the 2003 Legislative Session the date of the local (county) canvass was modified to allow time for counting provisional ballots; however the state canvassing date was not similarly modified. These sections additionally authorize the Secretary of State to adopt rules consistent with the Code that reduce the cost of the primary elections or facilitate the holding of the elections within the amount appropriated by the legislature for that purpose.

No other sections are affected by the proposed amendments.

§81.103. *Bank Account for Primary-Fund Deposits and Expenditures.*

(a) The county chair shall establish and maintain a bank account for the sole purpose of depositing and expending primary funds; any interest earned in such an account becomes part of the primary fund.

(b) The county chair, or any employee of the primary fund, shall not commingle primary funds with any other fund or account.

(c) Each check issued from a primary-funds account must include the following statement on its face: "VOID AFTER 60 DAYS."

(d) The county chair shall complete bank reconciliations on a monthly basis. Bank reconciliations are considered part of the primary-fund records and must be submitted to the Secretary of State with the final cost report.

(e) After all 2006 [2004] primary expenditures have been paid, the primary bank account must be closed and the remaining primary funds returned to the Secretary of State.

§81.111. *Interest on Start Up Loan to Open Primary Fund is not Reimbursable.*

[(a)] A party chair may not use primary funds, which are subsequently approved by the Secretary of State, to pay interest on loans used to defray operating expenses incurred prior to the receipt of such funds.

[(b) A party chair may receive an initial distribution of primary funds from the Secretary of State by filing a 2004 General Primary Cost Estimate on or before November 3, 2003.]

§81.112. *List of Candidates and Filing Fees.*

Not later than January 12, 2006 [2004], the county chair shall file with the Secretary of State a complete list of candidates, including the name of the candidate, the office sought, and the amount of the filing fee paid (or a notation that the candidate filed a petition in lieu of a filing fee). (Note: The amount of filing fees paid must equal the amount reported on the Final Cost Report. If any additions or deletions are made to the list of candidates, after being filed with the Secretary of State, a supplemental list of candidates must be filed with the Secretary of State, the county clerk and the state chair.)

§81.115. *Requirement for Competitive Bids for Services or Products.*

(a) This section does not apply to expenditures of \$2,000 or less. (Note: A large purchase may not be divided into small lot purchases to circumvent the dollar limits established by this section. For example, expenditures for computer equipment to a single vendor that total more than \$2,000 are subject to the competitive bid requirement and may not be split between printers/scanner/computers.)

(b) Unless prior approval from the Secretary of State is obtained, the county chair must purchase all services and products, including election kits and assembly kits, using competitive bids from no less than three sources.

(c) The county chair must document or otherwise provide an explanation regarding the lack of available bids from vendors. This documentation or explanation must be submitted with the 2006 [2004] General Primary Election Cost Estimate.

(d) If the county chair contracts with the county election official who has a term contract for election supplies or services, then competitive bids are not required for term-contract supplies or services if the county entered the term contract pursuant to regular county purchasing rules. If a term contract is utilized, a letter explaining the use of the term contract must be provided. The letter must be signed by the county official and the county purchasing agent stating that supplies were purchased for the primary election from a vendor with which they have a term contract. The letter must be submitted with the 2006 [2004] Primary Election Cost Estimate.

§81.116. *Estimating Voter Turnout.*

(a) The county chair shall use the formula set out in the following figure, with necessary modifications as determined by the chair, to determine the estimated voter turnout for the 2006 [2004] primary elections. This general formula is a guideline and must be adjusted if the local political situation indicates a higher voter turnout than that derived by the formula.

Figure: 1 TAC §81.116(a)

(b) After estimating the voter turnout for each precinct, the county chair shall use the guidelines set forth in §§81.117, 81.124, and 81.125 of this title (relating to the Number of Election Workers per Polling Place, Number of Paper or Electronic Voting System Ballots per Voting Precinct, and Number of Direct Record Electronic Units (DRE) Units [Voting Machines, Punch-Card Voting Devices,] or Precinct Ballot Counters per Voting Precinct) to determine the necessary personnel, supplies, and equipment for each precinct (i.e. ballots, election judges and clerks, voting devices, or machines).

(c) After estimating the need for personnel, supplies, and equipment for each precinct, the county chair shall combine all precinct data to determine the total countywide estimate.

(d) The county chair may use the estimate calculated under subsection (c) of this section to determine the cost of the election.

§81.117. *Number of Election Workers per Polling Place.*

(a) The county chair shall use the formula set out in the following figure to determine the number of election workers allowable for each polling place.

Figure: 1 TAC §81.117(a)

(b) Each polling place must have, at the minimum, a presiding judge, an alternate judge (clerk), and a clerk.

§81.119. *County Chair's Compensation.*

(a) Pursuant to §173.004 of the Texas Election Code, a county chair may receive compensation for administering primary elections. (Note: Ballot reprints, legal fees, programming errors, reprogramming

costs or similar corrective measures will not be included in the formula for determining the county chair's compensation. Additionally, if the county chair contracts for election services with the county, the activities contracted for will not be included in the compensation formula for the county chair.)

(b) The Secretary of State shall not authorize payment under this section until the county party's 2006 [2004] Final Primary Election Cost report has been approved. The Secretary of State shall notify the county chair of this approval by letter.

(c) After all other expenses have been paid, the county chair shall be paid with a check drawn on the county's primary-fund account.

(d) The Secretary of State may deny compensation to county chairs who file delinquent final-cost reports.

§81.120. *Compensation for Election-Day Workers.*

(a) Except as provided by subsection (b) of this section, the compensation paid to polling-place judges, clerks, early-voting-ballot board members, or persons working at the central counting station for the 2006 [2004] general-primary and primary-runoff elections shall be \$7.00 per hour, if the worker attends a training class certified by the Secretary of State or \$5.15 per hour if the worker does not attend a training class.

(b) The county chair may pay technical support personnel at the central counting station (appointed under Texas Election Code §§127.002, 127.003, or 127.004) compensation which is more than \$5.15/\$7.00 per hour. (Note: The county executive committee must provide a cost estimate for hiring employees to work at the central counting station. Estimates must be provided for each position for individuals hired pursuant to Texas Election Code §§127.002, 127.003, or 127.004.)

(c) Except as provided by this section, a judge or clerk may be paid only for the actual time spent on election duties performed in the polling place or central counting station. If an election worker elects to donate his or her compensation to the county party, signed documentation referencing that fact, by the election worker and chair, must be placed in the primary records.

(d) The county chair may allow one election worker from each polling place up to one hour before election day to annotate the precinct list of registered voters.

(e) The county chair is authorized to pay members of the early-voting-ballot board.

(1) Members of the early voting ballot board may only be compensated for the actual number of hours worked.

(2) Additionally, members may reconvene to process provisional or late ballots. The provisional ballot/late counting process must be completed not later than the 7th day after the primary or primary runoff elections.

(f) Compensation for the election judge or clerk who delivers and picks up the election records, equipment, and unused supplies may not exceed \$15 per polling place location.

(g) ~~[(f)]~~ Except as provided by subsection (f) of this section [§81.121(f) of this title (relating to Compensation for Delivering Election Records and Supplies and Attending Election Schools for Judges),] the county chair may not pay an election-day worker for travel time, delivery of supplies, or attendance at the precinct convention.

§81.121. *No Compensation for [Delivering Election Records and Supplies and] Attending Election Schools for Judges.*

(a) Training materials may be ordered free of charge from the Secretary of State.

(b) The county chair may not be reimbursed for materials published and provided by the Secretary of State.

(c) Election judges and clerks may not be compensated from the primary fund to attend an election school. [~~Compensation for the election judge or clerk who delivers and picks up the election records, equipment, and unused supplies may not exceed \$15 per polling place location.~~]

~~{(d) The election judge or the judge's designee may receive a delivery fee not to exceed \$15. A copy of the signed attendance roster for an election school must be maintained and may be requested by the Secretary of State for auditing purposes.}~~

§81.123. Administrative Personnel Limited.

(a) "Administrative Personnel" means a non-election-day worker.

(b) The employment of administrative personnel is not required for the conduct of the primary elections. (Please note that for the 2004 [2002] Primary and Runoff Elections, 387 [362] of the 508 county chairs reported \$0 in administrative personnel costs.)

(c) Pursuant to §81.114 of this title (relating to Conflicts of Interest), no member of the county chair's family may be paid an administrative salary from primary funds.

(d) The county chair shall obtain prior written approval from the Secretary of State before administrative personnel are hired under this section. (The Secretary of State encourages the use of part-time administrative personnel.)

(e) If administrative personnel are required for the conduct of the primary election, salaries or wages for such personnel are payable from the primary fund for a period beginning no earlier than December 1, 2005 [2003], and ending no later than the last day of the month in which the last primary election is held.

(f) The county chair shall submit to the Secretary of State a list of all necessary personnel to be paid from the primary fund. This list must indicate the name and title of the employee, job duties, hours to be worked, period of employment, monthly or hourly rate of pay, and the estimated or actual gross pay for the period. (The county chair must also attach this information to each primary cost estimate and to the 2006 [2004] Final Primary Election Cost Report.)

(g) The county chair shall use the formula set out in the following figure to calculate the maximum total gross salaries that may be paid to administrative personnel. Salaries must be reasonable for the hours worked and services rendered and must reflect the salaries paid for similar work or services in the same area. In no circumstance may an employee who is paid from the primary fund be compensated more than \$2,500 for any one-month's work. If an individual is paid from the primary fund and that individual is also leasing space, furniture, or equipment to the party for the primary-election, then the lease amounts must be added to that person's salary to determine whether the allowable administrative-salary limit has been reached.
Figure: 1 TAC §81.123(g) (No change.)

(h) If the county chair contracts with third parties or the county-elections officer for election services, the overall administrative personnel costs must be reduced to reflect the actual amount of work performed by the primary fund staff. (Administrative personnel costs include, but are not limited to, polling location services, ballot ordering, and secretarial services.)

(i) The Secretary of State may disallow full payment for administrative personnel if it is determined that the contracting county-elections officer substantially performed the conduct of the election.

§81.125. Number of Direct Record Electronic (DRE) Units [Voting Machines, Punch-Card Voting Devices,] or Precinct Ballot Counters per Voting Precinct.

(a) The county chair shall use the table set out in the following figure to determine the number of [voting machines,] precinct ballot counters and DRE units[, DRE's and punch-card voting devices] allowable for each precinct.
Figure: 1 TAC §81.125(a)

~~{(b) In counties where voting machines are used, the county chair should make a special assessment of whether the number of voting machines calculated according to the formula in subsection (a) of this section is adequate. Based on this determination, the chair should adjust the cost estimate and procurement of voting machines.}~~

~~(b) [(e)] If a county chair determines that the number of [voting machines,] precinct ballot counters and/or DRE units[, DRE's or punch-card voting devices] authorized under the formula is inadequate, he or she must obtain permission from the Secretary of State to obtain additional machines, counters, or devices.~~

~~(c) Pursuant to federal and state law, there must be at least one accessible voting unit in each precinct. If the county has only one accessible unit per precinct, the parties are encouraged to share that unit in a joint polling place. Sharing a polling place and sharing an accessible voting unit only is not considered a formal joint election pursuant to §172.126 of the Texas Election Code. Due to limited state funds, if the county does not have a sufficient number of accessible voting units for each party to lease independently, then the costs to lease additional accessible voting units may not be fully reimbursed by the state primary fund.~~

~~(d) In precincts that are conducting a limited joint election for purposes of sharing a polling place and a Direct Record Electronic ("DRE") unit, the presiding election judge from the party whose candidate for governor received the highest number of votes in the precinct or consolidated precinct in the most recent gubernatorial general election shall deliver the DRE device containing the vote totals to the general custodian. The presiding judge of the party whose candidate for governor received the highest number of votes in the precinct or consolidated precinct in the most recent gubernatorial general election may designate the presiding judge or clerk of the other party to deliver the ballot box and/or DRE device.~~

§81.126. Training Reimbursement to Attend County Chairs Election Law Seminar.

(a) Except as provided by this section, the Secretary of State shall reimburse from the state primary fund, the actual travel expenses for the county chair or the county chair's designee to attend the Secretary of State's Election Law Seminar for County Chairs. (The Secretary of State shall provide travel reimbursement forms at the seminar.)

(b) The Secretary of State shall reimburse the county chair or the county chair's designee for:

- (1) mileage (if driving personal vehicle);
- (2) airfare (coach only);
- (3) airport transfers;
- (4) airport parking;
- (5) lodging; and
- (6) any other reasonable expenses related to an individual's attendance at the Election Law Seminar for County Chairs.

(c) The Secretary of State shall use the Official State Mileage Guide to determine distances traveled to attend the Election Law Seminar for County Chairs. The Secretary of State shall reimburse mileage claims based on \$0.41 [~~\$0.35~~] per mile.

(d) The Secretary of State shall reimburse actual lodging expenses in an amount not to exceed \$85 [~~\$80~~] per day, plus applicable taxes.

(e) As provided by the Texas General Appropriations Act, the Secretary of State shall not make reimbursements for gratuities or tips.

(f) The county chair or the chair's designee must submit actual receipts to the Secretary of State in order to be reimbursed for airfare, lodging, parking, or airport transfers.

(g) The Secretary of State shall make all travel reimbursement warrants payable to the county chair.

§81.127. Office Equipment and Supplies.

(a) Rental of office equipment is not required in order to conduct primary elections.

(b) The county chair may lease office equipment necessary for the administration of the primary elections for a period beginning December 1, 2005 [~~2003~~], and ending not later than the last day of the month in which the last primary election is held.

(c) The county party may not rent or lease equipment in which the party, the county chair, or a member of the county chair's family has a financial interest. (See definition of "family" at §81.114(b) of this title (relating to Conflicts of Interest)).

(d) The county chair or party shall rent equipment from an entity that has been in business for at least 18 months and has at least three other bona fide clients.

(e) The purchase of office supplies necessary for the administration of the primary election is payable from the primary fund. (This includes the purchase of two paperback copies of the Texas Election Code.)

(f) The county chair or party may be reimbursed for the cost of incidental supplies used in connection with the primary election. (Examples of incidental supplies include paper, toner, and staples.)

(g) The county chair may not use primary funds to purchase any single office-supply item or equipment valued at over \$500.

(h) The county chair may not pay notary public expenses from the primary fund.

§81.128. Telephone and Postage Charges.

(a) The Secretary of State shall reimburse necessary telephone and postage costs incurred with respect to the administration of the primary elections beginning no earlier than December 1, 2005 [~~2003~~] and ending no later than the last day of the month in which the last primary election is held.

(b) In counties with fewer than 150 primary election day polling places, the county party may be reimbursed for the lease of no more than two telephone lines.

(c) In counties with 150 or more primary election day polling places, the county party may be reimbursed for the lease of no more than four telephone lines.

§81.129. Office Rental.

(a) The rental of office space is not required for the conduct of the primary elections. (Please note that for the 2004 [~~2002~~] Primary and Runoff Elections, 425 [~~377~~] of the 508 county chairs reported \$0 in office rental costs.)

(b) The Secretary of State shall reimburse necessary office-space-rental expenses incurred with respect to the administration of the primary elections for a period beginning no earlier than December 1, 2005 [~~2003~~], and ending not later than the last day of the month in which the last primary election is held.

(c) If the rental of office space is necessary, the county party shall rent office space in a regularly rented commercial building. Office rent shall not exceed the fair market rate for office space currently-rented in the same area.

~~[(d) Office rent shall not exceed the fair market rate for office space currently-rented in the same area. (Note: The Secretary of State will reimburse the party for office space based on a formula of 135 square feet of space per individual utilizing such space. For example: if the party has three workers in the leased space, the Secretary of State will only reimburse expenses necessary to lease 405 square feet of office space.)]~~

~~[(e)]~~ Unless such services are required in accordance with the lease agreement, no payment may be made with primary funds for janitorial services, parking, or signage.

~~[(f)]~~ The county party may not rent or lease office space in which the party, the county chair, the county chair's spouse, or the county chair's family has a financial interest. (See definition of "family" at §81.114(b) of this title (relating to Conflicts of Interest)).

~~[(g)]~~ If the party leases space for the purpose of the primary only, the county chair shall transmit a copy of the three competitive bids obtained as well as the lease agreement to the Secretary of State, along with a copy of the 2006 [~~2004~~] Primary Election Cost Estimate. (Note: If the party maintains a lease, irrespective of the conduct of the primary, the cost of that lease will not be reimbursed in excess of 30% of the rental cost by the state as a primary expense.)

~~[(h)]~~ The county chair shall transmit to the Secretary of State, with the next primary election cost estimate or report, any change in a lease agreement. The county chair shall also provide an explanation regarding any change in the lease.

§81.130. Payment for Use of County-Owned Equipment.

(a) Section 123.033 of the Texas Election Code provides for the rental rate that a county may charge for the use of its equipment. (The rental rates [are \$16 per lever-voting machine, \$5 per punch-card voting device,] \$5 for each unit of tabulating equipment and \$5.00 for each unit which makes up a DRE.)

(b) In addition to subsection (a) of this section, the county primary fund may be used to pay the actual expenses incurred by the county in transporting, preparing, programming, and testing the necessary equipment, as well as for staffing the central counting station.

(c) The county shall be reimbursed for actual expenses if the county's computer system is used as the central-counting-station ballot accumulator. (The county shall calculate the cost to be reimbursed by using the same cost-accounting techniques used by the county in charging county departments for use of its data-processing services. If the county does not have such a formula, then the reimbursement shall be calculated based on \$1 per 100 ballots tabulated.)

(d) The county chair shall submit all calculations for amounts charged for the use of county-owned and non-county owned equipment to the Secretary of State for review with the 2006 [~~2004~~] Final Cost Report.

(e) The county chair must immediately notify the Secretary of State if the actual number of voting devices used during the primary or runoff exceed the approved number of devices listed on the initial primary cost estimate. This notice must include a new estimate with

respect to the use of the additional voting devices. The notice required by this subsection must be submitted in writing.

(f) The county chair shall not use primary funds to pay expenses related to the use of noncounty-owned equipment, including but not limited to ballot boxes and voting booths, without written permission from the Secretary of State. The county chair must immediately notify the Secretary of State if a line item amount will exceed the cost provided on the initial primary cost estimate. This notice must include a new estimate with respect to the increased cost. The notice required by this subsection must be in writing.

§81.134. Legal Expenses.

(a) The county chair shall contact the Secretary of State's Elections Division for legal advice concerning routine election law questions. (Attorneys with the Elections Division may be reached toll-free by calling 1-800-252-2216. There is no charge for this service.)

(b) The Secretary of State shall not provide primary-fund reimbursement for legal expenses resulting from the negligent or wrongful acts of the county chair, a member of the county executive committee, the county executive committee, or a staff member performing a statutory duty.

(c) The Secretary of State shall only pay legal expenses related to litigation concerning the conduct of the primary election.

(d) The county chair shall contact the Secretary of State before entering into a contract for legal services in order to obtain a determination from the Secretary as to whether the legal services are payable from the primary fund.

(e) The Secretary of State shall not reimburse legal expenses if the county chair fails to notify the Secretary of State of litigation within three business days following the receipt of service of process.

(f) Not later than 14 days after the county chair retains an attorney, the county chair shall provide to the Secretary of State written information concerning the background of the case and an estimate of the cost to defend the case.

(g) The county chair shall provide to the Secretary of State copies of all invoices related to legal expenses. The Secretary of State shall review all invoices for legal expenses and make a determination as to their reasonableness based on the novelty and complexity of the legal issues involved. The Secretary of State shall base payment of legal expenses upon the pay scale currently reflected in the State Bar of Texas Attorney Economic Survey--Hourly Rates in Texas Law Firms.

(h) The county chair shall file a final invoice for legal expenses no later than July 1, 2006 [2004], unless the chair has requested and received a written authorization from the Secretary of State to extend the deadline.

(i) All legal billings submitted to the Secretary of State for reimbursement are subject to the Public Information Act (Chapter 552, Texas Government Code).

§81.135. Primary Canvass Rules for 2006 [2004] Elections.

(a) Local County Canvass Date in 2006 [2004]. For purposes of the March 7, 2006 [March 9, 2004] primary and April 11, 2006 [April 13, 2004] primary runoff elections, the Secretary of State shall direct the county chairs of each party conducting a primary to use the earliest available canvass date of Thursday, March 16, 2006 [March 18, 2004], in order to expedite the state canvass.

(b) State Canvass Date in 2006 [2004]. For purposes of the March 7, 2006 [March 9, 2004], primary, instead of the state canvass occurring on March 15, 2006 [March 17, 2004] (the second Wednesday after the primary election date), in accordance with §171.120 of the

Election Code, the state executive committee shall conduct a canvass for all races with potential runoffs (races with 3 or more candidates) not later than Sunday, March 19, 2006 [March 21, 2004].

(c) Local (County) Ballot Drawing. The local (county) ballot drawing for the primary runoff ballot shall be conducted not later than Monday, March 20, 2006 [March 22, 2004].

(d) State Canvass for Remaining Offices. State Executive Committee shall complete the state canvass for the remaining state and district races no later than Monday, March 27, 2006 [March 29, 2004].

(e) State Canvass for Primary Runoff. The State Executive Committee shall complete the state canvass for the primary runoff election no later than Saturday, April 29, 2006.

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 September 26, 2005.

TRD-200504275

Ann McGeehan

Director of Elections

Office of the Secretary of State

Earliest possible date of adoption: November 6, 2005

For further information, please call: (512) 463-5650



SUBCHAPTER G. JOINT PRIMARY ELECTIONS

1 TAC §§81.145, 81.148, 81.149, 81.152, 81.153, 81.157

The Office of the Secretary of State proposes amendments to §§81.145, 81.148, 81.149, 81.152, 81.153, and 81.157, concerning joint primary election funding. The amendments concern the financing of the 2006 joint primary elections with state funds, including the determination of necessary and proper expenses relating to the proper conduct of joint primary elections by party officials and the procedures for requesting reimbursement by the parties for such expenses.

The amendments are necessary for the proper and efficient conduct of the 2006 joint primary elections. It is in the public interest to establish adequate procedures to insure the best use of state funding.

Roger Williams, Secretary of State, has determined that for the first five-year period the sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Williams has determined also that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be the proper conduct of the 2006 primary elections by party officials with the aid of state money appropriated for that purpose. There will be no effect on small or micro-business. There will be no anticipated economic cost to the state and county chairs of the Democratic and Republican parties.

Written comments on the proposed amendments may be submitted to the Office of the Secretary of State, Ann McGeehan, Director of Elections, P.O. Box 12060, Austin, Texas 78711. Comments must be received no later than November 7, 2005.

The amendments are proposed under the Texas Election Code, §31.003 and §173.006, which provide the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code and other election laws. It also allows the Secretary of State in performing such duties, to prepare detailed and comprehensive written directives and instructions based on such laws. These sections additionally authorize the Secretary of State to adopt rules consistent with the Election Code that reduce the cost of the primary elections and facilitate the holding of the elections within the amount appropriated by the legislature for that purpose.

The amendments also are proposed under the Texas Election Code, §172.126(c) and (i) and §173.011(c) which provide the Office of the Secretary of State with the authority to prescribe procedures for appointment of election day workers, to ensure orderly and proper administration of as well as fair and efficient financing of joint primary elections.

The Texas Election Code, Chapter 173, Subchapter A, §173.006 is affected by these proposed rules.

§81.145. Recommended Deadlines to Comply with Statutory Requirements for the Conduct of Joint Primaries.

(a) November 14, 2005 [2003]: Recommended date by which county chairs who wish to conduct a joint primary should meet with the county clerk/elections administrator to determine whether to enter into a joint resolution to conduct the primary, and to determine the estimated number of election judges and clerks, members of the early-voting-ballot-board, and central counting station personnel to be appointed from the parties. Additionally, the parties and the county clerk/elections administrator should determine which voting system(s), ballot formats, and precinct consolidation or combination plans (if applicable) will be used. (It is permissible to create separate consolidation or combination plans for each party, provided that every consolidated or combined precinct has a co-judge representing each party.)

(b) December 1, 2005 [2003]: Recommended date by which the commissioners court should vote on approval of joint resolution. The joint resolution must include the required number of joint-precinct-polling places and the number of co-judges and clerks for each joint-precinct location. The commissioners court resolution approving the joint primary must also be signed by the county clerk or elections administrator, and the county chair of both parties entering into the agreement.

(c) December 12, 2005 [8, 2003] (2nd Monday in December): Statutory date for each party chair to deliver lists of names of election judges and clerks, early-voting-ballot-board members, and central counting station personnel (if applicable) to the county clerk/elections administrator.

(d) January 23, 2006 [20, 2004]: Deadline to file final cost estimate and joint resolution. Recommended date to make modifications to the joint resolution regarding the number of joint polling places and the number of polling-place personnel. Any modifications must be signed by the county clerk/elections administrator and both party chairs.

§81.148. Appointment of Various Election Officials.

(a) Upon receipt of the lists of names of election judges and clerk from each county chair (list must be submitted by December 12, 2005 [8, 2003]), the county clerk/elections administrator shall select co-judges, co-alternate judges, and appoint clerks (if applicable) for each precinct. (These selections are made in accordance with §32.002(c) of the Texas Election Code and §81.152 of this title (relating to Estimating Voter Turnout for Joint Primary.))

(b) The county clerk/elections administrator shall determine the total number of election workers required and select from the party chairs' list the individuals to be appointed as co-judges, members of the early-voting-ballot board, and central counting station personnel. The county clerk/elections administrator shall ensure party balance in these selections.

(c) If the total number of individuals serving on the early-voting-ballot board or at the central counting station is an odd number, the county clerk/elections administrator shall appoint an additional member from the party whose candidate for governor received the highest number of votes in the county in the most recent gubernatorial general election.

§81.149. Number of Election Workers per Joint Polling Place.

(a) The county clerk/election administrator shall use the table set out in the following figure, to determine the number of election workers allowable for each joint polling place.

(b) Each polling place shall have no less than one co-judge from each party and one clerk from each party.

(c) If the total number of workers is an odd number, the county clerk/elections administrator shall appoint an additional worker from the list of the party whose candidate for governor received the highest number of votes in the precinct in the most recent gubernatorial general election. (If precincts have been consolidated or combined for the joint primary, then the highest number of votes is determined by adding together the votes from the consolidated or combined precincts.)

Figure: 1 TAC §81.149(c)

§81.152. Estimating Voter Turnout for Joint Primaries.

(a) Each county chair shall estimate voter turnout for each precinct using the formula set out in the following figure.

Figure: 1 TAC §81.152(a)

(b) The county clerk/elections administrator shall combine the turnout estimates provided by each party chair for each joint-primary precinct.

(c) The county clerk/elections administrator shall enter this information in Section B of the Joint Primary Resolution.

§81.153. Delivery of Election Records and Supplies.

(a) In joint precincts using an electronic voting system in which only one ballot box or only one Direct Record Electronic ("DRE") unit is used, the co-judge from the party whose candidate for governor received the highest number of votes in the precinct or consolidated precinct in the most recent gubernatorial general election shall deliver the election supplies, including the DRE device contained the vote totals. (Note: A county clerk/elections administrator may use separate ballot boxes for each party when using electronic voting systems, if applicable.)

(b) The co-judge of the party whose candidate for governor received the highest number of votes in the precinct or consolidated precinct in the most recent gubernatorial general election may designate the other co-judge or a clerk to deliver the ballot box and/or DRE device.

(c) In a jurisdiction using paper ballots, each co-judge shall deliver their party's ballot box and election returns.

§81.157. Joint-Primary Contract with the County-Elections Officer (County Clerk, County Elections Administrator, or County Tax Assessor Collector).

(a) Before the county chair may make final payment, the county-elections officer must submit to the Secretary of State an

accounting of actual costs incurred in conducting the joint-primary election.

(b) Before the Secretary of State may reimburse the final 25% of primary funds requested, the county elections officer must submit to the Secretary of State a detailed billing of all actual costs with the Final Cost Report.

(c) The Secretary of State may only reimburse actual costs incurred by the county and payable pursuant to provisions of the Texas Election Code, a joint primary contract, or an administrative rule.

(d) If the joint elections agreement requires the county-elections officer to directly pay the costs associated with the joint election, then the county chair shall remit the total amount of state funds forwarded to the county chair pursuant to section B of the Final Cost Estimate to the county clerk no later than the fifth day after receipt of the funds.

(e) The cost estimate may not provide for reimbursement for training of election workers or for materials provided by the Secretary of State.

(f) The county may not reimburse from primary-election funds, regular pay for personnel normally employed by the county.

(g) The joint resolution for the 2006 [2004] primary elections may not provide for any salary or compensation for the county-elections officer for the performance of any statutory duty or service. (Note: Joint Primary Election Agreements do not count against the administrative salary limits set out under §81.123 of this title (relating to Administrative Personnel Limited).

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 September 26, 2005.

TRD-200504276

Ann McGeehan

Director of Elections

Office of the Secretary of State

Earliest possible date of adoption: November 6, 2005

For further information, please call: (512) 463-5650



PART 5. TEXAS BUILDING AND PROCUREMENT COMMISSION

CHAPTER 125. SUPPORT SERVICES

DIVISION--TRAVEL AND VEHICLE

SUBCHAPTER A. TRAVEL MANAGEMENT SERVICES

1 TAC §§125.1, 125.3, 125.5, 125.7, 125.9, 125.11, 125.15, 125.17, 125.19, 125.21, 125.23, 125.25, 125.29

(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 Building and Procurement Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Building and Procurement Commission (TBPC) proposes the repeal of 1 TAC Chapter 125, Subchapter A, §§125.1, 125.3, 125.5, 125.7, 125.9, 125.11, 125.15, 125.17, 125.19, 125.21, 125.23, 125.25, and 125.29, relating to the Travel Management Services. The subchapter is proposed for repeal because a new Subchapter A, §§125.1 - 125.8, is being proposed simultaneously and published elsewhere in this issue of the *Texas Register*.

Joanna B. Peavy, Deputy Executive Director, has determined for the first five-year period the repeal is in effect there will be reduced costs for state agencies and local governmental entities who utilize the state's travel services program.

Ms. Peavy has further 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 and the related new Subchapter A will be lower travel costs for state agencies and local governmental entities who participate in the state travel services program because these rules unnecessarily inhibit the use of lower cost travel services. There will not be any effect on large, small or micro-businesses that routinely participate in state business opportunities because these rules apply only to governmental entities. There will be no anticipated economic costs to persons who are required to comply with the rules and there is no impact on local employment.

Comments on the proposal may be submitted to Ingrid K. Hansen, General Counsel, Texas Building and Procurement Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments may also be sent via e-mail to: ingrid.hansen@tbpc.state.tx.us. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The repeal is proposed under the authority of the Texas Government Code §§2171.002, 2171.054 and 2171.056 authorizing the TBPC to adopt rules relating to the travel management program.

The following sections are affected by the repeal: Texas Government Code §§2171.002, 2171.054 and 2171.056.

§125.1. *General.*

§125.3. *Definitions.*

§125.5. *Available Services.*

§125.7. *Travel Agency Services.*

§125.9. *Corporate Travel Charge Card Services.*

§125.11. *Negotiated Rate Services.*

§125.15. *Certification of Capability To Provide Services.*

§125.17. *Travel Vendor Selection Process.*

§125.19. *Participation by State Agencies.*

§125.21. *Reporting Requirements for State Agencies.*

§125.23. *State Agency Travel Coordinators.*

§125.25. *Conference Rooms.*

§125.29. *Texas Counties, Texas Municipalities, School Districts, and Texas Public Junior Colleges Use of Contracts for Travel Services.*

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

Filed with the Office of the Secretary of State on September 23, 2005.

TRD-200504263

Ingrid K. Hansen

General Counsel

Texas Building and Procurement Commission

Earliest possible date of adoption: November 6, 2005

For further information, please call: (512) 463-4257



1 TAC §§125.1 - 125.8

The Texas Building and Procurement Commission (TBPC) proposes new 1 TAC Chapter 125, Subchapter A, §§125.1 - 125.8, relating to Travel Management Services. The proposed new Subchapter A replaces the existing Subchapter A, which is being proposed for repeal simultaneously and published elsewhere in this issue of the *Texas Register*.

Joanna B. Peavy, Deputy Executive Director, has determined for the first five-year period the new rules are in effect the fiscal implication for state or other governmental entities as a result of the new rules will be additional savings through greater participation in the state travel contracts and the purchasing of travel services at the lowest practicable rates.

Ms. Peavy has further determined that for each year of the first five-year the new rules are in effect, the public benefit anticipated as a result of the new rules will be neutral because there is no economic effect on large, small or micro-businesses that routinely participate in state business opportunities. These rules apply only to state agencies and other governmental entities who utilize the TBPC's contracted travel services. There will be no anticipated economic costs to private persons who are not required to comply with the rules and there is no impact on local employment.

Comments on the proposal may be submitted to Ingrid K. Hansen, General Counsel, Texas Building and Procurement Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments may also be sent via e-mail to: ingrid.hansen@tbpc.state.tx.us. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new sections are proposed under the authority of the Texas Government Code §§2171.002, 2171.054 and 2171.056 all relating to rules for the travel management program.

The following sections are affected by the proposal: Texas Government Code §§2171.002, 2171.054 and 2171.056.

§125.1. *Purpose and Applicability.*

(a) Purpose. This subchapter governs the use of contracted travel services and state travel credit cards by state officials and employees and other eligible persons. Contracted travel services may include state credit cards, travel agencies, airlines, vehicles, internet based reservation and ticketing, lodging and other modes and necessities of state business related travel. The purpose of this subchapter is to encourage travelers to obtain the lowest overall cost of travel services.

(b) Applicability. This subsection defines the persons eligible to use contracted travel services.

(1) State Agencies. State agency officials and employees shall use the contracted travel services as required by this subchapter whenever those services provide the most efficient travel resulting in the total lowest cost. State agencies may and are encouraged to purchase travel services at rates lower than the contracted travel services rates.

(2) Other Governmental Entities. Officers and employees of the following entities may, but are not required to, participate in the travel services pursuant to this subchapter:

(A) institutions of higher education when the travel is paid from general revenue funds or from funds defined in Education Code §51.009;

(B) Employees Retirement System when the travel is paid from general revenue funds;

(C) counties;

(D) municipalities;

(E) public junior colleges;

(F) school districts; and

(G) emergency communication districts. These entities may use contracted travel services after TBPC approves their application for the use of contracted travel services.

(c) Official Government Business. Contracted travel services shall be used only for official governmental business, unless the travel services contractor offers the same services for personal use. No contractor is required to allow the use of contracted travel services for other than official governmental business.

§125.2. *Definitions.*

The following words and terms, used in this subchapter, are defined as follows unless the context clearly indicates otherwise.

(1) Comptroller. The comptroller of the State of Texas.

(2) Contractor. An individual or entity under contract with TBPC for the provision of travel services.

(3) Contracted travel services. The travel services provided pursuant to TBPC contracts that guarantee prices and levels of services for all eligible entities and individuals.

(4) Force Majeure event. Any acts of god, war, riot, strike, or other event beyond the control of a contractor and that could not reasonably have been anticipated or avoided and which, by the exercise of all reasonable due diligence, such contractor is unable to overcome.

(5) Official government business. Business required in the scope and course of the traveler's employment that is properly authorized by the employing governmental entity.

(6) State agency. State agency means:

(A) any department, commission, board, office, council or other agency in the executive branch of state government created by the constitution or by statute.

(B) the Supreme Court, the Court of Criminal Appeals, any court of civil appeals and the Texas Judicial Council; and

(C) an institution of higher education as defined in Education Code §61.003.

(7) State employee. Any person employed by a state agency, or an elected or appointed official.

(8) State travel credit card. A credit card issued to an individual or a governmental entity by a contracted travel credit card contractor.

(9) State travel directory. A TBPC publication that lists current available contracted travel services.

(10) TBPC. Texas Building and Procurement Commission

(11) Traveler. Any person eligible to use contracted travel services, including those eligible pursuant to the comptroller's travel allowance guide.

§125.3. Exceptions to the Use of Contracted Travel Services.

(a) This section provides exceptions to use of contracted travel services. These exceptions apply to the use of any contracted travel services. When travel services are obtained at a lower total cost than the cost of contracted travel services, no reference to exceptions are required. Exceptions must be documented only when the lower total cost is greater than contracted travel services rates.

(b) Lower Cost to the State. State agencies may use any travel services obtained at a price lower than the contracted travel services price. State agencies are encouraged to obtain lower priced travel services through the use of fourteen day or other advanced reservations programs, promotional price reductions, or any method that provides a lower overall cost of travel.

(c) Unavailability of Contracted Travel Services. The contracted travel services are not available during the time or at the location necessary for the business purpose or because the contractor is unable to provide the contracted services due to a force majeure event.

(d) Special Needs. The traveler's health, safety, physical condition or disability requires accommodations, including medical emergency or other necessary services, not available from contracted travel service contractors.

(e) Custodians of Persons. The traveler has custody of a person pursuant to statute or court order and the traveler is required to provide a degree of security and safety that is not available from contracted travel service contractors.

(f) In Travel Status. The traveler is in the course of travel and changes in scheduling render the use of contracted travel services impractical or the appropriate travel services are not available. The traveler shall make reasonable efforts to secure rates equal to or lower than the contracted travel service rates.

(g) Group Program. The traveler is using a group program wherein reservations were made through a required source to obtain a particular rate or service.

(h) Emergency Response. The traveler is responding to a public health or safety emergency situation.

(i) Legally Required Attendance. The traveler is required by a court, administrative tribunal or other entity to appear at a particular time and place without sufficient notice to obtain contracted travel services.

§125.4. State Agency Contracts and Requests for Exceptions.

(a) Other Contracts. A state agency shall not enter into a contract for travel services without prior approval of TBPC. TBPC shall consider whether the proposed contract offers the best value for the State and the impact of the proposed contract on existing travel service contracts. A state agency may request TBPC to establish contract services with a particular contractor.

(b) Requests for Additional Exceptions. A state agency shall make a written request to TBPC for additional exceptions, not provided in §125.3 of this subchapter, when the agency offers a reasonable justification for the need for the exception. Additional exceptions may not be granted for longer than the term of existing contracts.

§125.5. State Agency Travel Coordinators.

(a) State agencies shall designate an employee as the travel coordinator, who shall serve as the single point of contact between the

TBPC travel management program and the agency for disseminating and collecting travel data and information. State agencies shall provide TBPC with the travel coordinator's name, telephone number, e-mail address, mobile telephone number and other requested and relevant contact information.

(b) State agencies, in cooperation with TBPC, shall provide training to travel coordinators to ensure that:

(1) agency employees receive current travel information;
(2) contracted travel services are used in accordance with this subchapter;

(3) travel data reports are submitted in compliance with this subchapter;

(4) agency travel activity is monitored for compliance with this subchapter and other applicable laws and rules; and

(5) complaints, concerns or other information relevant to achieving the efficient and economical travel services for the state are reported to TBPC.

(c) State agencies shall cooperate with TBPC by allowing travel coordinators to participate in travel advisory, proposal evaluation, education and any other groups needed to assist TBPC in contracting for the most economical, efficient and useful travel services.

§125.6. State Agency Reimbursement and Reporting.

(a) State agency officials and employees shall adhere to applicable laws and the regulations and guidelines of the Comptroller of the State of Texas governing travel vouchers.

(b) Reimbursement for Travel Expenses. State agencies shall not approve and the Comptroller shall not pay travel vouchers for services at rates higher than contracted rates, unless an exception in §125.3 of this subchapter applies. Travel vouchers submitted for reimbursement shall indicate the claimed exception in a manner prescribed by the Comptroller.

(c) Audits. The Comptroller may conduct pre-payment and post-payment audits of travel reimbursement requests; the audits may include a review of the propriety of claimed exceptions from the use of contracted travel services.

(d) False Claims for Reimbursement. All claims for travel reimbursement are subject to the Government Code §403.071 relating to claims and available money. Any person who knowingly makes a false claim against the State is subject to the penalties in Government Code §403.071(f) and other applicable laws.

(e) Monthly reporting. State agencies shall report data relating to travel services not purchased by a state credit card. The data shall be submitted to TBPC in accordance with applicable reporting requirements.

§125.7. Procuring Travel Agency and Other Travel Related Services.

(a) This section describes the authorized methods of procurement for travel services and the specific methods for travel agency contracts.

(b) Travel Agency Contract Structure. TBPC's travel agency contracts shall contain a clear statement of the services provided and the cost associated with each service. The contracts shall also contain descriptions of other ancillary services and any other provisions necessary for the convenience of the State.

(c) Solicitation and Evaluation Procedures for Travel Agency Contracts.

(1) TBPC is not required to competitively bid travel agency contracts.

(2) TBPC may negotiate contracts for travel agency services.

(3) TBPC shall solicit private sector entities to participate in negotiated contracts through effective and efficient means that ensure the best value for the State.

(4) TBPC shall consider the following criteria when evaluating proposed travel agency services:

(A) quantity of services;

(B) quality of services;

(C) price; and

(D) any other terms or conditions required to provide the overall best value for the State.

(d) Other Contracts. TBPC may use authorized competitive or negotiated procedures for procuring travel services. TBPC shall solicit, evaluate and award contracts for travel services in a manner that achieves the best overall value for the State.

§125.8. State Travel Credit Cards.

(a) State Credit Card. State employees shall use state travel credit cards to purchase contracted travel services. State credit cards may be used only for official state business and may be issued to individuals and state agencies. Contracted travel services for airfare shall be charged to state travel credit cards.

(b) Eligibility. Any entity eligible to use contracted travel services is also eligible to obtain state travel credit cards.

(c) State Travel Credit Cards Issued to Individuals. State agency employees should be issued a state travel credit card when the employee is expected to take at least three trips or spend at least \$500 per fiscal year for official state travel business. State agencies may, at their discretion, approve the issuance of the cards to any employee.

(d) State agencies shall ensure that:

(1) state travel credit cards are cancelled upon the employee's termination of employment;

(2) state travel credit cards are cancelled when the employee fails to timely pay the charges, uses the card for personal transactions, or any other misuse of the credit card; and

(3) individuals who are issued state travel credit cards understand that payment of charges on state travel credit cards is the sole responsibility of the individual and that the state shall not be responsible for the charges or for nonpayment by the employee.

(e) Individual Billing. State travel credit cards issued to individuals shall be billed directly to the individual who may obtain reimbursement through properly submitted state travel vouchers that comply with this subchapter and the rules and guidelines of the Comptroller. Other individuals eligible to use state travel credit cards shall comply with the reimbursement rules and procedures of their governing entity.

(f) Centralized Billing. A state travel credit card issued to an eligible entity shall be billed to that entity which may receive reimbursement pursuant to applicable statutes and rules.

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

Filed with the Office of the Secretary of State on September 23, 2005.

TRD-200504266

Ingrid K. Hansen

General Counsel

Texas Building and Procurement Commission

Earliest possible date of adoption: November 6, 2005

For further information, please call: (512) 463-4257

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SUBCHAPTER B. STATE VEHICLE FLEET
MANAGEMENT

1 TAC §125.40

The Texas Building and Procurement Commission (TBPC) proposes new rule 1 TAC §125.40, relating to Definitions, State Vehicle Fleet Management. The proposed rule adds definitions, previously located in §125.2, Subchapter A, to Subchapter B relating to the vehicle fleet management program. The result of this change is to separate the travel management definitions from the vehicle fleet management definitions.

Mr. Dan Contreras, Deputy Executive Director, has determined for the first five-year period the new rule is in effect there is no fiscal impact for state or local governments as a result of the new rule. This new rule provides definitions related to vehicle fleet management and does not affect any costs of compliance for any governmental entities.

Mr. Contreras has further determined that for each year of the first five-year period the new rule is in effect, there is a public benefit anticipated only from a better organized, clearer 1 TAC Chapter 125, Subchapter B. These definitions do not affect costs, enforcement nor do they make any substantive change to the vehicle fleet management program. Chapter 125 pertains only to state owned vehicles and therefore has no impact on large, small or micro-businesses that routinely participate in state business opportunities. There will be no anticipated economic costs to persons who are required to comply with the new rule and there is no impact on local employment.

Comments on the proposals may be submitted to Ingrid K. Hansen, General Counsel, Texas Building and Procurement Commission, P.O. Box 13047, Austin, TX 78711-3047. Comments may also be sent via email to: ingrid.hansen@tbpc.state.tx.us. Comments must be received no later than thirty days from the date of publication of the proposal in the *Texas Register*.

The new rule is proposed under the authority of the Government Code §2171.1045 which provides the Texas Building and Procurement Commission with the authority to promulgate rules relating to the assignment and use of agency vehicles.

The following is affected by the new rule: Government Code §2171.1045.

§125.40. Definitions.

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

(1) Accumulated Depreciation--The total amount of vehicle depreciation recorded in the Vehicle Information Program.

(2) Alternative Fuel--Compressed natural gas, liquefied natural gas, liquefied petroleum gas, electricity, methanol (or M85), or ethanol (or E85).

(3) Alternative Fuel Vehicle--A motor vehicle capable of using alternative fuel in the original equipment manufactured engine, or in a converted traditional gasoline or diesel engine.

(4) Assigned Vehicle--A state vehicle normally driven by the same employee or small specific group of employees.

(5) Book Value--The capitalized value less the accumulated depreciation.

(6) Capitalized Value--The original cost of a vehicle, plus later adjustments for major additions or improvements.

(7) Commission--The Texas Building and Procurement Commission (TBPC).

(8) Depreciation Rate--A uniform mathematical factor which reflects a vehicle's loss of market value due to wear, deterioration, or obsolescence.

(9) Direct Labor--The cost of labor associated with repairing or servicing vehicles, whether performed by a contractor or state employee.

(10) Disposal Date--The date on which a state vehicle is no longer included in a state agency's property inventory.

(11) Downtime--The total number of working hours a state vehicle, otherwise eligible for assignment, is out of service for repair or maintenance.

(12) Driver's Handbook--A reference manual or guide detailing state agency operational policy and procedure for state vehicles.

(13) Field Employee--A state employee whose regular duties require work in locations other than agency headquarters or regional offices and who regularly require a vehicle for ongoing daily duties.

(14) Fleet Officer--The individual designated by each state agency who is responsible for the timely and accurate submission of all required information utilized by the vehicle fleet management system.

(15) Gross Vehicle Weight (GVW)--The greatest weight of vehicle and load which the manufacturer recommends that a vehicle accommodate. The GVW includes the total weight of chassis, cab, body, special equipment, oil, water, gasoline, driver, and the maximum payload.

(16) Indirect Labor--The labor cost of vehicle fleet related employees whose time cannot be identified with repairing or servicing individual vehicles.

(17) OVM--Office of Vehicle Fleet Management.

(18) Pool Vehicle--A vehicle normally garaged in a central location for use by any authorized employee of the state agency.

(19) Salvage Value--The amount expected to be realized from the disposal of a vehicle at

(20) Special Purpose Vehicle (SPV)--A motor vehicle commercially designed to be used primarily for purposes other than to provide transportation service for personnel, supplies, or equipment.

(21) Standard Labor Rate (SLR)--A rate computed to approximate the total hourly cost of salaries and related fringe benefits.

(22) State agency--

(A) any department, commission, board, office, council, or other agency in the executive branch of state government created by the constitution or by a statute of this state;

(B) the Supreme Court of Texas, the Court of Criminal Appeals of Texas, a court of civil appeals, or the Texas Judicial Council;

(C) an institution of higher education as defined in the Texas Education Code, §61.003;

(23) State Employee--A person employed by a state agency, or an elected or appointed state official.

(24) State Vehicle--Any state-owned vehicle which is propelled by a self-contained engine and is licensed to operate on public highways.

(25) Transfer Date--The date a vehicle is transferred from one state agency to another.

(26) Vehicle Fleet Management System--A computerized data retrieval system to assist each state agency in the management of its vehicle fleet.

(27) Vehicle Inventory--A list of state agency vehicles by type and class which is utilized to determine their average cost of operation.

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

Filed with the Office of the Secretary of State on September 23, 2005.

TRD-200504267

Ingrid K. Hansen
General Counsel

Texas Building and Procurement Commission

Earliest possible date of adoption: November 6, 2005

For further information, please call: (512) 463-4257

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS PLANTS

SUBCHAPTER Q. SAPOTE FRUIT FLY QUARANTINE

4 TAC §19.172, §19.175

The Texas Department of Agriculture (the department) proposes amendments to §19.172 and §19.175, concerning a quarantine for the sapote fruit fly, *Anastrepha serpentina* (Wiedemann). The amendments to §19.172 are made to remove the quarantined infested areas and the core areas listed in the sapote fruit fly quarantine. A similar declaration was published in the July 18, 2003, issue of the *Texas Register* (28 TexReg 2003) upon successful completion of the sapote fruit fly eradication. In addition, the amendments to §19.172 are made to increase the number of adult sapote fruit flies required to declare a quarantined infested area from two adults to five and to change the radius from 4.5

miles to 5 to accurately describe a radius of the 81 square mile area. Recently, the Animal and Plant Health Inspection Service of the United States Department of Agriculture and departments of agriculture of the United States citrus-producing states agreed that relaxing the trigger from two adults to five to designate a quarantined infested area would be biologically acceptable and also would not significantly increase the pest introduction risk. The amendment to §19.175 updates the date referenced for the Texas Valley Mexican Fruit Fly Protocol.

Dr. Shashank Nilakhe, State Entomologist, has determined that for the first five-year period the new sections are in effect, there is no anticipated fiscal implication for the state or local government as a result of enforcing the amended sections, as proposed.

Dr. Nilakhe also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amended sections will be that the amendments will eliminate the confusion about the current quarantined area and potential new quarantined areas. Furthermore, it is likely that within the first five years at least in one instance an eradication project would have been prevented from launching because the fly count was just three or four. Consequently, growers and shippers could potentially save several hundred thousand dollars in fruit fumigation cost. There is no anticipated cost to small or micro-businesses.

Comments on the proposal may be submitted to Dr. Shashank Nilakhe, State Entomologist, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Agriculture Code, §71.001, which authorizes the department to establish a quarantine for an infested area against an in-state pest if it determines that the pest is dangerous and is not widely distributed in this state; and §71.007, which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of a grove or orchard or of infested or infected plants, plant products, or substances.

§19.172. *Infested Geographical Areas Subject to the Quarantine.*

(a) Quarantined infested areas.

(1) (No change.)

(2) The following areas are declared to be quarantined infested areas: None at this time. [That portion of Hidalgo County bounded by a line drawn as follows: Beginning at the intersection of South Cage Boulevard and the Rio Grande River; proceeding northwesterly along the Rio Grande River 17.11 miles; then continuing in a straight northerly imaginary line to the intersection of Aloe Vera and Sunrise Street; then continuing northeasterly in a straight imaginary line to the intersection of Victoria and Davina Street; then northwesterly in a straight imaginary line to the intersection of Farm Road 495 and North Stewart Road; then continuing in a straight northeasterly imaginary line to the intersection of Mile 4 North Road and North Ware Road; then easterly along Mile 4 North Road (also known as West Alberta Road) to its intersection with South I Road; then southerly along South I Road to its intersection with West Earling Road; then easterly along West Earling Road to its intersection with North San Juan Road; then southerly along North San Juan Road to its intersection with East Ferguson Avenue; then easterly along East Ferguson Road to its intersection with East Gasline Road; then southerly along East Gasline Road to its intersection with East Nebraska Road; then easterly along East Nebraska Road to its intersection with North

Morningside Road; then southerly along North Morningside Road to its intersection with Expressway 83; then easterly along Expressway 83 to its intersection with North Alamo Road; then northerly along North Alamo Road to its intersection with Earling Road; then westerly along Earling Road to its intersection with North Morningside Road; then northerly along North Morningside Road to its intersection with East Curve Road; then easterly along East Curve Road to its intersection with Alamo Road; then northerly along Alamo Road to its intersection with Mile 17 Road North; then westerly along Mile 17 Road North to its intersection with Sharp Road; then northeasterly along Sharp Road to its intersection with Mile 18 Road North; then easterly along Mile 18 Road North continuing in a straight imaginary line to the intersection of Mile 17" Road North and Mile 6 Road; then southerly along Mile 6 Rd West to its intersection with Mile 17 Road North; then easterly along Mile 17 Road North to its intersection with West Broadway Street; then southerly along West Broadway Street to its intersection with State Highway 107; then easterly along State Highway 107 to its intersection with Mile 4 Road West; then southerly on Mile 4 Road West to its intersection with Mile 13" North; then easterly along Mile 13" North to its intersection with Farm Road 1015; then southerly along Farm Road 1015 to its intersection with Expressway 83; then westerly along Expressway 83 to its intersection with South Bridge Avenue; then southerly along South Bridge Avenue to its intersection with East Eighth Street; then westerly along East Eighth Street to its intersection with South Boarder Avenue; then southerly along South Border Avenue to its intersection with Mile 6 North; then westerly along Mile 6 North to its intersection with Midway Road; then southerly along Midway Road to its intersection with Lott Road; then westerly along Lott Road continuing in a straight imaginary line to the intersection of FM 907 and Resaca Road; then southerly along FM 907 to its intersection with Balli Road; then westerly along Balli Road to its intersection with FM 2557; then southerly along FM 2557 to its intersection with Las Milpas Road; then easterly along Las Milpas Road to its intersection with South I Road; then southerly along South I Road to its intersection with Hi Line Road; then westerly along Hi Line Road to its intersection with South Cage Boulevard; then southerly along South Cage Boulevard to the point of beginning.]

(3) (No change)

(b) Creating, modifying, or extending quarantined infested areas. When five [two] or more adults of the sapote fruit fly are trapped or otherwise discovered within a time period equal to one fly generation and within 3 miles of each other or a mated female or one larva is trapped or otherwise discovered, a quarantine area shall be established around the site where the fly was trapped or otherwise discovered. The area quarantined shall consist of an area of approximately 5 [4-5] mile radius with the detection site at the center (roughly 81 square miles).

(c) Core areas. In addition to the quarantined area, one or more core areas may be established within each quarantined area around a detection site. Each core area shall consist of an approximately 1.0 square mile area with a detection site at or near the center. Each approximately square-shaped core area is defined by four GPS readings for each corner of the core area. Core areas are subject to more extensive monitoring and handling (including transportation and treatment) requirements. The following areas are declared to be core areas: None at this time. [Four core areas are currently in place for the sapote fruit fly quarantine, as described by the following GPS coordinates:]

[(1) N 260823.26; N 260915.36; W 981457.48; W 981555.51;]

[(2) N 260941.14; N 261033.25; W 981203.26; W 981301.32;]

~~{(3) N 261151.50; N 261243.73; W 980124.68; W 980222.89;}~~

~~{(4) N 261427.94; N 261520.08; W 980222.82; W 980320.93;}~~

~~{(5) N 261121.53; N 261213.64; W 981301.37; W 981359.42;}~~

(d) (No change.)

§19.175. Restrictions on Movement of Articles Subject to the Quarantine.

(a) (No change.)

(b) Conditions Under Which Regulated Articles May Be Moved Out of an Infested Area. Plants that are regulated articles shall not be moved outside the quarantined infested area with fruit attached. Detached fruit originating within a quarantined infested area may be moved outside the infested area if:

(1) the fruit is covered by a tarpaulin or other approved covering and taken directly to and segregated in an approved packing house or other approved treatment facility and fumigated as prescribed in the Texas Valley Mexican Fruit Fly Protocol 2005 [2002-2003], a copy of which may be obtained at the department's Valley Regional Office, 900-B East Expressway 82, San Juan, Texas 78598, (956) 787-8866, fax (956) 787-6701, and the fruit is accompanied by all documentation of origin or treatment required by this subchapter or a compliance agreement with the department or USDA;

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

(c) (No change.)

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

Filed with the Office of the Secretary of State on September 23, 2005.

TRD-200504257

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

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



TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 65. BOILER DIVISION

16 TAC §§65.10, 65.20, 65.50, 65.60, 65.70, 65.100

The Texas Department of Licensing and Regulation ("Department") proposes amendments to existing rules at 16 Texas Administrative Code §§65.10, 65.20, 65.50, 65.60, 65.70, and 65.100 regarding the boiler program.

These amendments are necessary to clarify, reorganize, and update requirements for boilers. The amendments provide better organization for the rules and bring certain rules more into line with ASME (American Society of Mechanical Engineers) Code

and NBIC (National Board Inspection Code) requirements. Section 65.10 was amended by adding four (4) new definitions for greater clarity--"boiler external piping," "modular boiler," "multiple pressure steam generator," and "nominal." Metric conversions were also added.

A technical correction was made to §65.20(b)(3). Section 65.20(h) was relocated to §65.100(k), and §65.20(i) was relocated to §65.100(a)(1).

Section 65.50(g) was reworded to clarify who is responsible for filing the repair and alteration report form with the department.

In §65.60 metric conversions were added. Also, §65.60(e) was relocated to §65.100(b), §65.60(f) was relocated to §65.100(a)(2), §65.60(g) was relettered to (e) and the reference to §65.50(g) was corrected to §65.50(h).

In §65.70 metric conversions were added. Additional amendments to §65.70(f)(2) removed mandated top and side boiler clearance requirements and replaced them with the manufacturer's recommended side clearances; subsection (i) was added to reflect requirements for restamping and name plate replacement; subsection (j) was added to clarify the requirements for "HLW" stamped boilers with reference to hot water heating systems; subsection (k) was added to reflect new requirements for modular boiler installations; subsection (l) was added to reflect and to clarify the requirements for multiple pressure steam generators; and subsection (m) was added to reflect and to clarify the requirements for stacked boilers installations.

In §65.100 metric conversions were added. Also, new subsection (a) language was relocated from §65.20(i) and §65.60(f); new subsection (b) language was relocated from §65.60(e) regarding ensuring the safety of the inspector; subsection (a) was relettered to (c), and subsequent paragraphs were relettered; paragraphs (e)(4) and (5) were reworded to more accurately reflect the requirements of the ASME Code, Section I, Part PEB; in paragraph (e)(7) language was added to clarify the requirements for the internal inspection of electric boilers; in subsection (f) language was added to clarify requirements that pertain only to extensions; in subparagraph (g)(6)(C) language was added to clarify possible accesses for entry; new paragraph (g)(8) was added to state boiler external piping requirements for power boilers; new subparagraph (h)(8)(C) was added to state entry requirements for unfired steam boilers; and new subparagraph (i)(9)(C) was added to state entry requirements for process steam generators. Existing subsection (h) potable water heaters, unique requirements, was moved under new subsection (o). Existing subsection (j) heating boilers was moved to new subsection (o). New language was added to separate and clarify the different types of boilers in this category. The tables have become new Exhibit 2, and language regarding the authority to set and seal safety appliances has been relocated to §65.100(k).

Additional changes in §65.100(n)(1), (2), (3), and (5) added the word "pressure" to the section title and in the rule text for clarification; language was revised in §65.100(n)(4) to more accurately describe the NBIC (National Board Inspection Code) and jurisdictional requirements; and in §65.100(n)(5)(B) the language "and addenda" was added to the end of the paragraph for clarification.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendments are in effect there will be no cost to state government and no cost to local government as a result of enforcing or administering the

amendments. The amendments may result in a small reduction in administrative costs to the Department because certain amendments have the effect of incorporating into rule matters that were the subject of variance requests in the past. Department staff will no longer need to process these kinds of variance requests. The Department anticipates no significant effect on state revenues and no effect on local government revenues.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed amendments are in effect, the public benefit will be that rule requirements concerning boiler safety in Texas will be clearer and more consistent with national standards.

Mr. Kuntz has determined that there will be no economic costs to persons required to comply with the amendments and no economic cost to small or micro-businesses. The amendments primarily clarify and reorganize the rules, rather than imposing additional regulatory requirements. There may be some reduced costs to the regulated community because certain rules are amended to defer to boiler manufacturer specifications rather than stating specifications in the rule.

Comments on the proposal may be submitted to William H. Kuntz, Jr., Executive Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: whkuntz@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Health and Safety Code, Chapter 755 and Texas Occupations Code, Chapter 51, which authorizes the Commission of Licensing and Regulation (Commission) to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department. In particular, these rule amendments are proposed under Texas Health and Safety Code, §755.032, which authorizes the Commission to adopt rules, in accordance with standard boiler usage, for the construction, inspection, installation, use, maintenance, repair, alteration, and operation of boilers.

The statutory provisions affected by the proposal are those set forth in Texas Health and Safety Code, Chapter 755 and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the proposal.

§65.10. Definitions.

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

- (1) Alteration--A substantial change in an original design.
- (2) Approved--Approved by the executive director.
- (3) ASME Code--The American Society of Mechanical Engineers Boiler and Pressure Vessel Code with addenda, code cases, and interpretations adopted by the council of the society.
- (4) Authorized inspector--An inspector employed by an inspection agency holding a commission issued by the executive director.
- (5) Board--The board of boiler rules.
- (6) Boiler--Any heating boiler, nuclear boiler, power boiler, unfired steam boiler or process steam generator.
- (7) Boiler external piping--The piping which begins where the ASME Section I or Section VIII, Division 1 or 2 boiler proper or separately fired superheater terminates at:

(A) the first circumferential joint for welding end connections; or

(B) the face of the first flange in bolted flanged connections; or

(C) the first threaded joint in that type of connection; and which extends up to and including the valve or valves required by ASME.

(8) [(7)] Certificate inspection--The required internal or external boiler inspection, the report of which is used by the chief inspector to decide whether to issue a certificate of operation.

(9) [(8)] Certificate of operation--A certificate issued by the executive director to allow the operation of a boiler.

(10) [(9)] Chief inspector--The inspector appointed in accordance with the Health and Safety Code, Section 755.023.

(11) [(40)] Code--ASME Code.

(12) [(44)] Commission--The Texas Commission of Licensing and Regulation.

(13) [(42)] Condemned boiler--A boiler inspected and declared unfit for further service by the chief inspector, the deputy inspector, or the executive director.

(14) [(43)] Department--Texas Department of Licensing and Regulation.

(15) [(44)] Deputy inspector--An inspector appointed by the executive director.

(16) [(45)] Electric boiler--A boiler in which the source of heat is electricity.

(17) [(46)] Executive Director--The executive director of the department.

(18) [(47)] Existing installation--Any boiler constructed, installed, placed in operation, or contracted for before June 3, 1937.

(19) [(48)] External inspection--An inspection of the exterior of a boiler and its appurtenances that is made, if possible, while the boiler is in operation.

(20) [(49)] Heating boiler--A steam heating boiler, hot water heating boiler, hot water supply boiler, or potable water heater, that is directly fired with oil, gas, solar energy, electricity, coal, or other solid or liquid fuel.

(21) [(20)] High-temperature water boiler--A water boiler designed for operation at pressures exceeding 160 pounds per square inch gage (1100 kilopascals) or temperatures exceeding 250 degrees Fahrenheit (121 degrees Celsius).

(22) [(21)] Hot water heating boiler--A boiler designed for operation at a pressure not exceeding 160 pounds per square inch gage (1100 kilopascals) or temperatures not exceeding 250 degrees Fahrenheit (121 degrees Celsius) at or near the boiler outlet.

(23) [(22)] Hot water supply boiler--A boiler designed for operation at pressures not exceeding 160 pounds per square inch gage (1100 kilopascals) or temperatures not exceeding 250 degrees Fahrenheit (121 degrees Celsius) at or near the boiler outlet if the boiler's heat input exceeds 200,000 British thermal units per hour (58.6 kilowatts); water temperature exceeds 210 degrees Fahrenheit (99 degrees Celsius); or nominal water-containing capacity exceeds 120 gallons (454 Liters).

(24) [(23)] Inspection agency--An authorized inspection agency providing inspection services.

(25) [(24)] Inspector--The chief inspector, a deputy inspector, or an authorized inspector.

(26) [(25)] Internal inspection--A complete and thorough inspection of the interior waterside and fireside areas of a boiler as construction allows.

(27) Modular boiler--A steam or hot water heating assembly consisting of a group of individual boilers called modules, intended to be installed as a unit, with a single inlet and single outlet. Modules may be under one jacket or may be individually jacketed.

(28) Multiple pressure steam generator--a boiler consisting of several sections of heat exchange surface designed for different pressure levels.

(29) [(26)] National Board--The National Board of Boiler and Pressure Vessel Inspectors.

(30) [(27)] National Board Inspection Code--The manual for boiler and pressure vessel inspectors published by the National Board.

(31) [(28)] New installations--A boiler constructed, installed, or placed in operation after June 3, 1937.

(32) Nominal--The accepted ASME standard used to designate a size or capacity of an item.

(33) [(29)] Nonstandard boiler--A boiler that does not qualify as a standard boiler.

(34) [(30)] Nuclear boiler--A nuclear power plant system, including its pressure vessels, piping systems, pumps, valves, and storage tanks, that produces and controls an output of thermal energy from nuclear fuel and the associated systems essential to the function of the power system.

(35) [(31)] Owner or operator--Any person, firm, or corporation owning or operating boilers within the State of Texas.

(36) [(32)] Portable power boiler--A boiler primarily intended for use at a temporary location.

(37) [(33)] Potable water heater--A boiler designed for operation at pressures not exceeding 160 pounds per square inch gage (1100 kilopascals) and water temperatures not exceeding 210 degrees Fahrenheit (99 degrees Celsius) if the boiler's: heat input exceeds 200,000 British thermal units per hour (58.6 kilowatts) or nominal water-containing capacity exceeds 120 gallons (454 liters).

(38) [(34)] Power boiler--A high-temperature water boiler or a boiler in which steam is generated at a pressure exceeding 15 pounds per square inch gage (103 kilopascals) for a purpose external to the boiler.

(39) [(35)] Preliminary order--A written order issued by the chief inspector or any deputy inspector to require repairs or alterations to render a boiler safe for use or to require that operation of the boiler be discontinued.

(40) [(36)] Process steam generator--an evaporator, heat exchanger, or vessel in which steam is generated by the use of heat resulting from the operation of a processing system that contains a number of pressure vessels, such as used in the manufacture of chemical and petroleum products.

(41) [(37)] Reinstalled boiler--A boiler removed from its original setting and reinstalled at the same location or at a new location without change of ownership.

(42) [(38)] Repair--The work necessary to return a boiler to a safe and satisfactory operating condition without changing the original design.

(43) [(39)] Rules--The rules promulgated and enforced by the commission in accordance with the Health and Safety Code, Section 755.032 and Occupations Code, Chapter 51.

(44) [(40)] Safety appliance--A safety device such as a safety valve or a safety relief valve for a boiler provided to diminish the danger of accidents.

(45) [(41)] Secondhand boiler--A boiler of which both the location and ownership have changed.

(46) [(42)] Special inspection--An inspection by the chief inspector or deputy inspector other than those in the Health and Safety Code, Sections 755.025, 755.026, and 755.027.

(47) [(43)] Standard boiler--A boiler that bears a Texas stamp, the stamp of a nationally recognized engineering professional society, or the stamp of any jurisdiction that has adopted a standard of construction equivalent to the standard required by the executive director.

(48) [(44)] Steam heating boiler--A boiler designed for operation at pressures not exceeding 15 pounds per square inch gage (103 kilopascals).

(49) [(45)] Unfired steam boiler--An unfired pressure vessel in which steam is generated. The term does not include: vessels known as evaporators or heat exchangers; or vessels in which steam is generated by using the heat that results from the operation of a processing system that contains a number of pressure vessels, as used in the manufacture of chemical and petroleum products.

§65.20. Licensing/Certification/Registration Requirements

(a) (No change.)

(b) Notice to owners or operators of boilers.

(1) All boilers, unless otherwise exempted, shall be prepared for initial inspection, regular inspections, or hydrostatic tests, whenever necessary, by the owner or operator when notified by the chief inspector, deputy inspector, or authorized inspector.

(2) The owner or operator shall prepare each boiler, in accordance with Section 65.70(h) [of this title ~~(relating to Responsibilities of the Licensee/Certificate Holder/Registrant);~~] for an internal inspection and shall prepare for and apply the hydrostatic tests whenever necessary on the date specified by the chief inspector, deputy inspector, or authorized inspector. This date shall not be less than seven days after the date of notification.

(3) No inspection shall be made by the chief inspector or any deputy inspector on a Saturday, Sunday, or legal holiday except in case of an accident or other emergency.

(c) - (g) (No change.)

~~[(h) Authority to set and seal safety appliances. All safety and safety relief valves for ASME Sections I, IV, and VIII Division 1 boilers must be repaired, tested, set, and sealed by one of the following, provided the scope of the issued certificate of authorization covers the work to be performed:]~~

~~[(1) an organization holding a valid V, HV, or UV certificate of authorization, as appropriate, issued by the American Society of Mechanical Engineers (ASME); or]~~

{(2) an organization holding a valid VR certificate of authorization issued by the National Board of Boiler and Pressure Vessel Inspectors; or}

{(3) an organization holding a valid owner/operator certificate of authorization issued by the department. Such authorization may be granted or withheld by the executive director.}

{(A) If authorization is granted and proper administrative fees as provided for in Section 65.80(b) of this title (relating to Fees) are paid, a certificate of authorization will be issued, expiring on the triennial anniversary date. The certificate shall indicate authorization to repair ASME Sections I, IV, or VIII valves, as verified by testing and as covered by the repair organization's quality control manual. The certificate will be signed by the executive director and the chief inspector.}

{(B) The applicant should apply to the department for renewal of authorization and reissuance of the certificate six months prior to the date of expiration.}

{(C) The owner/operator certificate of authorization is renewable every three years. Before issuance or renewal of the certificate of authorization, the repair organization and its facilities are subject to a review and demonstration of its quality control system by an inspector.}

{(D) Before the owner/operator certificate of authorization may be issued or renewed, two valves which have been repaired by the applicant must successfully complete operational verification tests as follows:}

{(i) visual examination to ensure the quality of material and workmanship;}

{(ii) verification that critical parts meet the valve manufacturer's specifications. Critical parts that are replaced must be fabricated to the valve manufacturer's specifications. Critical parts which require repair shall meet the valve manufacturer's specifications;}

{(iii) tightness tests and verification;}

{(iv) set pressure test and verification.}

{(E) The purpose of the tests is to ensure that the function and operation of the valves meet the requirements of the applicable section of the ASME Code to which they are manufactured. Should any of the valves fail to meet the applicable requirements, the test shall be repeated on two valves for each valve that failed. Failure of any of these valves shall cause the applicant to investigate and document the cause of failure and state what corrective action has been taken to prevent future recurrences. Retest of the original valve is acceptable. Following proper implementation of this corrective action and after satisfactory performance, permission to receive the certificate of authorization will be granted.}

{(F) Field repairs are defined as any repair conducted outside a fixed repair shop location. Field repairs may be conducted with the aid of mobile facilities with repair capabilities with or without testing capabilities. Field repairs may be conducted in owner/operator facilities without the use of mobile facilities. Organizations that obtain the owner/operator certificate of authorization for in-shop/plant repairs may also perform field repairs to safety and safety relief valves provided that:}

{(i) qualified technicians perform such repairs;}

{(ii) an acceptable quality control system covering field repairs is maintained;}

{(iii) periodic audits of the work carried out in the field are made by quality control personnel of the certificate of authorization holder to ensure that the requirements of the quality control system are met.}

{(G) Provided the provisions in paragraph (F)(i)-(iii) of this paragraph are met, verification testing of field repaired valves shall not be required.}

{(H) Organizations that perform field repairs only must demonstrate their field repair capabilities to an inspector before the certificate of authorization may be issued or renewed. Two valves must be repaired in the field and successfully complete verification tests as described in subparagraph (D) of this paragraph. A quality control manual as required in subparagraph (J) of this paragraph must be prepared describing all field repair activities.}

{(I) Repair of a safety and safety relief valve is considered to be the replacement, remachining, or cleaning of any part, lapping of seat and disc, or any other operation which may affect the flow passage, capacity, function, or pressure retaining integrity. Disassembly, reassembly, and/or adjustments which affect the safety or safety relief valve function are also considered a repair. The initial installation, testing, and adjustments of a new safety valve or a safety relief valve in a boiler are not considered a repair.}

{(J) In general, the quality control system shall describe and explain what documents and procedures the owner/operator will use to validate a valve repair. Before issuance or renewal of the owner/operator certificate of authorization, the applicant must meet all requirements, including an acceptable written quality control system. The basic elements of a written quality control system shall be those described in Exhibit 1 (herein adopted by reference and which exhibit may be secured from the Texas Department of Licensing and Regulation, Technical Standards-Boiler, 920 Colorado Street, Austin, Texas 78701, or mailing address P.O. Box 12157, Austin, Texas 78711). }

{(i) The written quality control system shall also include provisions for making revisions, enabling the system to be kept current as required.}

{(ii) A review of the applicant's quality control system will be performed by an inspector. The review will include a demonstration of the implementation of the applicant's quality control system.}

{(iii) Each applicant to whom a certificate of authorization is issued shall maintain thereafter a controlled copy of the accepted quality control manual with the inspector. Except for changes which do not affect the quality control program, revisions to the quality control manual shall not be implemented until such revisions are acceptable to the inspector.}

{(K) It is essential that owner/operator valve repair organizations ensure that personnel making repairs to safety and safety relief valves are knowledgeable and qualified. The owner/operator shall provide documented training with minimum qualification requirements for the valve repair position. Specific requirements to be included in an individual's training are as follows:}

{(i) working knowledge of the organization's quality control manual;}

{(ii) working knowledge of the applicable requirements; and}

{(iii) working knowledge of the technical aspects and mechanical skills for valves being repaired or tested.}

~~{(L) Performance testing of repaired valves.}~~

~~{(i) For shop valves, a test stand shall be used. The test stand shall be of a size and design to ensure clean, consistent, and repetitive pop action and response to blowdown adjustment, if possible. Test gages shall be connected to the test stand in such a manner as to indicate true pressure at the inlet of the valve being tested. Test gages shall be maintained and calibrated, at least every 90 days, to a minimum of one-half of 1.0% accuracy over the upper 80% of full scale range. The use of digital gages is acceptable. All calibrations shall be documented and traceable to national standards.}~~

~~{(ii) Valves marked for liquid service shall be set according to the applicable manufacturer's specification.}~~

~~{(iii) Valves marked for steam service or having special internal parts for steam should be tested with steam. However, valves for steam service may be tested with air or nitrogen for correct opening (popping), pressure setting, and, if possible, blowdown adjustment, provided the differential in popping pressure between steam and air or nitrogen, as specified in the quality control manual, are applied to the popping point.}~~

~~{(iv) Valves which are repaired in place shall be tested to demonstrate set pressure.}~~

~~{(v) For valves which are repaired in place, a device (hydraulic, pneumatic, etc.) may be used to apply an auxiliary lifting load on the spring to a valve for testing purposes and/or making adjustments. Calibrated testing equipment shall be used and detailed testing procedures followed. In such cases, the manufacturer's recommendations shall be used to establish blowdown.}~~

~~{(M) When a safety or safety relief valve is repaired, a metal repair tag, as described in the quality control manual, shall be attached to the valve. As a minimum, the information on the tag will include the valve identification number, set pressure, date of repair, and certificate of authorization number.}~~

~~{(i) Conditions not covered. Any owner or operator of boilers or any deputy inspector, authorized inspector, or interested party may submit in writing an inquiry to the executive director for an opinion or clarification.}~~

§65.50. Reporting Requirements.

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

(g) Repair and alteration report forms. All repair and alteration report forms shall ~~[must]~~ be filed, by the organization making the repair or alteration, with, ~~[submitted to]~~ the chief inspector within 90 days following the repair or alteration.

(h) (No change.)

§65.60. Responsibilities of the Department.

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

(c) Assignment of boiler numbers and identification.

(1) Texas boiler numbers shall be issued as a decal to all inspection agencies and deputy inspectors as requested in writing. Only numbers issued by the chief inspector shall be assigned to boilers. Only the official decal and corrosion-resistant metal tags supplied by the chief inspector may be used. Only one Texas boiler number shall be assigned to a boiler. Reassignment of Texas boiler numbers shall be made with the approval of the chief inspector.

(2) During the first inspection of all boilers, the inspector shall stamp, except as provided for in paragraphs (3) and (4) of this

subsection, the Texas boiler number as near to the original American Society of Mechanical Engineers (ASME) code symbol stamping and required information as practicable. All numbers shall be given on the first inspection report, including the National Board registration number and manufacturer's serial number. The stamping shall consist of the letters "TX" and directly below the TX shall be stamped the Texas boiler number with a five point star stamped immediately adjacent to the first and last digit of the Texas boiler number. All stamping shall be accomplished by low stress steel dies 5/16 inch (8 millimeters) high. The stamping shall be arranged as shown in Exhibit 3. In addition, the corrosion-resistant metal tag shall be applied, as permanently as practicable, to the external jacket or other covering where the surface temperature exceeds 200 degrees Fahrenheit (93.3 degrees Celsius), or the Texas boiler number decal shall be applied where the surface does not exceed 200 degrees Fahrenheit (93.3 degrees Celsius). The tag or decal shall be located on the boiler so that identification is easily obtained from the most accessible operating control side or information label side.

(3) Potable water heaters ASME code symbol stamped HLW, cast iron sectional boilers, water tube boilers with cast headers, and other types of boilers that will be damaged by direct impression stamping are exempt from the stamping requirements of paragraph (2) of this subsection. These boilers shall be identified with the Texas boiler number decal or corrosion-resistant tag.

(4) Portable or stationary nonstandard boilers shall be identified by the Texas boiler number as described in paragraph (2) of this subsection with an exception that the Texas boiler number decal shall not be applied. The letters "TEXAS SPECIAL" or "TX SPCL" shall identify portable or stationary nonstandard boilers and shall be stamped directly above the Texas boiler number.

(5) The Texas boiler number or other boiler identifying numbers shall not be concealed by lagging or paint.

(6) No person except the chief inspector or deputy inspector shall deface or remove such numbers, except as approved by the chief inspector.

(d) (No change.)

~~{(e) General safety. If, in the judgment of the inspector, a boiler is unsafe for operation at the pressure previously approved, the pressure shall be reduced and proper repair made, or the boiler shall be removed from service.}~~

~~{(f) Conditions not covered by rules. All conditions not specifically covered by these requirements shall be treated as new installations or be referred to the chief inspector for instruction.}~~

(e) ~~{(g)}~~ Interagency requirements. The department shall provide for those inspectors described in ~~§65.50(h)~~ ~~[65.50(g) of this title (relating to Reporting Requirements)]~~ the following:

- (1) current copies of the boiler rules;
- (2) training in the recognition of unregistered or unsafe boilers;
- (3) forms to identify, as a minimum, the owner/operator, location, number, and types of boilers; and
- (4) current roster of the department's headquarters and regional enforcement staff.

§65.70. Responsibilities of the Licensee/Certificate Holder/Registrar.

(a) (No change.)

(b) Existing installations.

(1) The maximum allowable working pressure for standard boilers shall be determined in accordance with the applicable provisions of the edition of the ASME code under which they were constructed and stamped.

(2) In no case shall the maximum allowable working pressure of an existing nonstandard boiler be increased to a greater pressure than would be allowed for a new boiler of same construction.

(3) The age limit of any boiler of nonstandard construction installed prior to the date this law became effective shall be 30 years, except that after a thorough internal and external inspection and hydrostatic pressure test of one and one-half times the allowable working pressure, held for a period of at least 30 minutes, during which no distress or leakage develops, any boiler having other than a lap-riveted longitudinal joint may be continued in operation without reduction in working pressure. The age limit of any nonstandard boiler having lap-riveted longitudinal joints and operating at a pressure in excess of 50 psig (345 kilopascals) shall be 20 years; this type of boiler, when removed from the existing setting, shall not be reinstalled for a pressure in excess of 15 psig (103 kilopascals); and a reasonable time for replacement shall be given at the discretion of the executive director.

(4) Shipment of portable or stationary nonstandard boilers into this state for use is prohibited unless application has been made for approval as a portable or stationary nonstandard boiler used for exhibition, instruction, education, show, display, or demonstration. The request to register a portable or stationary nonstandard boiler should include a sufficient description of the materials, methods of construction, drawings, and such other design information as required by the chief inspector to establish the maximum allowable working pressure. As an alternative, the chief inspector may require a proof test of the portable or stationary nonstandard boiler in accordance with the edition of the Code determined to be most applicable for the method of construction.

(5) In any case where a boiler is moved and reinstalled, the fittings and appliances must comply with the ASME code.

(6) The maximum allowable working pressure on the shell of an existing steam heating boiler shall not exceed 15 psig (103 kilopascals). For a hot water heating boiler, the working pressure shall not exceed 160 (1100 kilopascals) psig or a temperature of 250 degrees Fahrenheit (121 degrees Celsius). The maximum allowable working pressure on the shell of an existing riveted heating boiler shall be determined in accordance with the National Board Inspection Code covering existing installations for riveted boilers.

(c) - (d) (No change.)

(e) Foundations and levels.

(1) All boilers shall be kept reasonably level and must be provided with a substantial foundation such as steel, concrete, brick, or stone. The boiler mud rim or bottom of a vertical boiler setting shall not be less than six inches (152 millimeters) from the ground. The locomotive-type boiler mud rim or wet bottom shall have the foundation of its setting not less than 12 inches (305 millimeters) from the floor or ground. All boiler mud rims shall be accessible to the inspector.

(2) Boilers that are not level and do not have substantial foundations may be removed from service until such provisions are provided.

(3) Supports for boilers shall be masonry or structural steel of sufficient strength and rigidity to safely support the boiler. There shall be no vibration in either the boiler or its connecting piping.

(f) Clearance.

(1) All boilers and their appurtenances shall be so located that adequate space will be provided for the proper operation, inspection, maintenance, and repair.

(2) The minimum manufacturer's recommended side clearances shall be maintained on all sides of the boiler, except portable boilers. [A minimum clearance of two feet shall be maintained on all sides of a boiler except portable boilers. A minimum of four feet shall be maintained between top of a boiler and roof joist.] A minimum of one foot (305 millimeters) shall be maintained between the bottom of scotch-type boilers and the foundation or floor.

(g) - (h) (No change.)

(i) Boiler stamping. Restamping or nameplate replacement shall be in accordance with the National Board Inspection Code and jurisdictional requirements.

(j) Heating systems. Potable water heaters (HLW stamped boilers) shall not be incorporated into a hot water heating system as a hot water heating boiler.

(k) Modular boilers.

(1) All modular steam heating and hot water heating boilers that meet all of the requirements of ASME Section IV, HG-716 shall be registered with a single Texas boiler number.

(2) All the information that is required for each section of the modular boiler shall be included on the application for certification in the conditions block.

(l) Multiple pressure steam generators.

(1) A multiple pressure steam generator that meets the requirements of PG-106.12 shall be registered with a single Texas boiler number.

(2) All the information that is required in PG-106.12.6 that is included on the manufacturer's master data report shall be provided in the conditions block on the application for certification.

(3) All previously registered multiple pressure steam generators with multiple Texas boiler numbers shall remain as they were originally registered and a separate inspection report will be completed for each boiler number.

(m) Stacked boiler. The owner or operator of boilers that are to be stacked, shall submit to this Department the manufacturer's designed or fabricated stacking rack information for approval from the chief inspector.

§65.100. *Technical Requirements.*

(a) Conditions not covered by rules.

(1) Any owner or operator of boilers or any deputy inspector, authorized inspector, or interested party may submit in writing an inquiry to the executive director for an opinion or clarification.

(2) All conditions not specifically covered by these requirements shall be treated as new installations or be referred to the chief inspector for instruction.

(b) General safety.

(1) If, in the judgment of the inspector, a boiler is unsafe for operation at the pressure previously approved, the pressure shall be reduced and proper repair made, or the boiler shall be removed from service.

(2) Before internal access is made to a boiler by an inspector, the inspector shall deem the environment within the boiler to be safe for occupancy.

(c) ~~(a)~~ Ventilation.

(1) The boiler room must have an adequate and uninterrupted air supply to assure proper combustion and ventilation.

(2) The combustion and ventilation air may be supplied by either an unobstructed opening or by power ventilators or fans.

(3) The opening shall be sized on the basis of one square inch (645 square millimeters) of free area for each 2,000 Btu/hour (.586 kilowatts) input of the combined burners located in the boiler room.

(4) The power ventilator or fans shall be sized on the basis of 0.2 cfm. (5.6 liters per minute) for each 1,000 Btu/hour (.29 kilowatts) fuel input for the combined burners located in the boiler room.

(5) The boiler and the fans shall be interlocked so that the burners will not operate unless an adequate number of fans are in operation.

(d) ~~(b)~~ Location of discharge outlets. The discharge of safety valves and safety relief valves, blowdown pipes, and other outlets shall be located to prevent injury to personnel.

(e) ~~(e)~~ Electric steam boilers.

(1) A cable at least as large as one of the incoming power lines to the generator shall be provided for grounding the generator shell. This cable shall be permanently fastened on some part of the generator and shall be grounded in an approved manner.

(2) A suitable screen or guard shall be provided around high-voltage bushings, and a sign posted warning of high voltage. This screen or guard shall be so located that it will be impossible for anyone working around the generator to accidentally come in contact with the high voltage circuit.

(3) In electric boilers of the submerged-electrode type, the water gage glass shall be located to indicate the water levels both at start-up and under maximum load conditions as established by the manufacturer.

(4) Electric boilers of the resistance-element type shall have at least one gage glass. The lowest visible water level in the gage glass shall be at least 1 inch (25 millimeters) above the lowest permissible water level as determined by the manufacturer. [~~In electric boilers of the resistance-heating-element type, the lowest visible part of the water gage glass shall not be below the top of the electric resistance heating element.~~] Each boiler of this type shall be equipped with an automatic low-water [electric power] cutoff to cut off [automatically disconnect] the power supply before the surface of the water falls below the visible level in the gage glass [~~top of the electrical resistance heating elements~~].

(5) Tubular gage [water] glasses on electric boilers [~~having a normal water content not exceeding 100 gallons~~] shall be equipped with protective rods or shields [~~a protective shield~~].

(6) The minimum safety valve or safety relief valve relieving capacity for electric boilers shall be 3 1/2 pounds (24 kilopascals) of steam per hour per kilowatt input.

(7) All electric boilers shall be internally examined through the electric heating element, removable cover, inspection opening or handhole as construction allows.

(f) ~~(d)~~ Atmospheric vents, gas vents, bleed or relief lines for power boilers, unfired steam boilers and process steam generators with supplemental firing (extensions only, where applicable).

(1) Gas pressure regulators not incorporating integral vent limiters, and all other gas train components requiring atmospheric air

pressure to balance a diaphragm or other similar device, shall be provided with a connection for a vent line. These lines shall be sized in accordance with the component manufacturer's instructions. The vent or relief line shall be at least the same size as the vent outlet of the device.

(A) Where there is more than one gas pressure regulator at a location, each gas pressure regulator shall have a separate vent. The vent lines may be manifolded in accordance with accepted engineering practices to minimize back pressure in the event of a diaphragm failure (see paragraphs (2) and (3) following).

(B) A gas pressure regulator shall not be vented into the boiler flue or exhaust system.

(2) Atmospheric vent lines, when manifolded, shall be connected into a common atmospheric vent line having a cross-sectional area not less than the area of the largest vent line plus 50% of the areas of the additional vent lines.

(3) Atmospheric vent lines shall not be connected to any common or manifolded gas vent, bleed, or relief lines.

(4) Gas pressure relief valves may discharge into common manifolding only with other gas vent, bleed, or relief lines. When manifolded, the common vent line shall have a cross-sectional area not less than the area of the largest vent line plus 50% of the areas of the additional vent lines.

(5) Vent and relief lines shall be piped to the outdoors at a safe point of discharge so there is no possibility of discharged gas being drawn into the air intake, ventilating system, or openings of any structure or piece of equipment and shall extend sufficiently above any structure so that gaseous discharge does not present a fire hazard. A means shall be provided at the terminating point to prevent blockage of the line by foreign material, moisture, or insects.

(g) ~~(e)~~ Power boilers, excluding unfired steam boilers and process steam generators.

(1) Safety valves and safety relief valves.

(A) The use of weighted-lever safety valves, or safety valves having either the seat or disk of cast iron, is prohibited.

(B) Each boiler shall have at least one safety valve and, if it has more than 500 square feet (47 square meters) of water heating surface or has electric power input more than 1,100 kilowatts, it shall have two or more safety valves.

(C) The valve or valves shall be connected to the boiler, independent of any other steam connection, and attached as close as practicable to the boiler without unnecessary intervening pipe or fittings.

(D) No valve(s) of any description shall be placed between the required safety valve or safety relief valve or valves and the boiler, nor in the discharge pipe between the safety valve or safety relief valve or valves and the atmosphere. When a discharge pipe is used, it shall be at least full size of the safety valve discharge and fitted with an open drain to prevent water lodging in the upper part of the safety valve or discharge pipe. When an elbow is placed on a safety valve discharge pipe, it shall be located close to the safety valve outlet. The discharge pipe shall be securely anchored and supported. In the event multiple safety valves discharge into a common pipe, the discharge pipe shall be sized in accordance with ASME Code, Section I, PG-71. All safety valve or safety relief valve discharges shall be located or piped to a safe point of discharge clear from walkways or platforms.

(E) The safety valve capacity of each boiler must allow the safety valve or valves to discharge all the steam that can be generated by the boiler without allowing the pressure to rise more than 6.0% above the highest pressure to which any valve is set, and to no more than 6.0% above the maximum allowable working pressure. For forced-flow steam generators with no fixed steam and waterline, power-actuated relieving valves may be used in accordance with ASME Code, Section I, PG-67.

(F) One or more safety valves on every boiler shall be set at or below the maximum allowable working pressure. The remaining valve(s) may be set within a range of 3.0% above the maximum allowable working pressure, but the range of setting of all the safety valves on a boiler shall not exceed 10% of the highest pressure to which any valve is set.

(G) When two or more boilers, operating at different pressures and safety valve settings, are interconnected, the lower pressure boilers or interconnected piping shall be equipped with safety valves of sufficient capacity to prevent overpressure, considering the maximum generating capacity of all boilers.

(H) In those cases where the boiler is supplied with feedwater directly from water mains without the use of feeding apparatus (not to include return traps), no safety valve shall be set at a pressure higher than 94% of the lowest pressure obtained in the supply main feeding the boilers.

(2) Feedwater supply.

(A) Each boiler shall have a feedwater supply, which will permit it to be fed at any time while under pressure.

(B) A boiler having more than 500 square feet (47 square meters) of water heating surface shall have at least two means of feeding, one of which should be a pump, injector, or inspirator. A source of feed directly from water mains at a pressure of at least 6.0% greater than the set pressure of the safety valve with the highest setting may be considered as one of the means of feeding. Boilers fired by gaseous, liquid, or solid fuel in suspension may be equipped with a single means of feeding water, provided means are furnished for the immediate shutoff of heat input if the feedwater is interrupted.

(C) Feedwater shall not be discharged close to riveted joints of shell or furnace sheets or directly against surfaces exposed to products of combustion or to direct radiation from the fire.

(D) Feedwater piping to the boiler shall be provided with a check valve near the boiler and a stop valve or cock between the check valve and the boiler. When two or more boilers are fed from a common source there shall also be a stop valve on the branch to each boiler between the check valve and the source of supply. Whenever a globe valve is used on the feedwater piping, the inlet shall be under the disk of the valve.

(E) In all cases where returns are fed back to the boiler by gravity, there shall be a check valve and stop valve in each return line, the stop valve to be placed between boiler and the check valve, and both shall be located as close to the boiler as is practicable. It is recommended that no stop valve be placed in the supply and return pipe connections of a single boiler installation.

(F) Where deaerating heaters are not used, it is recommended that the temperature of the feedwater be not less than 120 degrees Fahrenheit (49 degrees Celsius) to avoid the possibility of setting up localized stress. Where deaerating heaters are used, it is recommended that the minimum feedwater temperature be not less than 215 degrees Fahrenheit (102 degrees Celsius) so that dissolved gases may be thoroughly released.

(3) Water level indicators.

(A) Each boiler, except forced-flow steam generators with no fixed steam and waterline, and high temperature water boilers of the forced circulation type that have no steam and waterline, shall have at least one water gage glass.

(B) Except for electric boilers of the electrode type, boilers with a maximum allowable working pressure (MAWP) over 400 psig (three megapascals) shall be provided with two water gage glasses, which may be connected to a single water column or connected directly to the drum.

(C) Two independent remote level indicators may be provided instead of one of the two required gage glasses for boiler drum water level indication, when the MAWP is above 400 psig (three megapascals). When both remote level indicators are in reliable operation, the remaining gage glass may be shut off, but shall be maintained in serviceable condition.

(D) In all installations where direct visual observations of the water gage glass(es) cannot be made, two remote level indicators shall be provided at operational level.

(E) The gage glass cock connections shall not be less than 1/2 inch nominal pipe size (diameter nominal 15).

(F) No outlet connections, except for damper regulator, feedwater regulator, drains, steam gages, or apparatus of such form as does not permit the escape of an appreciable amount of steam or water therefrom, shall be placed in the pipes connecting a water column or gage glass to a boiler.

(G) The water column shall be fitted with a drain cock or drain valve of at least 3/4 inch nominal pipe size (diameter nominal 20). The water column blowdown pipe shall not be less than 3/4 inch nominal pipe size (diameter nominal 20) and shall be piped to a safe point of discharge.

(H) Connections from the boiler to remote level indicators shall be at least 3/4 inch nominal pipe size (diameter nominal 20), to and including the isolation valve, and at least 1/2 inch (13 millimeters) OD tubing from the isolation valve to the remote level indicator. These connections shall be completely independent of other connections for any function other than water level indication.

(4) Low-water fuel cutoff and water feeding devices.

(A) All automatically fired steam boilers, except boilers having a constant attendant, who has no other duties while the boiler is in operation, shall be equipped with approved low-water fuel cutoffs. These devices shall be installed in such a manner that they cannot be rendered inoperative by the manipulation of any manual control or regulating apparatus. The low-water fuel cutoff devices shall be tested regularly by lowering the water level in the boiler sufficiently to shut off the fuel supply to the burner when the water level reaches the lowest safe level for operation. The low-water cutoff shall be rated for a pressure and temperature equal to or greater than the maximum allowable working pressure and temperature of the boiler.

(B) When a low-water fuel cutoff and feedwater pump control are combined in a single device, an additional separate low-water fuel cutoff shall be installed. The additional control shall be wired in series electrically with the existing low-water fuel cutoff.

(C) When a low-water fuel cutoff is housed in either the water column or a separate chamber it shall be provided with a blowdown pipe and valve not less than 3/4 inch nominal pipe size (diameter

nominal 20). The arrangement shall be such that when the water column is blown down, the water level in it will be lowered sufficiently to activate the lower-water fuel cutoff device.

(D) If a water feed device is utilized, it shall be constructed to prevent feedwater from entering the boiler through the water column or separate chamber of the low-water fuel cutoff.

(5) Pressure gages.

(A) Each boiler shall have a pressure gage that is easily readable. The dial of the pressure gage shall be graduated to approximately double the pressure at which the safety valve is set, but in no case, less than one and one-half times this pressure. The pressure gage shall be connected to the steam space, to the water column, or its steam connection. A valve or cock shall be placed in the gage connection adjacent to the gage. An additional valve or cock may be located near the boiler providing it is locked or sealed in the open position. No other shutoff valves shall be located between the gage and the boiler. The pipe connection shall be of ample size and arranged so that it may be cleared by blowing down. For a steam boiler, the gage or connection shall contain a siphon or equivalent device which will develop and maintain a water seal that will prevent steam from entering the gage tube.

(B) Each boiler must have a valved connection at least 1/4 inch nominal pipe size (diameter nominal 8) connected to the steam space for the exclusive purpose of attaching a test gage when the boiler is in service to test the accuracy of the pressure gage.

(6) Stop valves.

(A) Each steam outlet from a boiler (except safety valve connections) shall be fitted with a stop valve located as close as practicable to the boiler.

(B) When a stop valve is located that allows water to accumulate, ample drains shall be provided. The drain shall be piped to a safe location and shall not be discharged on the boiler or its setting.

(C) When boilers provided with manholes or other similar opening that permits access for human occupancy and that are connected to a common steam main, the steam connection from each boiler shall be fitted with two stop valves with an ample drain between them. The discharge of the drain shall be visible to the operator while manipulating the valves and shall be piped clear of the boiler setting. The stop valves shall consist preferably of one automatic nonreturn valve (set next to the boiler) and a second valve of the outside-screw-and-yoke type.

(7) Blowdown connection.

(A) The construction of the setting around each blowdown pipe shall permit free expansion and contraction. These setting openings must be sealed without restricting the movement of the blowdown piping.

(B) All blowdown piping, when exposed to furnace heat, shall be protected by firebrick or other heat-resisting material, and constructed to allow the piping to be inspected readily or easily.

(C) Each boiler shall have a blowdown pipe, fitted with a valve or cock, in direct connection with the lowest water space. The piping shall be run full size without the use of a reducer or bushings and shall not be galvanized. Cocks shall be of gland or guard type and suitable for the pressure allowed. The use of globe valves shall be in accordance with ASME code.

(D) When the maximum allowable working pressure exceeds 100 psig (700 kilopascals), the piping shall be at least schedule 80 steel and shall not be galvanized. Each blowdown pipe shall be

provided with two valves or a valve and cock, such valves and cocks shall be adequate for design conditions of the boiler.

(E) All fittings between the boiler and blowdown valve shall be of steel or extra-heavy malleable iron. In case of renewal of blowdown pipe or fittings, they shall be installed in accordance with the requirements of the applicable section of the ASME code.

(F) It is recommended that blowdown tanks be designed, constructed, and installed in accordance with National Board recommended rules for boiler blowoff equipment.

(8) Boiler external piping. All boiler external piping, as referenced in the ASME code, shall be examined for compliance to the boiler's code of construction and shall be documented in the appropriate block on the inspection report.

(h) [~~(f)~~] Unfired steam boilers.

(1) Unfired steam boilers referred to in Section 65.10 [~~of this title (relating to Definitions),~~] are shown in Exhibits 5C and 5D.

~~Figure 1: 16 TAC §65.100(f)(1)~~

~~Figure 1: 16 TAC §65.100(f)(1)~~

~~Figure 2: 16 TAC §65.100(h)(1)~~

~~Figure 2: 16 TAC §65.100(f)(1)~~

(2) Unfired steam boilers shall be constructed in accordance with the American Society of Mechanical Engineers (ASME), Section I, or ASME, Section VIII, Division 1.

(A) Unfired steam boilers constructed in accordance with ASME Code, Section VIII, Division 1 shall meet the special requirements for unfired steam boilers and shall be stamped with the U symbol stamping including the UB lettering. The limits are defined as the first blinding point, circumferential welded joint, threaded joint, or flanged joint in the piping connected to each vessel in which steam is generated. The safety devices, gages, gage glasses, and similar devices used to perform the functions covered by ASME Code, Section I, PG-59 through PG-61 are included within the Jurisdictional limits as shown in Exhibit 5C.

(B) When the owner/operator elects to construct the unfired steam boiler to ASME Code, Section I, the limits as shown in Exhibit 5D are as defined in Section I of the ASME code.

(3) Safety valves and safety relief valves

(A) The use of weighted-lever safety valves, or safety valves having either the seat or disk of cast iron, is prohibited.

(B) Each ASME Code, Section VIII, Division 1 unfired steam boiler shall have at least one pressure relieving device. Safety valves for ASME, Section VIII, Division 1 unfired steam boilers shall be V or UV stamped. ASME, Section VIII, Division 1 does not require that the relief device be attached directly to the boiler.

(i) The installation of isolation valves between the unfired steam boiler and the safety valve is permitted for systems designed and installed as depicted in Exhibit 5C.

(ii) Full-area stop valves may be installed on the inlet side of a safety valve as shown in Exhibit 5C. A full-area stop valve may be installed on the discharge of the safety valve when connected to a common header. Stop valves shall be car sealed or locked in the open position.

(iii) One or more safety valves on every unfired steam boiler shall be set at or below the maximum allowable working pressure. The remaining valves, if any, shall be set within the range specified and have the capacity required by the applicable ASME code.

(C) Each ASME Code, Section I unfired steam boiler shall have one safety valve and if it has more than 500 square feet (47 square meters) of water heating surface it shall have two or more safety valves. ASME Code, Section I safety valves shall be V stamped.

(i) The valve or valves shall be connected to the boiler, independent of any other steam connection, and attached as close as practicable to the boiler without unnecessary intervening pipe or fittings.

(ii) No valves of any description shall be placed between the required safety valve or safety relief valve or valves and the boiler, nor on the discharge pipe between the safety valve or safety relief valve and the atmosphere.

(iii) The safety valve capacity of each unfired steam boiler must allow the safety valve or valves to discharge all the steam that can be generated by the boiler without allowing the pressure to rise more than 6.0% above the highest pressure to which any valve is set, and to no more than 6.0% above the maximum allowable working pressure.

(D) When a discharge pipe open to the atmosphere is used, it shall be at least full size of the safety valve discharge and fitted with an open drain to prevent water lodging in the upper part of the safety valve or discharge piping. The drain or drains shall be piped to a safe point of discharge. When an elbow or fitting is installed on the discharge pipe it shall be located close to the safety valve outlet. The discharge pipe shall be securely anchored and supported. All safety valve discharges shall be located or piped to a safe point of discharge clear from walkways or platforms.

(E) When two or more unfired steam boilers operating at different pressures and safety valve settings are interconnected, the lower pressure boilers or interconnected piping shall be equipped with safety valves of sufficient capacity to prevent overpressure, considering the maximum generating capacity of all boilers.

(4) Feedwater supply.

(A) Each unfired steam boiler shall have a feedwater supply which will permit it to be fed at any time while under pressure.

(B) Feedwater piping to the unfired steam boiler constructed to ASME Code, Section I shall be provided with a check valve near the boiler and a stop valve or cock between the check valve and the boiler. When two or more boilers are fed from a common source there shall also be a stop valve on the branch to each boiler between the check valve and the source of supply. Whenever a globe valve is used on the feedwater piping, the inlet shall be under the disk of the valve.

(C) Where deaerating heaters are not used, it is recommended that the temperature of the feedwater be not less than 120 degrees Fahrenheit (49 degrees Celsius) to avoid the possibility of setting up localized stress. Where deaerating heaters are used, it is recommended that the minimum feedwater temperature be not less than 215 degrees Fahrenheit (102 degrees Celsius) so that dissolved gases may be thoroughly released.

(5) Water level indicators.

(A) ASME Code, Section I unfired steam boilers with a maximum allowable working pressure (MAWP) of 400 psig (three megapascals) or less shall have at least one gage glass. For a MAWP over 400 psig (three megapascals) shall have two required gage glasses. When two gage glasses are required one of the gage glasses may be replaced by two independent remote level indicators that are maintained in simultaneous operation while the boiler is in service.

(B) Each steam drum of an ASME Code, Section VIII, Division 1 unfired steam boiler, irrespective of pressure and temperature, shall be provided with one direct reading water level indicator (water gage glass) or two independent remote level indicators that are maintained in simultaneous operation while the boiler is in service.

(C) In all installations where direct visual observations of the water gage glass(es) cannot be made, two remote level indicators shall be provided at operational level.

(D) The gage glass cock connections shall not be less than 1/2 inch nominal pipe size (diameter nominal 15).

(E) No outlet connections, except for feedwater regulators, drains, steam gages, or apparatus of such form as does not permit the escape of an appreciable amount of steam or water therefrom, shall be placed in the pipes connecting a water column or gage glass to a boiler.

(F) The water column shall be fitted with a drain cock or drain valve of at least 3/4 inch nominal pipe size (diameter nominal 20). The water column blowdown pipe shall not be less than 3/4 inch nominal pipe size (diameter nominal 20) and shall be piped to a safe point of discharge.

(G) Connections from the unfired steam boiler to remote level indicators shall be at least 3/4 inch nominal pipe size (diameter nominal 20), to and including the isolation valve, and at least 1/2 inch (13 millimeters) OD tubing from the isolation valve to the remote level indicator. These connections shall be completely independent of other connections for any function other than water level indication.

(6) Low-water cutoffs, alarms and feed regulating devices.

(A) The owner/operator is responsible for the design and installation of any low water protection devices as required to prevent damage to the unfired steam boiler. All installed low water cutoffs, alarms and feeding devices shall be designed for pressure and temperature equal or greater than the maximum allowable working pressure of the unfired steam boiler.

(B) When a low-water cutoff, and/or alarm is housed in either the water column or a separate chamber, it shall be provided with a blowdown pipe and valve not less than 3/4 inch nominal pipe size (diameter nominal 20). The arrangement shall be such that when the water column is blown down, the water level in it will be lowered sufficiently to activate the low-water cutoff and/or alarm device.

(C) Should an unfired steam boiler be installed in a system without a local and constant attendant, and it is not a fail safe design, it shall be provided with a low-water cutoff as required for power boilers.

(7) Pressure gages.

(A) Each unfired steam boiler shall have a pressure gage that is easily readable. The dial of the pressure gage shall be graduated to approximately double the pressure at which the safety valve is set, but in no case, less than one and one-half times this pressure. The pressure gage shall be connected to the steam space, to the water column, or its steam connection. A valve or cock shall be placed in the gage connection adjacent to the gage. An additional valve or cock may be located near the boiler providing it is locked or sealed in the open position. No other shutoff valves shall be located between the gage and the boiler. The pipe connection shall be of ample size and arranged so that it may be cleared by blowing down. The gage or connection shall contain a siphon or equivalent device which will develop and maintain a water seal that will prevent steam from entering the gage tube.

(B) Each unfired steam boiler must have a valved connection at least 1/4 inch nominal pipe size (diameter nominal 8) connected to the steam space for the exclusive purpose of attaching a test gage when the boiler is in service to test the accuracy of the pressure gage.

(8) Stop valves.

(A) Each steam outlet from an ASME Code, Section I unfired steam boiler shall be fitted with a stop valve located as close as practicable to the boiler.

(B) When a stop valve is located such that it allows water to accumulate, ample drains shall be provided. The drain shall be piped to a safe location and shall not be discharged on the boiler or its setting.

(C) When boilers that are provided with manholes or other similar openings that permit access for human occupancy are connected to a common steam main, the owner or operator shall ensure that the boiler to which entry is being made is completely isolated from the steam main. This may be accomplished with the use of two stop valves with an ample drain between them, with a full isolation blind or removal of piping such that the boiler is no longer connected to the steam main.

(i) ~~(g)~~ Process steam generators.

(1) Some process steam generators referred to in Section 65.10 ~~[of this title (relating to Definitions)]~~ are shown in Exhibits 5A and 5B.

~~Figure 1: 16 TAC §65.100(g)(1)~~

~~[Figure 1: 16 TAC §65.100(g)(1)]~~

~~Figure 2: 16 TAC §65.100(i)(1)~~

~~[Figure 2: 16 TAC §65.100(g)(1)]~~

(2) The steam collection or liberation drums of a process steam generator shall be constructed in accordance with the American Society of Mechanical Engineers (ASME) Section VIII, Division 1 or Division 2, and shall be stamped with the U or U2 symbol. As an alternate the process steam generator may be constructed to ASME Code, Section I.

(3) When the owner/operator elects to construct a process steam generator to ASME Code, Section I, the limits as shown in Exhibits 5A and 5B are as defined in the rules of ASME Section I.

(4) Safety valves and safety relief valves.

(A) The use of weighted-lever safety valves, or safety valves having either the seat or disk of cast iron is prohibited.

(B) Each ASME Code, Section VIII, Division 1 or Division 2 steam collection or liberation drum of a process steam generator shall have at least one safety valve designed for steam service with the V or UV stamp. The valve body drain shall be open and piped to a safe point of discharge.

(i) The installation of full-area stop valves between the steam collection or liberation drum of a process steam generator and the safety valve is permitted as depicted in Exhibit 5A and 5B. A full-area stop valve may be installed on the discharge of the safety valve when connected to a common header. Stop valves shall be car sealed or locked in the open position.

(ii) One or more safety valves on every steam collection or liberation drum of a process steam generator shall be set at or below the maximum allowable working pressure. The remaining valves, if any, shall be set within the range specified and have the capacity required by the applicable ASME code.

(C) Each ASME Code, Section I process steam generator shall have one safety valve and if it has more than 500 square feet ~~(47 square meters)~~ of water heating surface it shall have two or more safety valves. ASME Code, Section I safety valves shall be V stamped.

(i) The valve or valves shall be connected to the steam collection or liberation drum of the process steam generator, independent of any other steam connection, and attached as close as practicable to the steam collection or liberation drum without unnecessary intervening pipe or fittings.

(ii) No valves of any description shall be placed between the required safety valve or safety relief valve or valves and the steam collection or liberation drum, nor on the discharge pipe between the safety valve or safety relief valve and the atmosphere.

(iii) The safety valve capacity of each process steam generator must allow the safety valve or valves to discharge all the steam that can be generated by the process steam generator without allowing the pressure to rise more than 6.0% above the highest pressure to which any valve is set, and to no more than 6.0% above the maximum allowable working pressure.

(D) When a discharge pipe open to the atmosphere is used, it shall be at least full size of the safety valve discharge and fitted with an open drain to prevent water lodging in the upper part of the safety valve or discharge piping. The drain or drains shall be piped to a safe point of discharge. When an elbow or fitting is installed on the discharge pipe it shall be located close to the safety valve outlet. The discharge pipe shall be securely anchored and supported. All safety valve discharges shall be located or piped to a safe point of discharge clear from walkways or platforms.

(E) When two or more steam collection or liberation drums of process steam generators, operating at different pressures and safety valve settings are interconnected, the lower pressure process steam generator(s) or interconnected piping shall be equipped with safety valves of sufficient capacity to prevent overpressure, considering the maximum generating capacity of all of process steam generators.

(5) Feedwater supply.

(A) Each steam collection or liberation drum of a process steam generator shall have a feedwater supply which will permit it to be fed at any time while under pressure.

(B) Feedwater piping to a process steam generator constructed to ASME Code, Section I shall be provided with a check valve near the process steam generator and a stop valve or cock between the check valve and the process steam generator. When two or more process steam generators are fed from a common source there shall also be a stop valve on the branch to each process steam generator between the check valve and the source of supply. Whenever a globe valve is used on the feedwater piping, the inlet shall be under the disk of the valve.

(C) Where deaerating heaters are not used, it is recommended that the temperature of the feedwater be not less than 120 degrees Fahrenheit ~~(49 degrees Celsius)~~ to avoid the possibility of setting up localized stress. Where deaerating heaters are used, it is recommended that the minimum feedwater temperature be not less than 215 degrees Fahrenheit ~~(102 degrees Celsius)~~ so that dissolved gases may be thoroughly released.

(6) Water level indicators.

(A) ASME Code, Section I process steam generators with a MAWP of 400 psig ~~(three megapascals)~~ or less shall have at least one gage glass. For a MAWP over 400 psig ~~(three megapascals)~~

shall have two required gage glasses. When two gage glasses are required one of the gage glasses may be replaced by two independent remote level indicators that are maintained in simultaneous operation while the process steam generator is in service.

(B) Each steam collection or liberation drum of an ASME Code, Section VIII, Division 1 or Division 2 process steam generator, irrespective of pressure and temperature, as shown in Exhibit 5A and 5B shall be provided with one direct reading water level indicator (water gage glass) or two independent remote level indicators that are maintained in simultaneous operation while the process steam generator is in service.

(C) In all installations where direct visual observations of the water gage glass(es) cannot be made, two remote level indicators shall be provided at operational level.

(D) The gage glass cock connections shall not be less than 1/2 inch nominal pipe size (diameter nominal 15).

(E) No outlet connections, except for feedwater regulator, drains, steam gages, or apparatus of such form as does not permit the escape of an appreciable amount of steam or water therefrom, shall be placed on the pipes connecting a water column or gage glass on the steam collection or liberation drum of a process steam generator.

(F) The water column shall be fitted with a drain cock or drain valve of at least 3/4 inch nominal pipe size (diameter nominal 20). The water column blowdown pipe shall not be less than 3/4 inch nominal pipe size (diameter nominal 20) and shall be piped to a safe point of discharge.

(G) Connections from the steam collection or liberation drum of a process steam generator to remote level indicators shall be at least 3/4 inch nominal pipe size (diameter nominal 20), to and including the isolation valve, and at least 1/2 inch (13 millimeters) OD tubing from the isolation valve to the remote level indicator. These connections shall be completely independent of other connections for any function other than water level indication.

(7) Low-water cutoffs, alarms and feed regulating devices.

(A) The owner/operator is responsible for the design and installation of any low water protection devices as required to prevent damage to the process steam generator. All installed low water cutoffs, alarms and feeding devices shall be designed for a pressure and temperature equal to or greater than the maximum allowable working pressure and temperature of the process steam generator steam collection or liberation drum.

(B) When a low-water cutoff, and/or alarm is housed in either the water column or a separate chamber, it shall be provided with a blowdown pipe and valve not less than 3/4 inch nominal pipe size (diameter nominal 20). The arrangement shall be such that when the water column is blown down, the water level in it will be lowered sufficiently to activate the low-water cutoff and/or alarm device.

(C) Should a steam collection or liberation drum of a process steam generator be installed in a system without a local and constant attendant, and it is not a fail safe design, it shall be provided with a low-water cutoff as required for power boilers.

(8) Pressure gages.

(A) Each steam collection or liberation drum of a process steam generator shall have a pressure-indicating device that is easily readable from the primary operating station. The range shall be graduated to approximately double the pressure at which the safety valve is set, but in no case, less than one and one-half times this pressure. The pressure-indicating device shall be connected to the

steam space, or to the water column, or its steam connection. A valve or cock shall be placed in the gage connection adjacent to the gage. An additional valve or cock may be located near the steam collection or liberation drum of the process steam generator. No other shutoff valves shall be located between the gage and the steam collection or liberation drum of the process steam generator. The pipe connection shall be of ample size and arranged so that it may be cleared by blowing down or flushing. The pressure-indicating device shall be provided with a siphon or equivalent device, which will develop and maintain a water seal that will prevent steam from entering the pressure-indicating device.

(B) Each steam collection or liberation drum of a process steam generator must have a valved connection at least 1/4 inch nominal pipe size (diameter nominal 8) connected to the steam space for the purpose of attaching a test gage when the process steam generator is in service to test the accuracy of the pressure-indicating device.

(9) Stop valves.

(A) Each steam outlet from a ASME Code, Section I process steam generator shall be fitted with a stop valve located as close as practicable to the steam collection or liberation drum of the process steam generator.

(B) When a stop valve is located that allows water to accumulate, ample drains shall be provided. The drain shall be piped to a safe location and shall not be discharged on the process steam generator or its setting.

(C) When boilers that are provided with manholes or other similar openings that permit access for human occupancy are connected to a common steam main, the owner or operator shall ensure that the boiler to which entry is being made is completely isolated from the steam main. This may be accomplished with the use of two stop valves with an ample drain between them, with a full isolation blind or removal of piping such that the boiler is no longer connected to the steam main.

~~{(h) Potable water heaters, unique requirements.}~~

~~{(1) Stop valves should be placed in the supply and discharge pipe connections of a water heater installation to permit draining the heater without emptying the system.}~~

~~{(2) Each heater shall have a bottom drain pipe connection fitted with a valve or cock connected to the lowest water space practicable. The minimum size bottom drain shall be 3/4 inch.}~~

~~{(3) Each water heater shall have a thermometer located and connected at or near the outlet that is easily readable. The thermometer shall at all times indicate the temperatures of the water in the hot water heater.}~~

~~{(4) When the water supply to a water heater exceeds 75% of the design pressure of the heater, a pressure-reducing valve shall be required.}~~

(j) ~~{(†) Nuclear boilers.~~

(1) Nuclear boilers shall be inspected inservice by the owner or operator in accordance with ASME Boiler and Pressure Vessel Code, Section XI.

(2) The owner or operator shall engage the services of an inspection agency, qualified in accordance with American National Standards Institute/American Society of Mechanical Engineers (ANSI/ASME) N626.1, licensed by the Texas State Board of Insurance, and authorized to provide inspection services by the executive director.

(3) The chief inspector shall assign, after receipt of the completed N-3 owner's data report, a state serial number to the nuclear boiler.

(A) All N-5 data reports for piping systems and N-3 owner's data reports shall be filed with the chief inspector.

(B) National Board registration described in Section 65.50(a) [of this title (relating to Reporting Requirements)] or Section 65.20(c)(1)(D) [of this title (relating to Licensing/Certification/Registration Requirements)] is not required.

(4) The certificate of operation will be issued after receipt of the preservice inspection summary report and prior to commercial service. The summary report shall include all activities required by ASME Code, Section XI, except for the results of examinations or test of items obtainable only during power ascension testing. These items shall be filed as an amendment to the summary report within 60 days of the completion of the power ascension testing. The items identified to be submitted in the amendment shall be agreed upon by mutual consent as provided for in paragraph (11) of this subsection prior to power ascension testing and issuance of the certificate of operation.

(5) The inservice inspection plan shall be submitted to the chief inspector by the owner or operator prior to commercial service.

(6) The chief inspector shall review the inservice inspection plan and select those items necessary to verify compliance with the Health and Safety Code, Chapter 755 and ASME Code, Section XI. Items selected for verification shall be from within the verification boundary of the nuclear boiler consisting of the components and component supports of the systems illustrated in Exhibit 6.

Figure: 16 TAC §65.100(j)(6)
[Figure: 16 TAC §65.100(i)(6)]

(7) The chief inspector shall, upon reasonable notification by the owner or operator of inservice inspection activities to be accomplished during any outage on items selected in subsection (h) [(f)] of this section, coordinate with the owner or operator the verification activities.

(8) The chief inspector shall review and maintain summary reports of the inservice inspections that are submitted by the owner or operator in accordance with ASME Code, Section XI.

(9) Repairs and/or replacements shall conform to the requirements of ASME Code, Section XI.

(10) The owner or operator shall, in case of serious accidents to a nuclear boiler involving a breach of the pressure boundary integrity of components included in Exhibit 6 immediately notify the chief inspector by the most expeditious means available and apprise him of the nature of the accident. The chief inspector shall assess the nature of the accident, formulate inspection activities as required, and coordinate these activities with the owner or operator and as necessary with other state and federal agencies having jurisdiction.

(11) If exceptions or situations arise which are not specifically addressed in this section or other sections of the Boiler Law and Rules, or in ASME Code, Section XI, the owner or operator shall contact the chief inspector for guidance or interpretation.

(k) Authority to set and seal safety appliances. All safety and safety relief valves for ASME Sections I, IV, and VIII Division 1 boilers must be repaired, tested, set, and sealed by one of the following, provided the scope of the issued certificate of authorization covers the work to be performed:

(1) an organization holding a valid V, HV, or UV certificate of authorization, as appropriate, issued by the American Society of Mechanical Engineers (ASME); or

(2) an organization holding a valid VR certificate of authorization issued by the National Board of Boiler and Pressure Vessel Inspectors; or

(3) an organization holding a valid owner/operator certificate of authorization issued by the department. Such authorization may be granted or withheld by the executive director.

(A) If authorization is granted and proper administrative fees as provided for in Section 65.80(b) are paid, a certificate of authorization will be issued, expiring on the triennial anniversary date. The certificate shall indicate authorization to repair ASME Sections I, IV, or VIII valves, as verified by testing and as covered by the repair organization's quality control manual. The certificate will be signed by the executive director and the chief inspector.

(B) The applicant should apply to the department for renewal of authorization and reissuance of the certificate six months prior to the date of expiration.

(C) The owner/operator certificate of authorization is renewable every three years. Before issuance or renewal of the certificate of authorization, the repair organization and its facilities are subject to a review and demonstration of its quality control system by an inspector.

(D) Before the owner/operator certificate of authorization may be issued or renewed, two valves which have been repaired by the applicant must successfully complete operational verification tests as follows:

(i) visual examination to ensure the quality of material and workmanship;

(ii) verification that critical parts meet the valve manufacturer's specifications. Critical parts that are replaced must be fabricated to the valve manufacturer's specifications. Critical parts which require repair shall meet the valve manufacturer's specifications;

(iii) tightness tests and verification;

(iv) set pressure test and verification.

(E) The purpose of the tests is to ensure that the function and operation of the valves meet the requirements of the applicable section of the ASME Code to which they are manufactured. Should any of the valves fail to meet the applicable requirements, the test shall be repeated on two valves for each valve that failed. Failure of any of these valves shall cause the applicant to investigate and document the cause of failure and state what corrective action has been taken to prevent future recurrences. Retest of the original valve is acceptable. Following proper implementation of this corrective action and after satisfactory performance, permission to receive the certificate of authorization will be granted.

(F) Field repairs are defined as any repair conducted outside a fixed repair shop location. Field repairs may be conducted with the aid of mobile facilities with repair capabilities with or without testing capabilities. Field repairs may be conducted in owner/operator facilities without the use of mobile facilities. Organizations that obtain the owner/operator certificate of authorization for in-shop/plant repairs may also perform field repairs to safety and safety relief valves provided that:

(i) qualified technicians perform such repairs;

(ii) an acceptable quality control system covering field repairs is maintained;

(iii) periodic audits of the work carried out in the field are made by quality control personnel of the certificate of authorization holder to ensure that the requirements of the quality control system are met.

(G) Provided the provisions in paragraph (F)(i)-(iii) of this paragraph are met, verification testing of field repaired valves shall not be required.

(H) Organizations that perform field repairs only must demonstrate their field repair capabilities to an inspector before the certificate of authorization may be issued or renewed. Two valves must be repaired in the field and successfully complete verification tests as described in subparagraph (D) of this paragraph. A quality control manual as required in subparagraph (J) of this paragraph must be prepared describing all field repair activities.

(I) Repair of a safety and safety relief valve is considered to be the replacement, remachining, or cleaning of any part, lapping of seat and disc, or any other operation which may affect the flow passage, capacity, function, or pressure retaining integrity. Disassembly, reassembly, and/or adjustments which affect the safety or safety relief valve function are also considered a repair. The initial installation, testing, and adjustments of a new safety valve or a safety relief valve in a boiler are not considered a repair.

(J) In general, the quality control system shall describe and explain what documents and procedures the owner/operator will use to validate a valve repair. Before issuance or renewal of the owner/operator certificate of authorization, the applicant must meet all requirements, including an acceptable written quality control system. The basic elements of a written quality control system shall be those described in Exhibit 1.

(i) The written quality control system shall also include provisions for making revisions, enabling the system to be kept current as required.

(ii) A review of the applicant's quality control system will be performed by an inspector. The review will include a demonstration of the implementation of the applicant's quality control system.

(iii) Each applicant to whom a certificate of authorization is issued shall maintain thereafter a controlled copy of the accepted quality control manual with the inspector. Except for changes which do not affect the quality control program, revisions to the quality control manual shall not be implemented until such revisions are acceptable to the inspector.

(K) It is essential that owner/operator valve repair organizations ensure that personnel making repairs to safety and safety relief valves are knowledgeable and qualified. The owner/operator shall provide documented training with minimum qualification requirements for the valve repair position. Specific requirements to be included in an individual's training are as follows:

(i) working knowledge of the organization's quality control manual;

(ii) working knowledge of the applicable requirements; and

(iii) working knowledge of the technical aspects and mechanical skills for valves being repaired or tested.

(L) Performance testing of repaired valves.

(i) For shop valves, a test stand shall be used. The test stand shall be of a size and design to ensure clean, consistent, and repetitive pop action and response to blowdown adjustment, if possible. Test gages shall be connected to the test stand in such a manner as to indicate true pressure at the inlet of the valve being tested. Test gages shall be maintained and calibrated, at least every 90 days, to a minimum of one-half of 1.0% accuracy over the upper 80% of full scale range. The use of digital gages is acceptable. All calibrations shall be documented and traceable to national standards.

(ii) Valves marked for liquid service shall be set according to the applicable manufacturer's specification.

(iii) Valves marked for steam service or having special internal parts for steam should be tested with steam. However, valves for steam service may be tested with air or nitrogen for correct opening (popping), pressure setting, and, if possible, blowdown adjustment, provided the differential in popping pressure between steam and air or nitrogen, as specified in the quality control manual, are applied to the popping point.

(iv) Valves which are repaired in place shall be tested to demonstrate set pressure.

(v) For valves which are repaired in place, a device (hydraulic, pneumatic, etc.) may be used to apply an auxiliary lifting load on the spring to a valve for testing purposes and/or making adjustments. Calibrated testing equipment shall be used and detailed testing procedures followed. In such cases, the manufacturer's recommendations shall be used to establish blowdown.

(M) When a safety or safety relief valve is repaired, a metal repair tag, as described in the quality control manual, shall be attached to the valve. As a minimum, the information on the tag will include the valve identification number, set pressure, date of repair, and certificate of authorization number.

~~[(j) Heating boilers.]~~

~~[(1) Safety valves.]~~

~~[(A) Each steam boiler shall have one or more officially rated safety valves of the spring pop type adjusted and sealed to discharge at a pressure not to exceed 15 psig. Seals shall be attached in a manner to prevent the valve from being taken apart without breaking the seal. The safety valves shall be arranged so that they cannot be reset to relieve at a higher pressure than the maximum allowable working pressure of the boiler. A body drain connection below seat level shall be provided. For valves exceeding two inch pipe size, the drain hole or holes shall be tapped not less than 3/8 inch pipe size. For valves two inch pipe size or less, the drain hole shall not be less than 1/4 inch in diameter.]~~

~~[(B) Each safety valve 3/4 inch or over used on a steam boiler shall have a substantial lifting device which will positively lift the disk from its seat at least 1/16 inch when there is no pressure on the boiler. The seats and disks shall be of suitable material to resist corrosion.]~~

~~[(C) No safety valve for a steam boiler shall be smaller than 1/2 inch. No safety valve shall be larger than 4 1/2 inches. The inlet opening shall have an inside diameter approximately equal to, or greater than, the seat diameter.]~~

~~[(D) The minimum relieving capacity of valve or valves shall be governed by the capacity marking on the boiler.]~~

~~[(E) The minimum valve capacity in pounds per hour shall be the greater of that determined by dividing the maximum Btu output at the boiler nozzle obtained by the firing of any fuel for which~~

the unit is installed by 1,000, or shall be determined on the basis of the pounds of steam generated per hour per square foot of boiler heating surface as given in the following table. For cast iron boilers, the minimum valve capacity shall be determined by the maximum output method. In every case, the safety valve capacity for each steam boiler shall be such that with the fuel burning equipment installed, and operated at maximum capacity, the pressure cannot rise more than five psig above the maximum allowable working pressure.}]

[Figure: 16 TAC §65-100(j)(1)(E)]

{(2) Safety relief valves.}]

{(A) Hot water boilers.}]

{(i) Each hot water heating or supply boiler shall have at least one officially rated safety relief valve set to relieve at or below the maximum allowable working pressure of the boiler.}]

{(ii) When more than one safety relief valve is used on either hot water heating or hot water supply boilers, the additional valve or valves shall be officially rated and may have a set pressure within a range not to exceed six psig above the maximum allowable working pressure of the boiler up to and including 60 psig, and 5.0% for those having a maximum allowable working pressure exceeding 60 psig.}]

{(iii) Safety relief valves shall be spring loaded. Safety relief valves shall be set and sealed so that they cannot be reset without breaking the seal. A body drain connection below seat level shall be provided. For valves exceeding two inch NPS (nominal pipe size), the drain hole or holes shall be tapped not less than 3/8 inch NPS. For valves of two inch NPS or less, the drain hole shall not be less than 1/4 inch in diameter.}]

{(iv) Each safety relief valve shall have a substantial lifting device which will positively lift the disk from its seat at least 1/16 inch when there is no pressure on the boiler.}]

{(v) Seats and disks of safety relief valves shall be made of a suitable material to resist corrosion. No materials likely to fail due to deterioration or vulcanization, when subjected to saturated steam temperature corresponding to capacity test pressure, shall be used for any part.}]

{(vi) No safety relief valve shall be smaller than 3/4 inch nor larger than 4 1/2 inch standard pipe size except that boilers having a heat input not greater than 15,000 Btu/hr may be equipped with a rated safety relief valve of 1/2 inch standard pipe size. The inlet opening shall have an inside diameter approximately equal to, or greater than, the seat diameter. In no case shall the minimum opening through any part of the valve be less than 1/4 inch in diameter or its equivalent area.}]

{(vii) The required steam relieving capacity, in pounds per hour, of the pressure relieving device or devices on a boiler shall be the greater of that determined by dividing the maximum output in Btu at the boiler nozzle obtained by the firing of any fuel for which the unit is installed by 1,000, or shall be determined on the basis of pounds of steam generated per hour per square foot of boiler heating surface as given in the table in subsection (j)(1)(E) of this section. For cast iron boilers the minimum valve capacity shall be determined by the maximum output method.}]

{(viii) In every case, the safety relief valve capacity for each boiler with a single safety relief valve shall be such that, with the fuel burning equipment installed and operated at maximum capacity, the pressure cannot rise more than 10% above the maximum allowable working pressure. When more than one safety relief valve is used,

the overpressure shall be limited to 10% above the set pressure of the highest set valve.}]

{(B) Potable water heaters.}]

{(i) Potable water heaters (tank type) shall have at least one pressure temperature relief valve of the automatic reseating type set to relieve at or below the maximum allowable pressure of the heater.}]

{(ii) The relief valve shall have a capacity equal to or exceeding the rated burner input of the heater.}]

{(iii) The ASME BTU rating on the valve shall be used to determine the relieving capacity.}]

{(iv) Relief valves shall be connected directly to the heater within the top six inches of the tank.}]

{(v) Relief valves may be installed vertically or horizontally. The center line of the horizontal connection shall be no lower than four inches from the top of the shell.}]

{(vi) Relief valves shall not be connected to an internal pipe in the heater, or to a cold water feed line connected to the heater.}]

{(3) Safety valve and safety relief valve piping. No valve shall be placed between the safety valve or safety relief valve and the boiler nor on the discharge pipe between the safety valve and the atmosphere or the safety relief valve and the drain. When a discharge pipe is used, it shall be full size and fitted with an open drain to prevent water from lodging in the upper part of the safety valve or relief valve or in the discharge pipe. When an elbow is placed on the safety valve or relief valve discharge pipe, it shall be located close to the valve outlet. The discharge pipe shall be securely anchored and supported, independent of the valve.}]

{(4) Pressure gages.}]

{(A) Steam heating boilers.}]

{(i) Each steam heating boiler shall have a pressure gage connected to the steam space, water column, or steam connection by a siphon or equivalent device exterior to the boiler. The gage shall be of sufficient capacity to keep the gage tube filled with water and arranged so that the gage cannot be shut off from the boiler except by a cock with tee or lever handle placed in a pipe near the gage. The handle of the cock shall be parallel to the pipe in which it is located when the cock is open.}]

{(ii) The scale on the dial of a steam heating boiler pressure gage shall be graduated to not less than 30 psig nor more than 60 psig. The travel of the pointer from zero to 30 psig pressure shall be at least three inches.}]

{(B) Hot water heating boilers or hot water supply.}]

{(i) Each hot water heating boiler shall have a pressure or altitude gage connected to it or to its flow connection which cannot be shut off from the boiler except by a cock with tee or lever handle placed on the pipe near the gage. The handle of the cock shall be parallel to the pipe in which it is located when the cock is open.}]

{(ii) The scale on the dial of the pressure or altitude gage shall be graduated to not less than one and one-half nor more than three times the pressure at which the safety relief valve is set. The gage shall be provided with effective stops for the indicating pointer at the zero point and at the maximum pressure point.}]

[(iii) Piping and tubing for pressure or altitude gage connections shall be of nonferrous metal when smaller than one-inch pipe size.]

[(5) Water gage glasses.]

[(A) Each steam heating boiler shall have one or more water gage glasses attached to the water column or boiler by means of valved fittings. The lower fitting shall have a drain valve of the straightway type with opening not less than 1/4 inch diameter to facilitate cleaning. Gage glass replacement shall be possible under pressure.]

[(B) Transparent material, other than glass, may be used for the water gage provided that the material has proved suitable for the pressure, temperature, and corrosive conditions encountered in service.]

[(6) Low-water fuel cutoffs and water feeding devices.]

[(A) All automatically fired steam boilers, except boilers having a constant attendant, who has no other duties while the boiler is in operation, shall be equipped with approved low-water fuel cutoffs installed in such a manner that they cannot be rendered inoperative by the manipulation of any manual control or regulating apparatus. The low-water fuel cutoff devices shall be tested regularly by lowering the water level in the boiler sufficiently to shut off the fuel supply to the burner when the water level reaches the lowest safe level for operation.]

[(B) When a low-water fuel cutoff and feedwater pump control are combined in a single device, an additional separate low-water fuel cutoff shall be installed. The additional control shall be wired in series electrically with the existing low-water fuel cutoff.]

[(C) When a low-water fuel cutoff is housed in either the water column or a separate chamber it shall be provided with a blowdown pipe and valve not less than 3/4 inch pipe size. The arrangement shall be such that when the water column is blown down, the water level in it will be lowered sufficiently to activate the low-water fuel cutoff device.]

[(D) All newly installed automatically fired hot water heating boilers, when installed in a forced circulation system and not under continuous attendance, shall be equipped in the manner described in this subsection. A coil-type boiler or a water-tube boiler requiring forced circulation to prevent overheating of the coils or tubes shall have a device which is listed by a nationally recognized testing agency to prevent burner operation at a flow rate inadequate to protect the boiler unit against overheating.]

[(E) As there is no normal water line to be maintained in a hot water heating boiler, any location of the low-water fuel cutoff above the lowest safe water level established by the boiler manufacturer is satisfactory.]

[(F) If a water feed device is utilized, it shall be constructed to prevent feedwater from entering the boiler through the water column or separate chamber of the low-water fuel cutoff.]

[(7) Stop valves.]

[(A) Single steam heating boilers. When a stop valve is used in the supply pipe connection of a single steam heating boiler, there shall be one used in the return pipe connection.]

[(B) Single hot water heating boilers.]

[(i) Stop valves shall be located at an accessible point in the supply and return pipe connections near the boiler nozzle of a single hot water heating boiler installation to permit draining the boiler without emptying the system.]

[(ii) When the boiler is located above the system and can be drained without draining the system, stop valves may be eliminated.]

[(C) Supply and return line. Each supply and return line to a steam heating boiler, which may be entered while adjacent boilers are in operation, shall be fitted with either two stop valves with ample drain between or a stop valve and figure 8 blank. The blank shall be installed between the stop valve and the boiler.]

[(D) Type of stop valve. When stop valves over two inches in size are used, they shall be of the outside screw-and-yoke rising stem type or of such other type as to indicate at a distance whether it is closed or open by the position of its stem or other operating mechanism. The wheel may be carried either on the yoke or attached to the stem. If the valve is of the plug cock type, it shall be fitted with a slow opening mechanism and an indicating device and the plug shall be held in place by a guard or gland.]

[(E) Identification of stop valves by tag. When stop valves are used, they shall be properly designated, substantially as follows, by tags of metal or other durable material fastened to them: [Figure: 16 TAC 65.100(j)(7)(E)]

[(8) Feedwater connections.]

[(A) Feedwater, makeup water, or water treatment shall be introduced into a boiler through the return piping system or through an independent feedwater connection which does not discharge against parts of the boiler exposed to direct radiant heat from the fire. Feedwater, makeup water, or water treatment shall not be introduced through openings or connections provided for inspection or cleaning, safety valve, or safety relief valve, surface blowoff, water column, water gage glass, pressure gage, or temperature gage.]

[(B) Feedwater pipe shall be provided with a check valve near the boiler and a stop valve or cock between the check valve and the boiler or return pipe system.]

[(9) Bottom blowdown or drain valve.]

[(A) Bottom blowoff valve. Each boiler shall have a bottom blowoff connection to the lowest water space practicable with a minimum size as shown in the following table. The discharge piping shall be full size to the point of discharge. Boilers having a capacity of 25 gallons or less are exempt from these requirements. [Figure: 16 TAC 65.100(j)(9)(A)]

[(B) Drain valve. Each boiler shall have one or more drain connections, fitted with valves or cocks connecting to the lowest water containing spaces. The minimum size of the drain piping, valves, and cocks shall be 3/4 inches. The discharge piping shall be full size to the point of discharge. When the blowoff connection is located at the lowest water containing space, a separate drain connection is not required.]

[(C) Minimum pressure rating. The minimum pressure rating of valves and cocks used for blowoff or drain purposes shall be at least equal to the pressure stamped on the boiler, but in no case less than 30 psig. The temperature rating of such valves and cocks shall not be less than 250 degrees Fahrenheit.]

[(10) Provisions for thermal expansion.]

[(A) Hot water heating boiler. If the system is of closed type, an airtight tank or other suitable air cushion that is consistent with the volume and capacity of the system shall be installed, and it shall be suitably designed for a hydrostatic test pressure of two and one-half times the allowable working pressure of the system. Expansion tanks for systems designed to operate above 30 psig shall be constructed in

accordance with the ASME Code, Section VIII, Division 1. Provision shall be made for draining the tank without emptying the system, except for pre-pressurized tanks.}]

{(B) Potable water heater. If a system is equipped with a check valve or pressure-reducing valve in the cold water inlet line, an airtight expansion tank or other suitable air cushion shall be considered. When an expansion tank is provided, it shall be constructed in accordance with the ASME Code, Section VIII, Division 1, for a maximum allowable working pressure equal to or greater than the water heater. Provision shall be made for pre-pressurized tanks.}]

(l) [(k)] Repairs and alterations. Repairs and alterations shall conform to the current edition of the National Board Inspection Code (NBIC) and addenda; and shall be acceptable to the inspector, except that repairs and alterations may be performed by the following provided the intended work is within the scope of the issued certificate of authorization:

(1) holders of the appropriate certificate(s) of authorization from the American Society of Mechanical Engineers; or

(2) holders of a certificate of authorization from the National Board of Boiler and Pressure Vessel Inspectors for use of the R repair symbol stamp; or

(3) owner/operators of boilers who have been issued a certificate of authorization by the Texas Department of Licensing and Regulation.

(A) Issuance of the certificate of authorization will be made upon submission of an application, on forms provided by the department.

(B) Review of the applicant's program and facilities initially and at subsequent three-year intervals will be done.

(i) The review will determine the applicant has a documented program to control repairs and/or alterations conforming to minimum requirements established by the department.

(ii) The review will require demonstration of the applicant's ability to perform repairs and/or alterations by implementing on representative work the requirements of the written program.

(m) [(h)] Lap seam cracks. The shell or drum of a boiler in which a typical lap seam crack is discovered along a longitudinal riveted lap-type joint shall be immediately and permanently discontinued for use under pressure. A lap seam crack is the typical crack frequently found in lap seams, which extends parallel to the longitudinal joint and is located either between or adjacent to rivet holes.

(n) [(m)] Hydrostatic pressure tests.

(1) When there is a question or doubt about the extent of a defect found in a boiler, the inspector may require a hydrostatic pressure test.

(2) In preparing a boiler for a hydrostatic pressure test, the boiler shall be filled with water to the stop valve and all air vented off. If the boiler to be tested is connected with other boilers that are under pressure, such connections shall be blanked off unless they have double stop valves on all connection pipes with a drain between.

(3) During a hydrostatic pressure test of a boiler, the safety valve or valves shall be removed or each valve disc shall be held to its seat by means of a testing clamp and not by screwing down the compression screw under the spring.

(4) The metal temperature for the pressure test shall not be less than 60 degrees Fahrenheit (16 degrees Celsius) unless the owner

provides information on the toughness characteristics of the material for a lower test temperature, but the maximum metal temperature shall not exceed 120 degrees Fahrenheit (50 degrees Celsius) unless a higher temperature is specified and is acceptable to the inspector. [The minimum temperature of the water used to apply a hydrostatic test shall be 70 degrees Fahrenheit, but the maximum temperature shall not exceed 120 degrees Fahrenheit.]

(5) When a hydrostatic pressure test is to be applied after inspection, the pressure shall be as follows.

(A) For all cases involving the question of tightness, the pressure shall be no more than the set pressure of the safety valve or valves having the lowest setting.

(B) For all cases involving the question of safety, the pressure applied shall not exceed the lesser of that which was required by the original code of construction, or the pressure equal to that which results in an applied stress no greater than 90% of the specified minimum yield stress at test temperature of the material as published by ASME Code, Section II, Part D, current edition and addenda.

(o) Heating boilers.

(1) Steam heating.

(A) Safety valves.

(i) Each steam boiler shall have one or more officially rated safety valves of the spring pop type adjusted and sealed to discharge at a pressure not to exceed 15 psig (103 kilopascals). Seals shall be attached in a manner to prevent the valve from being taken apart without breaking the seal. The safety valves shall be arranged so that they cannot be reset to relieve at a higher pressure than the maximum allowable working pressure of the boiler. A body drain connection below seat level shall be provided. For valves exceeding 2 1/2 inch nominal pipe size (diameter nominal 65), the drain hole or holes shall be tapped not less than 3/8 inch nominal pipe size (diameter nominal 10). For valves 2 1/2 inch nominal pipe size (diameter nominal 65) or less, the drain hole shall not be less than 1/4 inch (6 millimeters) in diameter.

(ii) Each safety valve 3/4 inch nominal pipe size (diameter nominal 20) or over used on a steam boiler shall have a substantial lifting device which will positively lift the disk from its seat at least 1/16 inch (1.6 millimeters) when there is no pressure on the boiler. The seats and disks shall be of suitable material to resist corrosion.

(iii) No safety valve for a steam boiler shall be smaller than 1/2 inch nominal pipe size (diameter nominal 15). No safety valve shall be larger than 4 1/2 inches nominal pipe size (diameter nominal 115). The inlet opening shall have an inside diameter approximately equal to, or greater than, the seat diameter.

(iv) The minimum relieving capacity of valve or valves shall be governed by the capacity marking on the boiler.

(v) The minimum valve capacity in pounds per hour shall be the greater of that determined by dividing the maximum Btu output at the boiler nozzle obtained by the firing of any fuel for which the unit is installed by 1,000, or shall be determined on the basis of the pounds of steam generated per hour per square foot of boiler heating surface as given in Table 1 of Exhibit 2. For cast iron boilers, the minimum valve capacity shall be determined by the maximum output method. In every case, the safety valve capacity for each steam boiler shall be such that with the fuel burning equipment installed, and operated at maximum capacity, the pressure cannot rise more than five psig (35 kilopascals) above the maximum allowable working pressure.

Figure: 16 TAC §65.100(o)(1)(A)(v)

(vi) Safety valve piping. No valve shall be placed between the safety valve and the boiler or on the discharge pipe between the safety valve and the atmosphere. When a discharge pipe is used, it shall be full size and fitted with an open drain to prevent water from lodging in the upper part of the safety valve or relief valve or in the discharge pipe. When an elbow is placed on the safety valve discharge pipe, it shall be located close to the valve outlet. The discharge pipe shall be securely anchored and supported, independent of the valve.

(B) Feedwater connections.

(i) Feedwater, or water treatment shall be introduced into a boiler through the return piping system or through an independent feedwater connection which does not discharge against parts of the boiler exposed to direct radiant heat from the fire. Feedwater, or water treatment shall not be introduced through openings or connections provided for inspection or cleaning, safety valve, surface blowoff, water column, water gage glass, pressure gage, or temperature gage.

(ii) Feedwater pipe shall be provided with a check valve near the boiler and a stop valve or cock between the check valve and the boiler or return pipe system.

(C) Low-water fuel cutoffs and water feeding devices.

(i) All automatically fired steam boilers, except boilers having a constant attendant, who has no other duties while the boiler is in operation, shall be equipped with approved automatic low-water fuel cutoffs installed in such a manner that they cannot be rendered inoperative by the manipulation of any manual control or regulating apparatus. The low-water fuel cutoff devices shall be tested regularly by lowering the water level in the boiler sufficiently to shut off the fuel supply to the burner when the water level reaches the lowest safe level for operation.

(ii) The MAWP of all low water fuel cutoff devices shall be set at or above the boiler stamped MAWP.

(iii) When low-water fuel cutoff and feedwater pump controls are combined in a single device, an additional separate low-water fuel cutoff shall be installed. The additional control shall be wired in series electrically with the existing low-water fuel cutoff.

(iv) When a low-water fuel cutoff is housed in either the water column or a separate chamber it shall be provided with a blowdown pipe and valve not less than 3/4 inch nominal pipe size (diameter nominal 20). The arrangement shall be such that when the water column is blown down, the water level in it will be lowered sufficiently to activate the low-water fuel cutoff device.

(v) If a water feed device is utilized, it shall be constructed to prevent feedwater from entering the boiler through the water column or separate chamber of the low-water fuel cutoff.

(D) Pressure gages.

(i) Each steam heating boiler shall have a pressure gage connected to the device exterior to the boiler. The gage shall be of sufficient capacity to keep the gage tube filled with water and arranged so that the gage cannot be shut off from the boiler except by a cock with tee or lever handle placed in a pipe near the gage. The handle of the cock shall be parallel to the pipe in which it is located when the cock is open.

(ii) The scale on the dial of a steam heating boiler pressure gage shall be graduated to not less than 30 psig (207kilopascals) nor more than 60 psig (414 kilopascals). The travel of the pointer from zero to 30 psig (207 kilopascals) pressure shall be at least three inches.

(E) Stop valves.

(i) Single steam heating boilers. When a stop valve is used in the supply pipe connection of a single steam heating boiler, there shall be one used in the return pipe connection.

(ii) Supply and return line. Each supply and return line to a steam heating boiler, which may be entered while adjacent boilers are in operation, shall be fitted with either two stop valves with ample drain between or a stop valve and figure 8 blank. The blank shall be installed between the stop valve and the boiler.

(iii) Type of stop valve. When stop valves over two inches in size are used, they shall be of the outside screw-and-yoke rising stem type or of such other type as to indicate at a distance whether it is closed or open by the position of its stem or other operating mechanism. The wheel may be carried either on the yoke or attached to the stem. If the valve is of the plug cock type, it shall be fitted with a slow opening mechanism and an indicating device and the plug shall be held in place by a guard or gland.

(F) Bottom blowdown or drain valve.

(i) Bottom blowoff valve. Each steam heating boiler shall have a bottom blowoff connection fitted with a valve or cock connected to the lowest water space practicable with a minimum size as shown in Table 2 of Exhibit 2 in Figure 65.100(o)(1)(A)(v). The discharge piping shall be full size to the point of discharge. Boilers having a capacity of 25 gallons (95 liters) or less are exempt from these requirements.

(ii) Drain valve. Each boiler shall have one or more drain connections, fitted with valves or cocks connecting to the lowest water containing spaces. The minimum size of the drain piping, valves, and cocks shall be 3/4 inch nominal pipe size (diameter nominal 20). The discharge piping shall be full size to the point of discharge. When the blowoff connection is located at the lowest water containing space, a separate drain connection is not required.

(iii) Minimum pressure rating. The minimum pressure rating of valves and cocks used for blowoff or drain purposes shall be at least equal to the pressure stamped on the boiler, but in no case less than 30 psig (207 kilopascals). The temperature rating of such valves and cocks shall not be less than 250 degrees Fahrenheit (121 degrees Celsius).

(G) Water gage glasses.

(i) Each steam heating boiler shall have one or more water gage glasses attached to the water column or boiler by means of valved fittings not less than 1/2 inch nominal pipe size (diameter nominal 15). The lower fitting shall have a drain valve of the straight-way type with opening not less than 1/4 inch (6 millimeters) diameter to facilitate cleaning. Gage glass replacement shall be possible under pressure.

(ii) Transparent material, other than glass, may be used for the water gage provided that the material will remain transparent and has proved suitable for the pressure, temperature, and corrosive conditions encountered in service.

(2) Hot water heating.

(A) Safety relief valves.

(i) Each hot water heating boiler shall have at least one officially rated safety relief valve set to relieve at or below the maximum allowable working pressure of the boiler.

(ii) When more than one safety relief valve is used on a hot water heating boiler, the additional valve or valves shall be officially rated and may have a set pressure within a range not to exceed six psig (42 kilopascals) above the maximum allowable working pressure

of the boiler up to and including 60 psig (414 kilopascals), and 5.0% for those having a maximum allowable working pressure exceeding 60 psig (414 kilopascals).

(iii) Safety relief valves shall be spring loaded. Safety relief valves shall be set and sealed so that they cannot be reset without breaking the seal. A body drain connection below seat level shall be provided. For valves exceeding 2 1/2 inch nominal pipe size (diameter nominal 65), the drain hole or holes shall be tapped not less than 3/8 inch nominal pipe size (diameter nominal 10). For valves of 2 1/2 inch nominal pipe size (diameter nominal 65) or less, the drain hole shall not be less than 1/4 inch (6 millimeters) diameter.

(iv) Each safety relief valve shall have a substantial lifting device which will positively lift the disk from its seat at least 1/16 inch (1.6 millimeters) when there is no pressure on the boiler.

(v) Seats and disks of safety relief valves shall be made of a suitable material to resist corrosion. No materials likely to fail due to deterioration or vulcanization, when subjected to saturated steam temperature corresponding to capacity test pressure, shall be used for any part.

(vi) No safety relief valve shall be smaller than 3/4 inch nominal pipe size (diameter nominal 20) nor larger than 4 1/2 inch nominal pipe size (diameter nominal 115) except that boilers having a heat input not greater than 15,000 Btu/hr (4.4 kilowatts) may be equipped with a rated safety relief valve of 1/2 inch nominal pipe size (diameter nominal 15). The inlet opening shall have an inside diameter approximately equal to, or greater than, the seat diameter. In no case shall the minimum opening through any part of the valve be less than 1/4 inch (6 millimeters) diameter or its equivalent area.

(vii) The required steam relieving capacity, in pounds per hour, of the pressure relieving device or devices on a boiler shall be the greater of that determined by dividing the maximum output in Btu at the boiler nozzle obtained by the firing of any fuel for which the unit is installed by 1,000, or shall be determined on the basis of pounds of steam generated per hour per square foot of boiler heating surface as given in Table 1 Exhibit 2 as shown in Figure 65.100(o)(1)(A)(v). For cast iron boilers the minimum valve capacity shall be determined by the maximum output method.

(viii) In every case, the safety relief valve capacity for each boiler with a single safety relief valve shall be such that, with the fuel burning equipment installed and operated at maximum capacity, the pressure cannot rise more than 10% above the maximum allowable working pressure. When more than one safety relief valve is used, the overpressure shall be limited to 10% above the set pressure of the highest set valve.

(ix) Safety relief valve piping. No valve shall be placed between the safety relief valve and the boiler or on the discharge pipe between the safety relief valve and the drain. When a discharge pipe is used, it shall be full size and fitted with an open drain to prevent water from lodging in the upper part of the safety relief valve or in the discharge pipe. When an elbow is placed on the safety relief valve discharge pipe, it shall be located close to the valve outlet. The discharge pipe shall be securely anchored and supported, independent of the valve.

(B) Makeup water connections.

(i) Makeup water, or water treatment shall be introduced into a boiler through the return piping system or through an independent makeup water connection which does not discharge against parts of the boiler exposed to direct radiant heat from the fire. Makeup water, or water treatment shall not be introduced through openings or

connections provided for inspection or cleaning, safety relief valve, pressure gage, or temperature gage.

(ii) Makeup water pipe shall be provided with a check valve near the boiler and a stop valve or cock between the check valve and the boiler or between the check valve and the piping system.

(C) Low-water fuel cutoffs and water feeding devices.

(i) All automatically fired hot water heating boiler shall have an automatic low-water fuel cutoff that has been designed for hot water service, and it shall be so located as to automatically cut off the fuel supply when the surface of the water falls to a level below the normal waterline established.

(ii) The MAWP of all low water fuel cutoff and flow sensing devices shall be set at or above the boiler stamped MAWP.

(iii) When low-water fuel cutoff and feedwater pump controls are combined in a single device, an additional separate low-water fuel cutoff shall be installed. The additional control shall be wired in series electrically with the existing low-water fuel cutoff.

(iv) When a low-water fuel cutoff is housed in either the water column or a separate chamber it shall be provided with a blowdown pipe and valve not less than 3/4 inch nominal pipe size (diameter nominal 20). The arrangement shall be such that when the water column is blown down, the water level in it will be lowered sufficiently to activate the low-water fuel cutoff device.

(v) As there is no normal water line to be maintained in a hot water heating boiler, any location of the low-water fuel cutoff above the lowest safe water level established by the boiler manufacturer is satisfactory.

(vi) All automatically fired hot water heating boilers, when installed in a forced circulation system and not under continuous attendance, shall be equipped in the manner described in this subsection. A coil-type boiler or a water-tube boiler requiring forced circulation to prevent overheating of the coils or tubes shall have a flow sensing device which is listed by a nationally recognized testing agency to prevent burner operation at a flow rate inadequate to protect the boiler unit against overheating.

(vii) If a water feed device is utilized, it shall be constructed to prevent feedwater from entering the boiler through the water column or separate chamber of the low-water fuel cutoff.

(D) Pressure gages.

(i) Each hot water heating boiler shall have a pressure or altitude gage connected to it or to its flow connection which cannot be shut off from the boiler except by a cock with tee or lever handle placed in a pipe near the gage. The handle of the cock shall be parallel to the pipe in which it is located when the cock is open.

(ii) The scale on the dial of the pressure or altitude gage shall be graduated to not less than 1 1/2 nor more than 3 1/2 times the pressure at which the safety relief valve is set. The gage shall be provided with effective stops for the indicating pointer at the zero point and at the maximum pressure point.

(iii) Piping and tubing for pressure or altitude gage connections shall be of nonferrous metal when smaller than 1 inch nominal pipe size (diameter nominal 25).

(E) Stop valves.

(i) Stop valves shall be located at an accessible point in the supply and return pipe connections near the boiler nozzle of a single hot water heating boiler installation to permit draining the boiler without emptying the system.

(ii) When the boiler is located above the system and can be drained without draining the system, stop valves may be eliminated.

(iii) Type of stop valve. When stop valves over two inches in size are used, they shall be of the outside screw-and-yoke rising stem type or of such other type as to indicate at a distance whether it is closed or open by the position of its stem or other operating mechanism. The wheel may be carried either on the yoke or attached to the stem. If the valve is of the plug cock type, it shall be fitted with a slow opening mechanism and an indicating device and the plug shall be held in place by a guard or gland.

(F) Drain valve.

(i) Each hot water heating boiler shall have one or more drain connections, fitted with valves or cocks connecting to the lowest water containing spaces. The minimum size of the drain piping, valves, and cocks shall be 3/4 inch nominal pipe size (diameter nominal 20). The discharge piping shall be full size to the point of discharge. When the blowoff connection is located at the lowest water containing space, a separate drain connection is not required.

(ii) Minimum pressure rating. The minimum pressure rating of valves and cocks used for blowoff or drain purposes shall be at least equal to the pressure stamped on the boiler, but in no case less than 30 psig (207 kilopascals). The temperature rating of such valves and cocks shall not be less than 250 degrees Fahrenheit (121 degrees Celsius).

(G) Provisions for thermal expansion.

(i) Heating systems with open expansion tank - An indoor overflow from the upper portion of the expansion tank shall be provided in addition to an open vent, the indoor overflow to be carried within the building to a suitable plumbing fixture or basement.

(ii) Closed heating system - If the system is of closed type, an airtight tank or other suitable air cushion that is consistent with the volume and capacity of the system shall be installed, and it shall be suitably designed for a hydrostatic test pressure of two and one-half times the allowable working pressure of the system. Expansion tanks for systems designed to operate above 30 psig (207 kilopascals) shall be constructed in accordance with the ASME Code, Section VIII, Division 1. Alternatively, a tank built to ASME Section X requirements may be used if the pressure and temperature ratings of the tank are equal to or greater than the pressure and temperature ratings of the system. Provision shall be made for draining the tank without emptying the system, except for pre-pressurized tanks.

(3) Hot water supply.

(A) Safety relief valves.

(i) Each hot water supply boiler shall have at least one officially rated safety relief valve set to relieve at or below the maximum allowable working pressure of the boiler.

(ii) When more than one safety relief valve is used on a hot water supply boiler, the additional valve or valves shall be officially rated and may have a set pressure within a range not to exceed six psig (42 kilopascals) above the maximum allowable working pressure of the boiler up to and including 60 psig (414 kilopascals), and 5.0% for those having a maximum allowable working pressure exceeding 60 psig (414 kilopascals).

(iii) Safety relief valves shall be spring loaded. Safety relief valves shall be set and sealed so that they cannot be reset without breaking the seal. A body drain connection below seat level shall be provided. For valves exceeding 2 1/2 inch nominal pipe size

(diameter nominal 65), the drain hole or holes shall be tapped not less than 3/8 inch nominal pipe size (diameter nominal 10). For valves of 2 1/2 inch nominal pipe size (diameter nominal 65) or less, the drain hole shall not be less than 1/4 inch (6 millimeters) diameter.

(iv) Each safety relief valve shall have a substantial lifting device which will positively lift the disk from its seat at least 1/16 inch (1.6 millimeters) when there is no pressure on the boiler.

(v) Seats and disks of safety relief valves shall be made of a suitable material to resist corrosion. No materials likely to fail due to deterioration or vulcanization, when subjected to saturated steam temperature corresponding to capacity test pressure, shall be used for any part.

(vi) No safety relief valve shall be smaller than 3/4 inch nominal pipe size (diameter nominal 20) nor larger than 4 1/2 inch nominal pipe size (diameter nominal 115) except that boilers having a heat input not greater than 15,000 Btu/hr (4.4 kilowatts) may be equipped with a rated safety relief valve of 1/2 inch nominal pipe size (diameter nominal 15). The inlet opening shall have an inside diameter approximately equal to, or greater than, the seat diameter. In no case shall the minimum opening through any part of the valve be less than 1/4 inch (6 millimeters) diameter or its equivalent area.

(vii) The required steam relieving capacity, in pounds per hour, of the pressure relieving device or devices on a boiler shall be the greater of that determined by dividing the maximum output in Btu at the boiler nozzle obtained by the firing of any fuel for which the unit is installed by 1,000, or shall be determined on the basis of pounds of steam generated per hour per square foot of boiler heating surface as given in Table 1 Exhibit 2 as shown in Figure 65.100(o)(1)(A)(v). For cast iron boilers the minimum valve capacity shall be determined by the maximum output method.

(viii) In every case, the safety relief valve capacity for each boiler with a single safety relief valve shall be such that, with the fuel burning equipment installed and operated at maximum capacity, the pressure cannot rise more than 10% above the maximum allowable working pressure. When more than one safety relief valve is used, the overpressure shall be limited to 10% above the set pressure of the highest set valve.

(ix) Safety relief valve piping. No valve shall be placed between the safety relief valve and the boiler nor on the discharge pipe between the safety relief valve and the drain. When a discharge pipe is used, it shall be full size and fitted with an open drain to prevent water from lodging in the upper part of the safety relief valve or in the discharge pipe. When an elbow is placed on the safety relief valve discharge pipe, it shall be located close to the valve outlet. The discharge pipe shall be securely anchored and supported, independent of the valve.

(B) Makeup water connections.

(i) Makeup water, or water treatment shall be introduced into a boiler through the return piping system or through an independent makeup water connection which does not discharge against parts of the boiler exposed to direct radiant heat from the fire. Makeup water, or water treatment shall not be introduced through openings or connections provided for inspection or cleaning, safety relief valve, pressure gage, or temperature gage.

(ii) Makeup water pipe shall be provided with a check valve near the boiler and a stop valve or cock between the check valve and the boiler or between the check valve and the piping system.

(C) Low-water fuel cutoffs and water feeding devices.

(i) All automatically fired hot water supply boiler shall have an automatic low-water fuel cutoff that has been designed for hot water service, and it shall be so located as to automatically cut off the fuel supply when the surface of the water falls to a level below the normal waterline established.

(ii) The MAWP of all low water fuel cutoff and flow sensing devices shall be set at or above the boiler stamped MAWP.

(iii) When low-water fuel cutoff and feedwater pump controls are combined in a single device, an additional separate low-water fuel cutoff shall be installed. The additional control shall be wired in series electrically with the existing low-water fuel cutoff.

(iv) When a low-water fuel cutoff is housed in either the water column or a separate chamber it shall be provided with a blowdown pipe and valve not less than 3/4 inch nominal pipe size (diameter nominal 20). The arrangement shall be such that when the water column is blown down, the water level in it will be lowered sufficiently to activate the low-water fuel cutoff device.

(v) As there is no normal water line to be maintained in a hot water supply boiler, any location of the low-water fuel cutoff above the lowest safe water level established by the boiler manufacturer is satisfactory.

(vi) All automatically fired hot water heating boilers, when installed in a forced circulation system and not under continuous attendance, shall be equipped in the manner described in this subsection. A coil-type boiler or a water-tube boiler requiring forced circulation to prevent overheating of the coils or tubes shall have a flow sensing device which is listed by a nationally recognized testing agency to prevent burner operation at a flow rate inadequate to protect the boiler unit against overheating.

(vii) If a water feed device is utilized, it shall be constructed to prevent feedwater from entering the boiler through the water column or separate chamber of the low-water fuel cutoff.

(D) Pressure gages.

(i) Each hot water supply boiler shall have a pressure or altitude gage connected to it or to its flow connection which cannot be shut off from the boiler except by a cock with tee or lever handle placed in a pipe near the gage. The handle of the cock shall be parallel to the pipe in which it is located when the cock is open.

(ii) The scale on the dial of the pressure or altitude gage shall be graduated to not less than 1 1/2 nor more than 3 1/2 times the pressure at which the safety relief valve is set. The gage shall be provided with effective stops for the indicating pointer at the zero point and at the maximum pressure point.

(iii) Piping and tubing for pressure or altitude gage connections shall be of nonferrous metal when smaller than 1 inch nominal pipe size (diameter nominal 25).

(E) Stop valves.

(i) Stop valves shall be located at an accessible point in the supply and return pipe connections near the boiler nozzle of a single hot water supply boiler installation to permit draining the boiler without emptying the system.

(ii) When the boiler is located above the system and can be drained without draining the system, stop valves may be eliminated.

(iii) Type of stop valve. When stop valves over two inches in size are used, they shall be of the outside screw-and-yoke rising stem type or of such other type as to indicate at a distance whether

it is closed or open by the position of its stem or other operating mechanism. The wheel may be carried either on the yoke or attached to the stem. If the valve is of the plug cock type, it shall be fitted with a slow opening mechanism and an indicating device and the plug shall be held in place by a guard or gland.

(F) Drain valve.

(i) Each hot water supply boiler shall have one or more drain connections, fitted with valves or cocks connecting to the lowest water containing spaces. The minimum size of the drain piping, valves, and cocks shall be 3/4 inch nominal pipe size (diameter nominal 20). The discharge piping shall be full size to the point of discharge. When the blowoff connection is located at the lowest water containing space, a separate drain connection is not required.

(ii) Minimum pressure rating. The minimum pressure rating of valves and cocks used for blowoff or drain purposes shall be at least equal to the pressure stamped on the boiler, but in no case less than 30 psig (207 kilopascals). The temperature rating of such valves and cocks shall not be less than 250 degrees Fahrenheit (121 degrees Celsius).

(G) Provisions for thermal expansion. If a system is equipped with a check valve or pressure reducing valve in the cold water inlet line, consideration should be given to the installation of an airtight expansion tank or other suitable air cushion. Otherwise, due to the thermal expansion of the water, the safety relief valve may lift periodically. If an expansion tank is provided, it shall be constructed in accordance with the ASME Code, Section VIII, Division 1 or Section X. Except for pre-pressurized tanks, which should be installed on the cold water side, provisions shall be made for draining the tank without emptying the system.

(4) Potable water heaters.

(A) Safety relief valves.

(i) Potable water heaters (tank type) shall have at least one officially rated pressure temperature safety relief valve of the automatic reseating type set to relieve at or below the maximum allowable pressure of the heater. No safety relief valve shall be smaller than 3/4 inch nominal pipe size (diameter nominal 20).

(ii) The relief valve shall have a capacity equal to or exceeding the rated burner input of the heater. The relieving capacity for electric water heaters shall be 3,500 Btu/hr (1.0 kilowatts) per kilowatt of input.

(iii) The ASME Btu rating on the valve shall be used to determine the relieving capacity.

(iv) Relief valves shall be connected directly to the heater within the top six inches of the tank.

(v) Relief valves may be installed vertically or horizontally. The center line of the horizontal connection shall be no lower than four inches from the top of the shell.

(vi) Relief valves shall not be connected to an internal pipe in the heater, or to a cold water feed line connected to the heater.

(vii) Safety relief valve piping. No valve shall be placed between the safety relief valve and the boiler nor on the discharge pipe between the safety relief valve and the drain. When a discharge pipe is used, it shall be full size and fitted with an open drain to prevent water from lodging in the upper part of the safety relief valve or in the discharge pipe. When an elbow is placed on the safety relief valve discharge pipe, it shall be located close to the valve outlet. The

discharge pipe shall be securely anchored and supported, independent of the valve.

(B) Water supply.

(i) Water supply shall be introduced into a water heater through an independent water supply connection. Water shall not be introduced through openings or connections provided for cleaning, safety relief valves, drains, pressure gage or temperature gage.

(ii) If the water supply pressure to a hot water heater exceeds 75% of the set pressure of the safety relief valve, a pressure reducing valve is required.

(C) Flow sensing device.

(i) All automatically fired potable water heater, when installed in a forced circulation system and not under continuous attendance, shall be equipped in the manner described in this subsection. A coil-type boiler or a water-tube boiler requiring forced circulation to prevent overheating of the coils or tubes shall have a flow sensing device which is listed by a nationally recognized testing agency to prevent burner operation at a flow rate inadequate to protect the boiler unit against overheating.

(ii) The MAWP of all flow sensing devices shall be set at or above the boiler stamped MAWP.

(D) Temperature gages. Each hot water heater shall have a thermometer located and connected at or near the outlet that is easily readable. The thermometer shall at all times indicate the temperatures of the water in the hot water heater.

(E) Stop valves. Stop valves should be placed in the supply and discharge pipe connections of the hot water heater installation to permit draining the heater without emptying the system.

(F) Drain valves. Each hot water heater shall have a bottom drain pipe connection fitted with a valve or cock connected to the lowest water space practical. The minimum size bottom drain shall be 3/4 inch nominal pipe size (diameter nominal 20).

(G) Provisions for thermal expansion. If a system is equipped with a check valve or pressure reducing valve in the cold water inlet line, consideration should be given to the installation of an airtight expansion tank or other suitable air cushion. Otherwise, due to the thermal expansion of the water, the safety relief valve may lift periodically. If an expansion tank is provided, it shall be constructed in accordance with the ASME Code, Section VIII, Division 1 or Section X. Except for pre-pressurized tanks, which should be installed on the cold water side, provisions shall be made for draining the tank without emptying the system.

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 September 19, 2005.

TRD-200504158

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: November 6, 2005

For further information, please call: (512) 463-7348



CHAPTER 82. BARBERS

16 TAC §§82.1, 82.10, 82.20 - 82.23, 82.26 - 82.28, 82.31, 82.32, 82.40, 82.65, 82.70 - 82.73, 82.75 - 82.77, 82.80, 82.90, 82.100 - 82.102

The Texas Department of Licensing and Regulation ("Department") proposes new 16 Texas Administrative Code §§82.1, 82.10, 82.20 - 82.23, 82.26 - 82.28, 82.31, 82.32, 82.40, 82.65, 82.70 - 82.73, 82.75 - 82.77, 82.80, 82.90, and 82.100 - 82.102, regarding the licensing and regulation of barbers.

These rules are necessary to implement acts of the 79th Texas Legislature, Senate Bill 411 which transferred the functions of the Texas State Board of Barber Examiners ("Board") to the Texas Department of Licensing and Regulation effective September 1, 2005 and abolished the Board. Therefore, the Department proposes new administrative rules regarding the regulation of barbers under the provisions of Texas Occupations Code, Chapters 1601 and 1603. The Department in a separate rulemaking action will propose the repeal of rules at 22 Texas Administrative Code Chapter 51 that will be replaced by the proposed rules contained herein.

Section 82.1 describes the department's authority for adopting Chapter 82.

Section 82.10 defines key terms relating to the regulation of barbers.

Section 82.20 establishes license application requirements for individuals under Texas Occupations Code Chapters 1601 and 1603 for Class A Barber Certificate, Teacher's Certificate, Barber Technician License, Manicurist License, Student Permit and Registered Examination Proctor.

Section 82.21 establishes examination requirements for individual license types issued under Texas Occupations Code Chapters 1601 and 1603.

Section 82.22 establishes the permit requirements for barber-shops and specialty shops.

Section 82.23 establishes the permit requirements for barber schools.

Section 82.26 establishes the requirements for renewal of a license, permit, certificate or registration issued under Chapter 82.

Section 82.27 establishes the eligibility criteria and requirements for a booth rental permit.

Section 82.28 establishes the requirements for issuance of a license through reciprocity or endorsement.

Section 82.31 lists the term of licenses, permits, certificates and registrations issued under Chapter 82.

Section 82.32 clarifies the process for transfer of student hours from another state.

Section 82.40 clarifies the process for determining the necessity for and the quantity of a fee for the Barber School Tuition Protection Account.

Section 82.65 sets out the purpose and composition of the Advisory Board on Barbering.

Section 82.70 sets out the responsibilities of individual license holders, including compliance with the sanitation requirements of §82.100.

Section 82.71 sets out the responsibilities of shop owners and managers, including compliance with the sanitation requirements of §82.100.

Section 82.72 sets out the responsibilities of barber schools, including compliance with the sanitation requirements of §82.100.

Section 82.73 sets out the responsibilities of students.

Section 82.75 sets out the responsibilities of registered examination proctors.

Section 82.76 sets out the responsibilities of barber technicians.

Section 82.77 sets out the requirements for taking a barber refresher course.

Section 82.80 establishes license, permit, certificate and other fees under this chapter and Texas Occupations Code Chapters 1601 and 1603.

Section 82.90 sets out the criteria for imposition of administrative penalties and sanctions.

Section 82.100 establishes sanitation requirements.

Section 82.101 establishes curriculum requirements.

Section 82.102 establishes reporting requirements.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the new rules are in effect there will be no cost to state or local government as a result of enforcing or administering the new rules.

Mr. Kuntz also has determined that for each year of the first five-year period the new rules are in effect, the public benefit will be rules that are more easily understood by licensees and the public.

There will be little effect on small businesses or micro-businesses as a result of the proposed new rules, because the proposed new rules are, for the most part, similar to the rules of the Texas State Board of Barber Examiners at 22 Texas Administrative Code Chapter 51, and should not impose new costs on small businesses and micro-businesses. Individuals who choose to apply to become registered examination proctors will incur a \$25.00 annual cost for the registration, along with a one-time \$50.00 fee for a training course.

Comments on the proposal may be submitted to Tamala Fletcher, Legal Secretary, Office of the General Counsel, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: tamala.fletcher@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The new rules are proposed under Texas Occupations Code Chapters 51, 1601 and 1603, which authorize the Texas Commission of Licensing and Regulation ("Commission") to adopt rules as necessary to implement Chapter 51 and any other law establishing a program regulated by the Department, and which authorize the Commission to adopt rules for the administration of Chapter 1603 and the operations of the Department in regulating barbering.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code Chapters 51, 1601 and 1603. No other statutes, articles, or codes are affected by the proposal.

§82.1. Authority.

These rules are promulgated under the authority of the Texas Occupations Code Chapters 51, 1601 and 1603.

§82.10. Definitions.

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

(1) Act--Texas Occupations Code Chapters 1601 and 1603.

(2) Barber Refresher Course--A department-approved to renew or update the skills of a currently licensed barber, or a barber who has not practiced for a period of time, or to prepare a formerly licensed barber for the examination.

(3) Barber School--When used in this chapter includes both barber schools and barber colleges.

(4) Beard--The beard extends from below the line of demarcation and includes all facial hair regardless of texture and shall only be trimmed, shaped or cut by a licensed barber.

(5) Board--The Advisory Board on Barbering.

(6) Commission--The Texas Commission of Licensing and Regulation.

(7) Department--The Texas Department of Licensing and Regulation.

(8) Hair Relating to Haircutting--The hair extending from the scalp of the head is recognized as the hair trimmed, shaped or cut in the process of hair cutting.

(9) License--A license, permit, certificate, or registration issued under the authority of the Act.

(10) Line of Demarcation between "the hair" and "the beard"--The demarcation boundary between scalp hair ("the hair") and facial hair ("the beard") is a line drawn from the bottom of the ear.

(11) Out of Scope--

(A) The use of any blade or cutting tool for the purpose of removing any or all corns or calluses is considered a medical practice and is prohibited. The possession or storage of any blade or cutting tool for the purpose as contemplated by this rule is prima facie evidence of use.

(B) The use of any drill or similar tool designed for use by a manicurist or pedicurist is prohibited without proof of certification of training of that manicurist or pedicurist through a program approved by the department.

(C) Any chemical currently not approved for a particular use by the EPA, FDA, or any other governmental agency is prohibited.

(D) Or any other practice prohibited by the Act or these rules.

(12) Registered Examination Proctor--An individual authorized by the Department to evaluate or grade a practical examination for the department for a certificate or license issued under Texas Occupations Code, Chapter 1601.

(13) Sideburn--A sideburn may be part of a hair cut or style that is a continuation of the natural scalp hair growth, and must not extend below the bottom of the ear lobe, and must not be connected to any other bearded area on the face. Only a licensed barber shall trim, shape or cut the sideburns with any type of razor.

§82.20. Licensing, Permitting and Certification Requirements--Individuals.

(a) To be eligible for a Class A Barber Certificate, a Teacher's Certificate, Barber Technician License, Manicurist License, or Student Permit, an applicant must:

- (1) submit the application on a Department approved form;
- (2) pass the applicable examination;
- (3) pay the fee required under §82.80; and
- (4) meet other applicable requirements of the Act and this section.

(b) Class A Barber Certificate--To be eligible for a Class A barber certificate, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.253;

(c) Teacher's Certificate--To be eligible for a teacher's certificate, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.254;

(d) Barber Technician License--To be eligible for a Barber Technician License, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.256;

(e) Manicurist License--To be eligible for a Manicurist license, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.257;

(f) Student Permit--To be eligible for a Student permit, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.260;

(g) Registered Examination Proctor--To be eligible for an Examination Proctor registration, an applicant must:

- (1) have held an active teacher's certificate for at least two of the five years preceding the application;
- (2) hold an active teacher's certificate;
- (3) obtain a certificate of completion from a department approved training course;
- (4) submit a completed application for initial registration on a form approved by the department; and
- (5) pay the applicable fee under §82.80.

(h) Any person who holds a certificate of registration, permit, or license issued by the department shall notify the department in writing of any name change within thirty days and request a revised registration, permit or license.

(i) It is the responsibility of licensees to maintain a current mailing address on file with the department. All licensees must notify the department not later than 14 calendar days following any change of mailing address.

§82.21. License Requirements--Examinations.

(a) Upon completion of 1,500 hours in not less than nine months, a student may apply for examination for a Class A registered barber certificate. This application shall be on forms furnished by the department.

(b) Each applicant shall submit to the department the following:

- (1) the application for examination form;
- (2) a statement from the manager or owner of the barber school, stating that the course is completed;
- (3) the examination fee;
- (4) the student certificate with photograph. Unless the student supplied a size two-inch by two-inch permanent-type photograph (no Polaroid photographs) upon application for enrollment, he or she shall submit a new photograph of this size and type.

(c) Each school will be furnished schedules of examination dates and locations. Students will not be individually notified. Each barber school is responsible for ensuring that applications for examinations are provided to the department no later than the 15th day of the month prior to the date on which the student is scheduled to take any examination, written or practical.

(d) When appearing for an examination for a Class A barber certificate or a teacher's certificate, the examinee shall bring the instruments necessary to give a practical demonstration of barbering services.

(e) An examinee for a manicurist or barber technician license shall bring to the examination any instruments necessary for a practical demonstration of the services distinctive to his or her specialty.

(f) The examinee shall provide a model, of 18 years of age or older, on whom to demonstrate the practical work.

(g) Each examinee is required to wear a clean and fastened barber smock, without any lettering or logos during both written and practical portions of the exams.

(h) The examinee shall provide a current, valid photo identification.

(i) The department will notify an examinee of the results of the examination by letter. The letter will be sent to the student in care of the barber school that he or she attended.

(j) The department will notify an examinee if the examinee fails either or both portions of the examination. If an examinee fails any part of the examination, he or she will be required to complete a new exam application; submit a new examination fee; and retake the entire failed portion, either written or practical, or both portions in the event the entire examination was failed.

(k) Any student or examination applicant having had a name change during his or her enrollment at any department licensed barber school must notify the department in writing prior to the date on which the student or examination applicant is scheduled to take any examination, written or practical.

§82.22. Permit Requirements--Barbershops and Manicurist Specialty Shops.

(a) To be eligible for a Barbershop or Manicurist Specialty Shop Permit, an applicant must:

- (1) submit the application on a department approved form;
- (2) pay the fee required under §82.80; and
- (3) meet other applicable requirements of the Act and this section.

(b) Barbershop Permit--To be eligible for a barbershop permit, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.303;

(c) Manicurist Specialty Shop Permit--To be eligible for a Manicurist Specialty Shop Permit, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.305;

§82.23. Permit Requirements--Barber Schools.

(a) To be eligible for a Barber School Permit, an applicant must:

- (1) submit the application on a department approved form;
- (2) pay the fee required under §82.80 and any required fee under §82.40; and
- (3) meet other applicable requirements of the Act and this section.

(b) Barber School Permit--To be eligible for a barber school permit, an applicant must meet the eligibility requirements set forth in Texas Occupations Code Chapter 1601, Subchapter H.

(c) The department shall inspect a proposed new barber school to determine that it fulfills all requirements of the department, applicable rules, and the Act. The required inspection (permit) fee or the re-inspection fee must be received by the department before the initial inspection or re-inspection will be scheduled.

§82.26. Licensing, Permitting, Certification and Registration Requirements--Renewals.

To renew a license, permit, registration or certificate, an applicant must:

(1) continue to meet the requirements for license, permit, registration or certificate issuance;

(2) comply with other applicable requirements of the Act or these rules;

(3) submit a completed renewal application on a form approved by the department; and

(4) pay the applicable fee under §82.80.

§82.27. Booth Rental Permit.

(a) Barbers or manicurists that contract, lease, or rent a booth in a barbershop or specialty shop must have an individual booth rental permit.

(b) Booth rental is defined as a shop within a shop. Even though you do not own the shop, you are responsible for the area that you rent.

(c) If you are issued a W2 form by the owner of the shop at the end of the year, the owner of the shop pays your withholding taxes. You are not required to have a booth rental permit.

(d) If you are self-employed and pay your own withholding taxes, or have no proof or documentation of employment you are required to have a booth rental permit.

§82.28. Reciprocity or Endorsement.

(a) The examination requirement shall be waived for any person who completes the application for and payment of fees prescribed by the department for a certificate of registration, license, or permit and who submits satisfactory proof that he or she holds a current, valid certificate, license or permit from another state or country that has substantially equivalent licensing requirements to those of the State of Texas.

(b) Applicant must provide:

(1) The completed application, all required documents, and fees for a Class A registered barber certificate and the fee for the current law and rules book published by the department must be submitted to the department office in Austin.

(2) Proof that the applicant is at least 16 years of age and has at least a seventh grade education.

(3) A current original barber license from the home licensing state or country.

(4) A certified transcript of hours completed in an approved barber school and proof of graduation. If the applicant has an apprentice or assistant barber license, proof of 1,500 hours of barber school or working experience will be required from the licensing board or barber school.

(5) One current two-inch by two-inch process photograph (not Polaroid).

(6) A letter from the licensing board in the home state, bearing its official seal of office, stating that the applicant's license is current and in good standing.

(c) Texas requires 1,500 hours of training substantially equivalent to the Texas curriculum. If the applicant graduated in a state that required less than 1,500 hours, documented work experience may be substituted at the rate of 25 hours per month worked, up to a maximum of 500 hours, or the applicant must complete the balance of hours required in an approved Texas barber school.

§82.31. Licenses--License Terms.

(a) The following licenses issued under this chapter shall have a term of two years from the date of issuance:

(1) Class A Barber Certificate;

(2) Teacher's Certificate;

(3) Barber Technician License;

(4) Manicurist License;

(5) Barbershop Permit;

(6) Manicurist Specialty Shop Permit; and

(7) Booth Rental Permit.

(b) The following licenses issued under this chapter shall have a term of one year from the date of issuance:

(1) Student Permit;

(2) Barber School Permit; and

(3) Examination Proctor Registration.

§82.32. Transfer of Student Hours from Out of State.

(a) A student barber may transfer hours of training as a barber from school of other states to Texas by providing to the department:

(1) an official transcript from the school attended, showing hours credited;

(2) a statement from the barber board of that state giving hours credited;

(3) proof of at least a seventh grade education;

(4) two recent, identical pictures, size two inches by two inches; and

(5) payment of applicable examination fee.

(b) If the student has not completed 1,500 hours in another state, credit for hours completed will be given when he or she is enrolled in a Texas barber school and when a student permit is issued.

§82.40. Barber School Tuition Protection Account.

(a) Pursuant to §1601.3571 of the Act, the Barber School Tuition Protection Account is created to refund unused tuition if a barber school ceases operation before its course of instruction is complete.

(b) In each year in which the balance of the Barber School Tuition Protection Account is less than \$25,000 the Department will determine a fee that shall be paid by all permitted barber schools to the account.

(c) The necessity for assessing the fee will be determined by the Department when it conducts its annual account balance review prior to December 31st. The fee that is assessed by the Department shall be in effect for a period of 12 months.

(d) The fee shall be paid by each permitted barber school, upon annual renewal of the license during the 12-month period and shall be

paid in addition to the renewal fee. The renewal notice sent by the Department will reflect the fee due to the account.

(e) In addition to any other fees, all new schools applying for a barber school permit shall pay the prescribed fee to the account before a permit will be issued.

(f) The total payment of a claim from the Barber School Tuition Protection Account may not exceed \$3,000.

§82.65. Advisory Board on Barbering.

(a) The purpose of the Advisory Board on Barbering is to advise the commission and department on adopting rules, setting fees, and enforcing and administering these rules, and Texas Occupations Code Chapters 1601 and 1603, as applicable.

(b) The board is composed of five persons as specified in the Texas Occupations Code Chapter 1601. Board members will serve staggered six-year terms.

(c) Expenses can be reimbursed to board members only when the legislature has specifically appropriated money for that purpose, and only to the extent of the appropriation.

(d) Expense reimbursements to board members are limited to authorized expenses incurred while traveling to and from board meetings and shall be limited to those allowed by the State of Texas Travel Allowance Guide, the Texas Department of Licensing and Regulation policies governing employee travel allowances, and the General Appropriations Act.

§82.70. Responsibilities of Individual License Holders.

(a) Only a permitted barber school or a licensed barber may advertise in the yellow pages of the telephone directory under "Barber."

(b) A licensed barber who is enrolled in a barber refresher course cannot at the same time be employed or serve as a manager or instructor in the school.

(c) License holders, including Class A barbers, teachers, barber technicians and manicurists are responsible for compliance with the sanitation requirements of §82.100.

§82.71. Responsibilities of Shop Owner and/or Shop Manager.

(a) The owner of a barbershop or manicurist specialty shop and the shop manager in whose name the shop permit is jointly issued, if different from the owner, shall both be responsible individually and jointly for ensuring that all persons who work in a shop are properly licensed at all times. Individuals who do not hold a current license and/or permit required by the department shall not be allowed to engage in barbering. Shop owners and shop managers commit an offense in violation of department rules if an individual with an expired license or permit or no license or no permit engages in barbering in a shop.

(b) Shop owners and/or shop managers shall verify that all employees and independent contractors have current licenses and permits, as applicable.

(c) The shop owner and/or shop manager shall maintain a current list of all individuals who work in a shop at the time of inspection including employees and independent contractors who engage in barbering. The list is to be made available to department inspectors upon demand. The list shall contain at least the following information:

(1) name of each individual working in the shop;

(2) the file number (license number) for each individual;

(3) the booth rental permit number for each independent contractor (booth renter) whose booth rental permit was issued on or after September 1, 2004;

(4) whether the individual is an employee or an independent contractor who engages in barbering;

(5) the type of license or permit held by the individual (e.g., barber, manicurist;)

(6) the expiration date of the individual's license and/or permit; and

(7) the expiration date of the independent contractor's booth rental permit.

(d) Each barbershop may display a barber pole. This pole shall be the traditional red, white with the optional blue.

(e) In addition, barbershops shall display the words "Barber Shop" or "Barber Salon" or any phrase containing the word "Barber" on the entrance door or window of the shop in letters at least three inches high.

(f) A barbershop or specialty shop shall not prepare for sale or consumption food and drink except by vending machine, any food or drink must be disposed of in a closed container and the shop shall be separated by a solid wall and have a separate entrance if located in the same building with a restaurant or food preparation area. This rule will not apply to a licensed barbershop or specialty shop in a department store when the sale of food and drink is not immediately adjacent to the shop.

(g) No products may be sold in a barbershop or specialty shop other than products related to the practicing of barbering, including, but not limited to shampoos and treatment products, hair dyes, bleaches, wigs, toupees and hairpieces, cosmetic preparations and skin treatments, manicuring preparations, and implements, appliances, or ornaments used on the hair, skin, or nails.

(h) Permit holders are responsible for compliance with the sanitation requirements of §82.100.

§82.72. Responsibilities of Barber Schools.

(a) If a barber school changes ownership, the new owner shall notify the department of the transfer not later than the 10th day before the date on which the change becomes effective, and obtain a new permit from the department within thirty days of the change of ownership.

(b) The department shall inspect a barber school that has changed ownership to determine that it fulfills all requirements of the department and of the Act.

(c) A new permit fee shall be required from a barber school that has changed ownership.

(d) Each barber school must inform the department in writing which hours and days the school is open and closed.

(e) A barber school must have one barber chair available for each student in attendance on the practical floor. Additional students in attendance must be assigned to the beginner's department or theory classroom.

(f) A barber school shall furnish each student within seven days of the student's enrollment his or her own copy of the law and rules book published by the department. Each student shall retain permanent ownership of the books so that he or she will have ready access to and be knowledgeable of the laws and rules that regulate barbering.

(g) The barber school must issue within seven days of enrollment each student his or her own textbook or books which shall contain all subjects referred to in Texas Occupations Code §1601.558. The department must approve each textbook or books before it may be used in the barber school curriculum.

(h) Within 30 days of enrollment, a barber school shall furnish to or ensure that each student is equipped with his or her own personal tools which must include the following:

- (1) one professional electric clipper of modern design;
- (2) one neck duster;
- (3) one barber shears;
- (4) one thinning shears;
- (5) one razor equipped with disposable blades;
- (6) three barber combs;
- (7) one styptic powder or liquid styptic;
- (8) one tool kit (carrying kit);
- (9) one hair styling brush;
- (10) one neck clip;
- (11) one can clipper oil;
- (12) two washable uniforms;
- (13) one hand held hair dryer; and
- (14) one T-edger or outliner;

(i) Optional equipment for the kit will be as follows:

- (1) one razor strop;
- (2) one razor hone; and
- (3) one straight razor.

(j) No student may take instruction or accrue hours for practical work unless he or she is equipped with the tools required above.

(k) Each barber school shall have:

(1) for each student in attendance on the practical floor, enrolled in a manicurist course outlined in §82.101, one complete manicure table, one complete set of manicuring implements for plain and sculptured nails, and one textbook with complete instructions;

- (2) an adequate supply of permanent wave rods;
- (3) a minimum of two canvas-type wig blocks;
- (4) two mannequins, one long-haired and one short-haired;
- (5) a minimum of one wig, one hairpiece, and one hairwoven piece;
- (6) clock;
- (7) bulletin board;
- (8) fire extinguisher with current inspection report; and
- (9) teacher's desk in classroom.

(l) Each classroom consultant to theory instruction in a barber school shall have a valid Texas barber teacher's certificate, an academic degree or specialized training or expertise in the subject being taught if the subject pertains to material relating to barbering.

(m) A student teacher may instruct theory only if assisted by a person holding a teaching certificate.

(n) Whenever an approved barber school is without the services of at least one teacher who has a valid Texas barber teacher's certificate for all or any portion of three consecutive business days, the owner, manager, or authorized agent of the school must notify the department in writing. This notification must be on or before the seventh

calendar day following the first day of the absence, and must explain the absence and its duration or expected duration. No instruction may be provided, and no student shall accrue hours for either practical work or theory for the duration of such absence.

(o) A barber school shall submit each application for enrollment which shall include the following items:

(1) The original of the application for enrollment form.

(2) Proof of a seventh-grade education or its equivalency. This shall be in the form of a transcript or photostatic copy of the diploma, equivalency certificate, or record.

(3) Two recent, identical, permanent-type photographs, size two-inch by two-inch, with applicant's signature on front. No Polaroid photographs will be accepted.

(p) Application for enrollment in a barber school must be sent to the department in complete form within ten days of actual date of enrollment.

(q) Each barber school approved by the department shall include in its instruction the curriculum approved by the department.

(r) All hours earned by a student in a barber refresher course must be reported to the department on the school's monthly progress report, and the student permit must be returned by the school owner or manager within 7 days to the department when the student has completed 300 hours.

(s) No business other than the teaching and practicing of barbering can be operated on the premises of a barber school, with the exception of vending machines or retail products directly relating to hair care.

(t) Only a permitted barber school or a licensed barber may advertise in the yellow pages of the telephone directory under "Barber."

(u) A student enrolled in a barber school must wear a clean uniform or smock during school hours.

(v) Barber schools are responsible for compliance with the sanitation requirements of §82.100.

(w) Barber schools are responsible for compliance with the reporting requirements of §82.102.

§82.73. Responsibilities of Students.

(a) Each person enrolling in an approved barber school in Texas must apply on forms approved by the department.

(b) After the department receives the completed application for enrollment the department will issue a student permit which gives the student the right to do barber service only in the school. Affixed to the student permit will be a current photograph furnished by the student to the school in accordance with §82.72. No student permit is valid unless this photograph is attached thereto.

(c) A student permit expires 12 months after the date of enrollment. If a student has not completed the 1,500 hours required by §82.101 within 12 months from the date of enrollment, upon request by the school the department will reissue the student permit for an additional 12 month period.

(d) The student is responsible for ensuring that a student permit is on display at all times during the student's enrollment at or near the student's work station. No student may accrue hours for practical work or theory unless the permit is displayed in accordance with this subsection.

(e) When a student withdraws or otherwise interrupts his or her training in a barber school, for more than 60 days, after last date of

attendance, the school shall send the student permit to the department within seven days after such withdraw, or interruption. The manager or owner of the barber school shall write on the back of the permit the last day of the student's attendance and the number of credit hours accrued by the student and shall sign the student permit.

(f) If a student returns to the same barber school after interruption the school shall notify the department in writing and a student permit shall be reissued.

(g) When a barber school accepts a transfer of a student from another school the accepting school, shall on behalf of the student, submit to the department in writing the student's enrollment application and a request that the department issue a new student permit for the transferring student.

(1) Upon receipt of the accepting schools notification of transfer the department shall notify the school at which the student was formerly enrolled of such transfer.

(2) Upon receipt of the department's transfer notification the manager or owner of the barber school shall, within seven days of receipt of the department's transfer notification, send to the department the student permit with the following information written on the back:

- (A) the last day of the student's attendance;
- (B) the number of credit hours accrued by the student;
- (C) the manager's or owner's signature.

and
(h) No reenrolled or transferred students may take instruction or accrue hours for practical work or theory unless the new student permit issued by the department is on display at or near the student's work station.

§82.75. Responsibilities of Registered Examination Proctor.

(a) Responsibilities of Registrant

(1) A registrant shall be knowledgeable of and comply with all standards, specifications, and procedures established by the commission or department relating to the evaluation or grading of practical examinations.

(2) A registrant shall be knowledgeable of and have expertise in the subject matter(s) of the practical examination. It is the obligation of the registered examination proctor to exercise reasonable judgment and skill in the evaluation or grading of practical examinations conducted under Texas Occupations Code, Chapter 1601.

(3) A registrant shall be professional, honest and trustworthy in the evaluation or grading of practical examinations and any activities related to evaluating or grading practical examinations.

(4) A registrant must hold a current and active teacher certification throughout the entire period of the registration.

(b) Responsibilities of Registrant--Prohibited Acts

(1) A registrant shall not perform as an examination proctor without a current and active examination proctor registration.

(2) A registrant shall not evaluate or grade a practical examination of an applicant who is the registrant's current student.

(3) A registrant shall not evaluate or grade a practical examination of an applicant who is the registrant's current employee, employer or co-worker.

(4) A registrant shall not evaluate or grade a practical examination of an applicant who is related to the registrant by family or by other personal or financial interest or relationship.

(5) A registrant shall not knowingly furnish false, misleading, inaccurate, or deceitful information about an applicant or an applicant's performance on a practical examination.

(6) A registrant shall not engage in any act or practice that constitutes a threat, coercion or extortion of an applicant.

(7) A registrant shall not ask for or receive directly from an applicant anything in connection to a registrant's evaluation or grading of an applicant.

(8) A registrant shall not state or imply that the department will grant or approve an applicant's certificate or license, or that the applicant will pass the examination.

(9) A registrant shall not engage in any activity that constitutes dishonesty or misrepresentation of or relating to the registrant's responsibilities.

§82.76. Responsibilities of Barber Technician.

(a) A barber technician may:

(1) assist the barber in shampooing and sterilizing in a barbershop and shall work under the direction of a registered Class A barber; and

(2) give massages, administer facial treatments, and apply makeup.

(b) A barber technician may not cut hair.

§82.77. Barber Refresher Course.

An applicant for a barber refresher course must:

(1) hold a current or expired barber license issued by the State of Texas or another state; and

(2) comply with all student enrollment requirements, and submit a photocopy of the current or expired barber license with the enrollment application.

§82.80. Fees.

(a) Application and Renewal Fees:

(1) Class A Registered Barber License--\$90 (includes \$10 newsletter fee)

(2) Barber Teacher Certificate--\$70

(3) Barber Technician License--\$90 (includes \$10 newsletter fee)

(4) Manicurist License--\$40 (includes \$10 newsletter fee)

(5) Student Permit--\$35 (includes \$10 law and rules book fee)

(6) Barber by Endorsement or Reciprocity from Other States--\$180 (includes \$10 newsletter fee and \$10 law and rules book fee)

(7) Registered Examination Proctor--\$25

(8) Barbershop Permit--\$60

(9) Manicurist Specialty Shop Permit--\$50

(10) Booth Rental Permit--\$50

(b) Barber School Fees:

(1) Original Inspection (Permit)--\$1,000

(2) Re-inspection--\$500

(3) School (Renewal) Permit--\$300

(c) Examination Fees:

- (1) Student Barber--\$40
- (2) Student Manicurist--\$40
- (3) Student Teacher--\$70
- (4) Five-year Barber Teacher--\$70
- (5) Expired License Barber (Old Texan)--\$75

(d) Issuance of a revised or duplicate license, certificate or permit--\$25

(e) Verification of license, permit or certificate to other states--\$25

(f) Law and Rules Book Fee--\$10

(g) Registered Examination Proctor Department Training Course--\$50

(h) Late renewals fees for licenses, certificates and permits issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

§82.90. Administrative Penalties and Sanctions.

If a person violates any provision of Texas Occupations Code, Chapters 1601 or 1603, any provision of this chapter, or any provision of an order of the executive director or commission, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both administrative penalties and sanctions in accordance with the provisions of Texas Occupations Code Chapters 51, 1601, and 1603, and Chapter 60 of this title.

§82.100. Technical Requirements--Sanitation.

(a) Shop Conditions

(1) Establishments to be lighted and ventilated. Every barbershop, manicurist specialty shop, and barber school as defined in the Act shall be properly and adequately lighted and ventilated. An adequate volume of air must be exhausted to remove contaminants from aerosol products. Fresh air must be provided to replace air exhausted.

(2) Walls, ceilings, et cetera, to be kept clean. The walls, ceilings, furniture and other fixtures, and all other exposed surfaces in every such establishment shall be kept clean, free from dust, and maintained in a state of good repair.

(3) Floors to be kept clean. Floors of every such establishment shall be thoroughly cleaned each day. All hair dropping upon the floor shall be removed there from as soon as practicable and in such a manner as not to cause a nuisance. Floors shall be maintained in a state of good repair.

(4) Suitable equipment. Establishments shall be suitably equipped to give adequate service to patrons and shall never be used as a living, dining, or sleeping apartment.

(5) A barbershop, manicurist specialty shop, or barber school must be in a separate room from sleeping quarters and the owner or operator shall permit no person to sleep in any room used wholly or in part as such facility. There shall be no entrances from the facility opening directly into sleeping quarters.

(6) A barbershop, manicurist specialty shop, or barber school must be separated from a place where food is prepared or served by a solid wall from floor to ceiling of lath or plaster or glass or other solid material.

(b) Water Supply, Sewerage, and Toilet Facilities

(1) All barbershops, manicurist specialty shops, or barber schools shall be supplied with an adequate supply of hot and cold water under pressure. When water is not obtained from an acceptable public supply, water must meet the bacteriological, chemical, and physical requirements for drinking water systems of the Department of State Health Services. Whenever possible, the source of water supply shall be from an existing public drinking water system. Cross connections between potable water systems and other systems or equipment containing water or other substances of unknown or questionable safety are prohibited. Protection against backflow and back siphonage shall be provided by proper airgaps or approved backflow preventers where necessary.

(2) Adequate and safe sewage facilities shall be provided. Whenever possible, the facility shall be connected to a public sewerage facility. Where public sewerage is not available, adequate treatment facilities meeting the standards of the Department of State Health Services and approved by the local health authority shall be installed to dispose of sewage.

(3) Toilet facilities with flush toilets shall be suitably located in adequately and properly ventilated compartments with closing doors that lock from the inside. Toilet facilities in toilet rooms, separate for each gender, shall be provided in all places of employment in accordance with paragraph (4) of this subsection.

(4) The number of facilities to be provided for each gender shall be based on the number of employees of that gender for whom the facilities are furnished. Where only one toilet room is reasonably available and can be locked from the inside, the rule requiring separate toilet rooms for each gender can be waived. Where such single-occupancy rooms have more than one toilet facility, only one such facility in each toilet room shall be counted for the purposes of the table: Number employees--Number water closets: 1 to 15--1; 16 to 35--2; 36 to 55--3. When persons other than employees are permitted use of toilet facilities on the premise, the number of such facilities shall be appropriately increased in accordance with the table. For each three required toilet facilities, at least one lavatory shall be located either in the toilet room or adjacent thereto. Where only one or two toilet facilities are provided, at least one lavatory so located shall be provided.

(5) Washing facilities to be provided. Every such establishment shall be provided with suitable and adequate washing facilities for barbering or specialty services. Sinks or wash basins must be of non-absorbent material and properly trapped, with not less than one sink per three chairs for barbershops and one sink per two chairs for barber schools.

(6) Drinking water facilities. Where fountain facilities designed for drinking from the stream are provided for dispensing drinking water, such facilities shall be equipped with approved type angle jet fountain heads. No common drinking cups are permitted.

(c) Use of Equipment

(1) No barber or other person affected by these rules shall use on any person a comb, hairbrush, hair duster, mug, shaving brush, razor, shears, scissors, clippers, or tweezers or any similar articles that are not thoroughly cleaned and disinfected since last used.

(2) The use of vacuum type devices for removal of loose hair is satisfactory provided that the portion of the device coming in contact with the patron is easily removed and constructed for easy cleaning and disinfection and shall be disinfected prior to use on each patron.

(d) Attendants to Wash Hands. Attendants shall wash their hands thoroughly with soap and hot water before attending any person.

(e) Cleaning and Disinfecting.

(1) A container of liquid sterilizer shall be located at each barber chair or station in a shop or school to be used to disinfect or sterilize combs, brushes, scissors or other equipment described in subsection (c)(1) of this section, which may be safely immersed in a liquid sterilizer. Equipment and tools to be placed in the liquid sterilizer shall first be cleaned by wiping, brushing or by running water over the implement to remove hair and other contaminants before being immersed in the liquid sterilizer. The liquid sterilizer shall be kept reasonably free of hair and other debris and shall be replaced in accordance with the manufacturer's instructions.

(2) A disinfectant, germicide, or bactericide used shall be approved by the Environmental Protection Agency and used according to label instructions. When not in use, or when not in a liquid sterilizer, instruments shall be placed in dry disinfectant equipment or under germicidal ultraviolet light. Metallic instruments with a cutting edge shall be disinfected after proper washing by wiping carefully with a clean cotton pad saturated with a 70% ethyl alcohol solution, or clipper blades may be disinfected with spray-type disinfectants approved by the Environmental Protection Agency.

(3) Whirlpool Footspas

(A) As used in this section, "whirlpool footspa" or "spa" is defined as any basin using circulating water.

(B) Before use upon each patron, each whirlpool footspa shall be cleaned and disinfected in the following manner:

(i) All water shall be drained and all debris shall be removed from the spa basin.

(ii) The spa basin must be cleaned with soap or detergent and water.

(iii) The spa basin must be disinfected with an EPA-registered disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity which must be used according to manufacturer's instructions.

(iv) The spa basin must be wiped clean with a dry towel.

(C) At the end of each day, each whirlpool footspa shall be cleaned and disinfected in the following manner:

(i) The screen shall be removed, all debris trapped behind the screen shall be removed, and the screen and the inlet shall be washed with soap and water or detergent and water.

(ii) Before replacing the screen, one of the following procedures shall be performed:

(I) The screen shall be washed with a chlorine bleach solution of one (1) teaspoon of 5% chlorine bleach to one (1) gallon of water, or

(II) The screen shall be totally immersed in an EPA-registered disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity which must be used according to the manufacturer's instructions.

(iii) The spa system shall be flushed with low sudsing soap and warm water for at least ten (10) minutes, after which the spa shall be rinsed and drained.

(D) Every other week (bi-weekly), after cleaning and disinfecting as provided in subparagraph (C) of this paragraph, each whirlpool footspa shall be cleaned and disinfected in the following manner:

(i) The spa basin shall be filled completely with water and one (1) teaspoon of 5% bleach for each one (1) gallon of water.

(ii) The spa system shall be flushed with the bleach and water solution for 5 to 10 minutes and allowed to sit for 6 to 10 hours.

(iii) The spa system shall be drained and flushed with water before use upon a patron.

(E) A record shall be made of the date and time of each cleaning and disinfecting as required by subparagraphs (B), (C), and (D) of this paragraph and indicate whether the cleaning was a daily or bi-weekly cleaning. Cleaning and disinfecting records shall be made available upon request by either a patron or a department representative.

(F) A violation of this section may result in an administrative fine and/or disciplinary action. Each footspa not in compliance with this section may result in a separate violation.

(G) A footspa found to be in violation of the cleaning or disinfecting requirements of this rule, or a footspa for which documentation is not maintained in accordance with this rule must be removed from service and not used again until it has been cleaned and disinfected in accordance with the requirements of this rule and the records have been properly updated.

(f) Towels

(1) Individual towels required. No towels or washcloths shall be used in any such establishment for more than one person without being properly laundered and sanitized by regular commercial laundering or noncommercial laundering process. The process shall include washing with a laundry detergent and rinsing at a minimum temperature of 150 degrees Fahrenheit for not less than 20 minutes. A bleach or sanitizing cycle using a rinse containing 100 ppm of available chlorine for three minutes may be used in addition to the above wash and rinse cycle. A predrying procedure for towels and washcloths will facilitate the removal of hair. Pre or post drying temperatures should not exceed 165 degrees Fahrenheit.

(2) Wet towels and washcloths must be removed from work-stands upon completion of service to each patron.

(3) Individual headrest coverage required. Before any patron attended at any such establishment is permitted to recline in a chair, the headrest of the chair shall be covered with a clean towel or clean sheet or paper not previously used for any other purposes.

(4) Dipping towels, shaving mugs, brushes, et cetera, in water containers is prohibited.

(5) Clean linens, such as face towels, steam towels, and other linens used in any such establishment shall be kept in a closed cabinet at all times.

(6) Single use towels may be used on only one person.

(g) Use of Stick Astringent Prohibited. No alums or other astringent in stick or lump form shall be used in any such establishment. (Powdered or liquid caustics are suggested.)

(h) Creams, Lotions, and Cosmetics. All creams, lotions, and other cosmetics used for patrons must be kept in clean and closed containers.

(i) Powder Boxes. Open powder boxes must not be used in a reception room and booths for patrons. Powder must be in shakers or similar receptacles.

(j) Sanitary Removal of Creams and Semisolid Substances. Creams and other semisolid substances must be dipped from the container with disinfected articles or spatula; removing such substances with the fingers is prohibited.

(k) Communicable Diseases and Infections

(1) Employees. No person who is knowingly affected with a disease in communicable form shall work or be employed in such establishment as required in Texas Occupations Code Chapter 1601.

(2) Patrons. No person who to his/her own knowledge is affected with a known disease in communicable form shall be attended in any such establishment.

(l) Sufficient copies of the rules under this section shall be kept posted in conspicuous places in every such establishment.

(m) To the extent that these rules are in conflict with the Americans with Disabilities Act (ADA), the ADA supersedes these rules.

(n) No animals shall be allowed in a barbershop, specialty shop, or school except animals used in the aid of sensory perceptions, such as seeing eye dogs.

§82.101. Technical Requirements--Curricula.

(a) Full-time student teacher. A person enrolled in the six-month postgraduate course as a student teacher in an approved barber school shall complete a total of 26 consecutive weeks of training in such barber school. The full-time course shall consist of not less than:

- (1) seven hours, 45 minutes per day for a five-day week; or
- (2) six hours, 30 minutes per day for a six-day week.

(b) Part-time student teacher. A part-time student teacher at three-fourths time shall be required to attend school either:

- (1) six hours per day for a five-day week for 33 weeks, plus an additional two days; or
- (2) five hours per day for a six-day week for 33 weeks, plus an additional two days.

(c) Part-time student teacher requirements. On a part-time basis, a student teacher shall complete the course of 1,000 hours in not more than 18 months or shall surrender the student certificate, unless the student produces sufficient evidence of cause to the department in the form of an affidavit.

(d) Requirement for enrollment. No person may enroll in a teacher's course in an approved barber school before receiving a certificate of registration as a Class A barber.

(e) The curriculum to prepare a student for the examination for the teacher's certificate will consist of 1,000 hours, to include:
Figure: 16 TAC §82.101(e)

(f) The curriculum to prepare a student for the examination for the class A barber certificate will consist of 1,500 hours to include the following:
Figure: 16 TAC §82.101(f)

(g) The curriculum to prepare a student for the examination for the manicurist license will consist of 600 hours, to be completed in a course of not less than 16 weeks, to include:
Figure: 16 TAC §82.101(g)

(h) The curriculum to prepare a student for the examination for the barber technician license will consist of 300 hours, to include:
Figure: 16 TAC §82.101(h)

(i) The curriculum for a barber refresher course will consist of 300 hours to include:

Figure: 16 TAC §82.101(i)

§82.102. Technical Requirements--Reporting.

(a) Each barber school must submit to the department a monthly progress report of hours accrued by each student enrolled.

(b) The report is due to the department no later than the 15th day of the month following the month covered in the report.

(c) The Progress Report Barber School Monthly Records of Student Hours must include the following:

- (1) the words "Progress Report Barber School Monthly Records of Student Hours;"
- (2) registered teachers' names and certificate numbers;
- (3) instructors' names and license numbers;
- (4) name of school and address;
- (5) month and year;
- (6) student names in alphabetical order (10 per page);
- (7) a graph comprised of:
 - (A) a vertical heading of days of the month (1 - 31);
 - (B) student certificate number;
 - (C) monthly hours acquired;
 - (D) previous hours;
 - (E) grand total hours; and
 - (F) course;
- (8) student's signature;
- (9) signed by instructor or school owner.

(d) The department may refuse to accept student hours for:

- (1) schools' failure to staff school with qualified instructors and teachers;
- (2) lack of presence of presence of qualified instructors and teachers in the schools; and
- (3) schools' failure to conduct required instruction in theory and practical training.

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

Filed with the Office of the Secretary of State on September 19, 2005.

TRD-200504172
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: November 6, 2005
For further information, please call: (512) 463-6208



CHAPTER 83. COSMETOLOGISTS

16 TAC §§83.1, 83.10, 83.20 - 83.26, 83.28, 83.31, 83.40, 83.65, 83.70 - 83.73, 83.75, 83.80, 83.90, 83.100 - 83.103

The Texas Department of Licensing and Regulation ("Department") proposes new rules at 16 Texas Administrative Code,

Chapter 83, §§83.1, 83.10, 83.20 - 83.26, 83.28, 83.31, 83.40, 83.65, 83.70 - 83.73, 83.75, 83.80, 83.90, and 83.100 - 83.103 regarding the licensing and regulation of cosmetology.

These rules are necessary to implement Senate Bill 411 ("SB 411"), 79th Legislature, Regular Session, 2005, which transferred the regulation of cosmetology from the Texas Cosmetology Commission to the Texas Department of Licensing and Regulation effective September 1, 2005, and which amended Texas Occupations Code, Chapter 1602 and added new Chapter 1603, relating to the regulation of cosmetology. These rules also implement House Bill 3149, 79th Legislature, Regular Session, 2005, relating to inactive license status. These proposed rules are filed simultaneously with the proposed repeal of the former Texas Cosmetology Commission's rules in order to reorganize and clarify the rules regulating cosmetology under Title 16, Texas Administrative Code, relating to the rules of the Texas Department of Licensing and Regulation.

Section 83.1 prescribes the Department's authority to propose rules pursuant to Texas Occupations Code, Chapters 51, 1602, and 1603.

Section 83.1 describes the Department's authority for adopting Chapter 83.

Section 83.10 defines key terms relating to the regulation of cosmetologists.

Section 83.20 establishes license application requirements for individuals under Texas Occupations Code Chapters 1602 and 1603 for an Operator License, Facialist Specialty License, Manicurist Specialty License, Hairweaving/Braiding Specialty Certificate, Wig Specialty Certificate, Shampoo/Conditioning Specialty Certificate, Instructor License, Facial Instructor Specialty License, Manicure Instructor Specialty License, Shampoo Apprentice Permit, Student Permit, Student-Instructor Registration, and Examination Proctor Registration.

Section 83.21 establishes examination requirements for individual license types issued under Texas Occupations Code Chapter 1602 and 1603.

Section 83.22 establishes the requirements for beauty salons and booth rental (independent contractor) licenses.

Section 83.23 establishes requirements for private beauty culture school licenses and public beauty culture school certificates.

Section 83.24 establishes the requirements for an inactive license under Texas Occupations Code Chapter 1602.

Section 83.25 establishes continuing education requirements for individual licensees.

Section 83.26 establishes requirements for renewing a license, permit, certificate or registration under Chapter 83.

Section 83.28 establishes the requirements for issuance of a license through reciprocity or endorsement.

Section 83.31 lists the terms of licenses, permits, certificates, and registrations issued under Chapter 83.

Section 83.40 clarifies the process for determining the necessity for and the quantity of a fee for the Private Beauty Culture School Tuition Protection Account.

Section 83.65 sets forth the purpose and composition of the Advisory Board on Cosmetology.

Section 83.70 sets forth the responsibilities of individual license holders, including compliance with the sanitation requirements of §83.100.

Section 83.71 sets forth the responsibilities of beauty salons, including compliance with the sanitation requirements of §83.100.

Section 83.72 sets forth the responsibilities of beauty culture schools, including compliance with the sanitation requirements of §83.100.

Section 83.73 sets forth the responsibilities of students.

Section 83.75 sets forth the responsibilities of registered examination proctors.

Section 83.80 establishes license, permit, certificate and other fees under this chapter and Occupations Code Chapters 1602 and 1603.

Section 83.90 sets forth the criteria for the imposition of administrative penalties and sanctions.

Section 83.100 establishes sanitation requirements.

Section 83.101 establishes curriculum requirements.

Section 83.102 establishes facility and equipment requirements.

Section 83.103 establishes requirements for booth rental (independent contractor) licensees.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the new rules are in effect there will be no cost to state or local government as a result of enforcing or administering the new rules.

Mr. Kuntz also has determined that for each year of the first five-year period the new rules are in effect, the public benefit anticipated as a result of the proposed rules will be that the Department's rules relating to cosmetology will be more easily understood by licensees who are required to comply with the rules and that the rules will promote the Department's operational efficiency in administering Texas Occupations Code, Chapters 1602 and 1603.

Mr. Kuntz has determined that there may be a minimal economic cost to persons who wish to become a registered examination proctor, a new license for persons who grade cosmetology practical examinations, pursuant to SB 411, 79th Legislature, Regular Session, 2005. In addition there will be a cost to continuing education providers of \$5.00 per continuing education records submitted to the Department.

Comments on the proposal may be submitted to Caroline Jackson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: caroline.jackson@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The new rules are proposed under Texas Occupations Code, Chapters 51, 1602, and 1603, which authorizes the Department 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 proposal are those set forth in Texas Occupations Code, Chapters 51, 1601, and 1603. No other statutes, articles, or codes are affected by the proposal.

§83.1. Authority.

These rules are promulgated under the authority of the Texas Occupations Code, Chapters 51, 1602 and 1603.

§83.10. Definitions.

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

(1) Act--Texas Occupations Code, Chapters 1602 and 1603.

(2) Beauty Culture School--A cosmetology school licensed under the Act, public or private.

(3) Board--The Advisory Board on Cosmetology.

(4) Department--The Texas Department of Licensing and Regulation.

(5) Commission--The Texas Commission of Licensing and Regulation.

(6) Cosmetology establishment--A beauty salon, specialty salon or school, public or private, licensed under the Act.

(7) Facialist--A person who holds a specialty license and who is authorized to practice the application of facial cosmetics, manipulations, eye tabbing, arches, lash and brow tints, and the temporary removal of hair by the use of depilatory, mechanical tweezers, or wax.

(8) Instructor--An individual authorized by the Department to offer instruction in any act or practice of cosmetology under Texas Occupations Code, §1602.002.

(9) Law and Rules Book--Texas Occupations Code, Chapters 1602 and 1603, and 16 Texas Administrative Code, Chapter 83.

(10) License--A Department issued permit, certificate, approval, registration, or other similar permission required by law.

(11) Manicurist--A person who holds a specialty license and who is authorized to treat a person's nails by cutting, trimming, polishing, tinting, coloring, cleansing, manicuring, attaching false nails or removing hair from a person's body using depilatories or mechanical tweezers.

(12) Operator--An individual authorized by the Department to perform any act or practice of cosmetology under Texas Occupations Code, §1602.002.

(13) Registered Examination Proctor--An individual authorized by the Department to evaluate or grade a practical examination for the Department for a license issued under Texas Occupations Code, Chapter 1602.

(14) Shampoo Apprentice--A person authorized to perform the practice of cosmetology as defined in §1602.002(3), relating to shampooing and conditioning a person's hair.

(15) Specialty Instructor--An individual authorized by the Department to offer instruction in an act or practice of cosmetology limited to Texas Occupations Code, §1602.002(7), (9), and/or (10). Specialty instructors may only teach the subject matter in which they are licensed.

(16) Specialty Salon--A cosmetology establishment in which only the practice of cosmetology as defined in Texas Occupations Code, §1602.002(2), (4), (7), (9), or (10) is performed. Specialty salons may only perform the act or practice of cosmetology in which the salon is licensed.

(17) Wet disinfectant soaking container--A container with a cover to prevent contamination of the disinfectant solution and of a sufficient size such that the objects to be disinfected may be completely immersed in the disinfectant solution.

§83.20. License Requirements--Individuals.

(a) To be eligible for an operator license, facialist specialty license, manicurist specialty license, hairweaving/braiding specialty certificate, wig specialty certificate, or shampoo/conditioning specialty certificate, an applicant must:

(1) pass a written and practical examination required under §83.21;

(2) submit a completed application on a Department approved form;

(3) pay the fee required under §83.80;

(4) be at least 17 years of age;

(5) have obtained a high school diploma, or the equivalent of a high school diploma, or have passed a valid examination administered by a certified testing agency that measures the persons ability to benefit from training; and

(6) have completed the following hours of cosmetology curriculum in a beauty culture school:

(A) for an operator license, one of the following:

(i) 1500 hours of instruction in a beauty culture school; or

(ii) 1000 hours of instruction in beauty culture courses and 500 hours of related high school courses prescribed by the Department in a vocational cosmetology program in a public school.

(B) for a facialist specialty license, 750 hours of instruction.

(C) for a manicurist specialty license, 600 hours of instruction.

(D) for a hairweaving/braiding specialty certificate, 300 hours of instruction completed in not less than eight weeks from date of enrollment.

(E) for a wig specialty certificate, 300 hours of instruction completed in not less than eight weeks from date of enrollment.

(F) for a shampoo/conditioning specialty certificate, 150 hours of instruction completed in not less than four weeks from date of enrollment.

(b) To be eligible for an instructor license, facial instructor specialty license or manicure instructor specialty license, an applicant must:

(1) be at least 18 years of age;

(2) have completed the 12th grade or its equivalent; and

(3) meet the following requirements:

(A) for an instructor license, hold an active operator license and have completed one of the following:

(i) 750 hours in methods of teaching the student; or

(ii) 250 hours of student-instructor training, if the student-instructor can verify two years of working experience in a licensed beauty salon.

(B) for a facial instructor specialty license, hold an active operator or facialist specialty license and have completed one of the following:

(i) 750 hours in methods of teaching the student; or

(ii) 250 hours of student-instructor training, if the student-instructor can verify two years of facial experience in a licensed beauty salon or facial specialty salon.

(C) for a manicure instructor specialty license, hold an active operator or manicurist specialty license and have completed one of the following:

(i) 750 hours of instruction in cosmetology courses and methods of teaching in a Department approved school or program, or

(ii) 250 hours of student-instructor training, if the student-instructor can verify two years of manicure experience in a licensed beauty salon or manicure specialty salon.

(c) To be eligible for a shampoo apprentice permit, an applicant must:

- (1) be at least 16 years of age; and
- (2) submit a completed application on a Department approved form.
- (3) An applicant is not required to pay a fee for a shampoo apprentice permit.
- (4) An applicant is not required to complete instruction at a cosmetology school as a prerequisite for the issuance of a shampoo apprentice permit.

(5) An applicant may not earn credit hours at a beauty culture school as a result of time spent while holding a shampoo apprentice permit.

(d) To be eligible for a student permit, an applicant must:

- (1) obtain the current law and rules book;
- (2) submit a completed application on a Department approved form; and
- (3) pay the fee required under §83.80.

(e) To be eligible for a student-instructor registration, an applicant must:

- (1) have completed the 12th grade or its equivalent;
- (2) submit a completed application on a Department approved form; and
- (3) have one of the following:
 - (A) for an instructor license, an active operator license;
 - (B) for a manicure instructor specialty license, an active operator or manicure specialty license; or

(C) for a facial instructor specialty license, an active operator or facialist specialty license.

(f) To be eligible for a registered examination proctor registration, an applicant must:

- (1) have held an active instructor license for at least two of the five years preceding the application;
- (2) hold an active instructor license;
- (3) obtain a certificate of completion from a Department approved training course;
- (4) submit a completed application on a Department approved form; and
- (5) pay the applicable fee under §83.80.

§83.21. License Requirements--Examinations.

(a) To be eligible for a Department examination, an applicant must submit:

- (1) a completed application on a Department approved form; and
- (2) a current photograph.

(b) The passing grade for a Department written, practical and oral examination is 70.

(c) All Department examinations consist of a written and practical part. Instructor examinations have an additional oral part. A passing grade on each part is needed to satisfy the examination requirement.

(d) An examination application is valid for one year from the date it is filed with the Department.

(e) To be admitted to a Department examination, applicants must present an identification card that includes the applicant's full name, a photograph and date of birth. The following forms of identification are acceptable if they contain the required information:

- (1) valid driver's license;
- (2) Texas Department of Public Safety identification card;
- (3) military or other government identification card;
- (4) current high school identification card; or
- (5) resident alien card.

(f) Applicants who fail to appear for their scheduled examination will forfeit their examination fee and be required to submit another examination application and fee.

(g) Applicants are required to dress in a professional manner for an examination. The following dress code is required to be admitted to a practical examination:

- (1) plain and clean non-knit clothing;
- (2) dress slacks or dress skirt: black or white;
- (3) dress blouse or shirt: white only;
- (4) a three-quarter length laboratory coat: white only; or
- (5) instead of paragraphs of (2) - (4) of this subsection; an all-white professional type uniform of washable material with the armpits covered may be worn.
- (6) Shoes must be clean and plain, black or white (no combination) and no heels over one-inch tall. No sandals, open-heeled, open-toed, open side or high-topped tennis shoes. Any shoe which has loops or holes for laces must be laced. Slip-on style shoes are acceptable.

(h) Models used in an examination are required to wear appropriate street clothes and be at least 16 years of age.

(i) A copy of the student permit and photograph must be posted at the school if a student continues to accrue hours between the time an examination application is filed and the date scheduled for an examination.

§83.22. License Requirements--Beauty Salons and Booth Rentals (Independent Contractors).

(a) To be eligible for a beauty salon license, an applicant must:

- (1) comply with the facility and equipment requirements for a beauty salon under §83.102;

(2) submit a completed application on a Department approved form; and

(3) pay the fee required under §83.80.

(b) A beauty salon must be inspected and approved by the Department prior to the operation of the beauty salon. To ensure timely inspection, an applicant should submit a completed application at least 45 days in advance of the anticipated opening date.

(c) When a beauty salon changes ownership, the salon shall be officially closed under the former owner. The new owner must apply for an original beauty salon license within 30 days after the change of ownership and meet the requirements of subsections (a) and (b) of this section.

(d) When a beauty salon moves to a new location, the owner must apply and be inspected for continued operation under subsections (a) and (b) of this section.

(e) When an beauty salon owner dies or becomes incompetent, the remaining owners (if jointly owned) or the heirs, devisees, executors, administrators, or guardians (if a sole proprietorship), or any combination of the foregoing, may operate the salon for the duration of the owner's license. Within 30 days of a change of ownership under this subsection, the remaining owners or new owners must notify the Department. The remaining owners or new owners under this subsection must comply with the applicable law and rules.

(f) To be eligible for a booth rental (independent contractor) license, an applicant must:

(1) hold an active Department issued cosmetology license;

(2) obtain the current law and rules book;

(3) comply with the facility and equipment requirements under §83.103;

(4) submit a completed application on a Department approved form; and

(5) pay the fee required under §83.80.

§83.23. License Requirements--Beauty Culture Schools.

(a) To be eligible for a beauty culture school license, an applicant must:

(1) comply with the facility and equipment requirements for a beauty culture school under §83.102;

(2) submit a completed application on a Department approved form; and

(3) one of the following:

(A) for a private beauty culture school, pay the applicable license and inspection fees required under §83.80; or

(B) for a public beauty culture school, pay the applicable inspection fee required under §83.80.

(b) A beauty culture school must be inspected and approved by the Department prior to the operation of the school. To ensure timely inspection, an applicant should submit a completed application at least 45 days in advance of the anticipated opening date.

(c) When a beauty culture school changes ownership, the school shall be officially closed under the former owner. The new owner must apply for an original beauty culture school license within 30 days after the change of ownership and meet the requirements of subsections (a) and (b) of this section.

(d) When a school moves to a new location or alters the school's floor plan, the owner must apply and be inspected for continued operation under subsections (a) and (b) of this section.

(e) When a school owner dies or becomes incompetent, the remaining owners (if jointly owned) or the heirs, devisees, executors, administrators, or guardians (if a sole proprietorship), or any combination of the foregoing, may operate the school for the duration of the owner's license. Within 30 days of a change of ownership under this subsection, the remaining owners or new owners must notify the Department. The remaining owners or new owners under this subsection must comply with the applicable law and rules.

§83.24. Inactive License.

(a) To be eligible for an inactive license, an applicant must:

(1) submit a completed application on a Department approved form;

(2) pay the fee required under §83.80;

(b) A person who's license is inactive may not practice cosmetology authorized by that license and is not required to complete continuing education required under §83.25.

(c) To change from an inactive license to an active license, an applicant must:

(1) submit a completed application on a Department approved form;

(2) pay the fee required under §83.80; and

(3) complete the continuing education that is required for the renewal of an active license during the preceding license period.

§83.25. License Requirements--Continuing Education.

(a) Terms used in this section have the meanings assigned by Chapter 59 of this title, unless the context indicates otherwise.

(b) To renew an operator license on or after September 1, 2006, a licensee must complete a total of 12 hours of continuing education through Department approved courses, of which 4 hours must be in Sanitation required under the Act and 16 Texas Administrative Code, Chapter 83.

(c) To renew a manicurist specialty license, facialist specialty license, hairweaving/braiding specialty certificate, wig specialty certificate, and shampoo/conditioning specialty certificate on or after September 1, 2006, a licensee must complete a total of 8 hours of continuing education through Department approved courses, of which 4 hours must be in Sanitation required under the Act and 16 Texas Administrative Code, Chapter 83.

(d) If a licensee under subsections (b) or (c) also holds an instructor license, facial instructor specialty license, or manicure instructor specialty license, then, of the total hours required under subsections (b) and (c), the licensee must complete 2 hours in Methods of Teaching in accordance with §83.101.

(e) For a timely or a late renewal, a licensee must complete the required continuing education hours within the two year period immediately preceding the renewal date.

(f) A licensee may receive continuing education hours in accordance with the following:

(1) A licensee may not receive continuing education hours for attending the same course more than once.

(2) A licensee may receive continuing education hours for a course if the course provider was approved by the former Texas Cosmetology Commission and the licensee completed the course on or after September 1, 2004 and on or before October 15, 2005.

(3) Except as provided within this subsection, a licensee will receive continuing education hours for only those courses that are registered with the Department, under procedures prescribed by the Department.

(g) A licensee shall retain a copy of the certificate of completion for a course for two years after the date of completion. In conducting any inspection or investigation of the licensee, the Department may examine the licensee's records to determine compliance with this subsection.

(h) To be approved under Chapter 59 of this title, a provider's course must be dedicated to instruction in one or more of the following topics:

- (1) Texas Occupations Code, Chapters 1602 and 1603;
- (2) 16 Texas Administrative Code, Chapter 83; and/or
- (3) the curriculum subjects listed in 16 Texas Administrative Code, §83.101.

(i) A registered course may be offered until the expiration of the course registration or the provider's registration, whichever occurs first.

(j) A provider shall pay to the Department a continuing education record fee of \$5 for each licensee who completes a course for continuing education credit. A provider's failure to pay the record fee for course completions submitted to the Department on or after February 1, 2006 may result in disciplinary action against the provider, up to and including revocation of the provider's registration under Chapter 59 of this title.

§83.26. Licensing Requirements--Renewals.

(a) To renew an operator license, manicurist specialty license, facialist specialty license, hairweaving/braiding specialty certificate, wig specialty certificate, and shampoo/conditioning specialty certificate, an applicant must:

- (1) complete the continuing education requirements under §83.25;
- (2) submit a completed application on a Department approved form; and
- (3) pay the applicable fee required under §83.80.

(b) In addition to the requirements of subsection (a), to renew an examination proctor registration, a registrant must hold an active instructor license.

(c) To renew and maintain continuous licensure, the renewal requirements under this section must be completed prior to the expiration of the license. A late renewal means the licensee will have an unlicensed period from the expiration date of the expired license to the issuance date of the renewed license. During the unlicensed period, a person may not perform any act of cosmetology that requires a license under this chapter.

(d) Non-receipt of a license renewal notice from the Department does not exempt a person from any requirements of this chapter.

§83.28. Reciprocity or Endorsement.

(a) To be granted a license through reciprocity or endorsement, and applicant must:

(1) submit a completed application on a Department approved form;

(2) furnish a certified transcript of hours from the state board, territory, or foreign nation from which the applicant is applying;

(3) provide one of the following:

(A) if an applicant is from another state of the United States, provide documentation that licensure in another state was obtained by standards substantially equivalent to those of Texas; or

(B) if an applicant is from a territory or foreign nation, provide documents verified by the Department or a certified credentialing agency confirming that licensure in the territory or foreign nation was obtained by standards substantially equivalent to those of Texas.

(4) obtain the current law and rules book;

(5) furnish a valid license or certificate; and

(6) pay the fee required under §83.80.

(b) A person who cannot provide documentation of standards equivalent to those in Texas must pass the applicable written and practical examination for the license.

(c) A person issued a license through reciprocity or endorsement may perform those acts of cosmetology authorized by the license.

§83.31. Licenses--License Terms.

(a) The following licenses have a term of two (2) years:

- (1) operator license;
- (2) manicurist specialty license;
- (3) facialist specialty license;
- (4) hairweaving/braiding specialty certificate;
- (5) wig specialty certificate;
- (6) shampoo/conditioning specialty certificate;
- (7) instructor license;
- (8) facial instructor specialty license;
- (9) manicure instructor specialty license;
- (10) an inactive license;
- (11) booth rental (independent contractor) license;
- (12) beauty and specialty salon license.

(b) The following licenses have a term of one (1) year:

- (1) private beauty culture school license;
- (2) public secondary or postsecondary beauty culture school certificate; and
- (3) examination proctor registration.

(c) A shampoo apprentice permit expires one (1) year from the date of issuance and is not renewable.

(d) A student permit and student-instructor registration are valid for the student's duration in school until the student withdraws from school or takes an examination for licensure.

§83.40. Private Beauty Culture School Tuition Protection Account.

(a) Pursuant to Texas Occupations Code, Chapter 1602, the Private Beauty Culture School Tuition Protection Account is created to pay the tuition costs and expenses incurred by a school in providing training directly related to educating the student in the event of a private beauty culture school closing.

(b) In each year in which the balance of the Private Beauty Culture School Tuition Protection Account is less than \$200,000 the Department will determine a fee that shall be paid by all private beauty culture schools to the account.

(c) The necessity for assessing the fee will be determined by the Department when it conducts its annual account balance review prior to December 31st. The fee that is assessed by the Department shall be in effect for a period of 12 months.

(d) The fee shall be paid by each private beauty culture school, upon annual renewal of the license during the 12-month period and shall be paid in addition to the renewal fee. The renewal notice sent by the Department will reflect the fee due to the account.

(e) In addition to any other fees, all new schools applying for a private beauty culture school license shall pay the prescribed fee to the account before a license will be issued.

(f) The total payment of a claim from the Private Beauty Culture School Tuition Protection Account may not exceed \$35,000.

§83.65. Advisory Board on Cosmetology.

(a) The purpose of the Advisory Board on Cosmetology is to advise the Commission and Department on adopting rules, setting fees, and enforcing and administering the Act, as applicable.

(b) The board is composed of at least six licensees and persons specified in the Act. Board members will serve staggered six-year terms.

(c) Expenses can be reimbursed to board members only when the legislature has specifically appropriated money for that purpose, and only to the extent of the appropriation.

(d) Expense reimbursements to board members are limited to authorized expenses incurred while traveling to and from board meetings and shall be limited to those allowed by the State of Texas Travel Allowance Guide, the Texas Department of Licensing and Regulation policies governing employee travel allowances, and the General Appropriations Act.

§83.70. Responsibilities of Individuals.

(a) License holders are responsible for compliance with the sanitation requirements under §83.100.

(b) Booth rental (independent contractor) licensees are responsible for compliance with the requirements under §83.103.

(c) A licensee shall be restricted to working in a cosmetology establishment licensed under this chapter.

(d) Specialty certificate holders may only perform the practice authorized by the specialty certificate.

(e) Individual licenses, booth rental (independent contractor) licenses, and the last inspection report must be posted at the licensee's work station in the public view.

(f) A current photograph of the licensee approximately 1 1/2 inches by 1 1/2 inches shall be attached to the front of the license, certificate or permit.

(g) Individuals licensed under §83.20 must notify the Department not later than thirty (30) days following any change of address. The Department may send all notices on other information required by applicable laws and rules to any licensee's last known mailing address on file with the Department.

(h) Cosmetology services may be performed on incapacitated or deceased persons provided that the appointment is made through

the salon. Licensees must have their license in their possession while performing the service.

§83.71. Responsibilities of Beauty Salons.

(a) Beauty and specialty salons are responsible for compliance with the sanitation requirements under §83.100.

(b) Beauty and specialty salons are responsible for compliance with the facility and equipment requirements under §83.102.

(c) Salons may lease space to an independent contractor who holds a booth rental (independent contractor) license. The lessor to an independent contractor must maintain a list of all renters that includes the name of renter and the cosmetology license number of the renter. The lessor must supply the Department inspector with a list of renters upon request.

(d) With the exception of a dog for sightless or hearing impaired persons, a security dog during closed hours, and aquariums containing fish, no animal, fowl, reptile, insect, etc. may be present at a beauty salon.

§83.72. Responsibilities of Beauty Culture Schools.

(a) In addition to the requirements of Texas Occupations Code, Chapter 1602, beauty culture schools and programs are responsible for compliance with the following:

- (1) sanitation requirements under §83.100;
- (2) curriculum requirements under §83.101; and
- (3) facility and equipment requirements under §83.102;

(b) The curriculum shall be posted in a conspicuous place in the school. A current syllabus and lesson plan for each course shall be maintained by the school and be available for inspection; and

(c) Schools must have not less than one full-time instructor on staff and on duty during business hours for each 25 students in attendance, including evening classes. A school may not enroll more than three student-instructors for each licensed instructor teaching in the school on a full-time basis. The student-instructor shall at all times work under the direct supervision of the full-time licensed instructor and may not service clients, but will concentrate on teaching skills. A licensed instructor must be physically present during all curriculum activities. No credit for instructional hours can be granted to a cosmetology student unless such hours are accrued under the supervision of a licensed instructor.

(d) Schools must maintain one album to display each student permit, including affixed picture, of each enrolled student. The permits should be in alphabetical order.

(e) Schools must use a time clock to track student hours and maintain a daily record of attendance with each student personally punching the time clock in accordance with the following:

(1) Attendance records will be maintained in the school and available to the Department for a period of 48 months after the student completes or terminates attendance.

(2) Within five days of a time clock failure, written documentation must be submitted to the Department on a Department approved form stating the time clock failure. If a technician is required to repair the clock, a copy of the work order indicating date(s) of repair must be submitted as part of the written documentation.

(3) Not later than the 10th day of each month, a school must display on a Department approved form the monthly hour report showing the hours acquired by each student during the preceding month in an album or binder.

(4) Each student must be given the opportunity to review, under supervision, his or her hours, and to sign or initial the report. The report shall be complete, accurate, and kept available for inspection by the student or a Department representative. One copy of the monthly hour report, signed by a school official, must be given to the Department inspector at each inspection visit.

(5) Students are prohibited from preparing hour reports or supporting documents. Student-instructors may prepare hours reports.

(6) A school must properly account for the hours granted to each student. A school shall not engage in any act directly or indirectly that grants or approves student hours that are not accrued in accordance with this chapter.

(f) With the exception of a dog for sightless or hearing impaired persons, a security dog during closed hours, and aquariums containing fish, no animal, fowl, reptile, insect, etc. may be present at a beauty salon.

(g) Private schools can utilize locations away from the building for instruction in the approved cosmetology school curriculum. The instruction at these locations must be identified as a field trip.

(h) All areas of a school or campus are acceptable as instructional areas for a public cosmetology school, provided that the instructor is teaching cosmetology curriculum required under §83.101.

(i) A private cosmetology school may provide cosmetology instruction to public high school students by contracting with the Texas Education Agency and complying with Texas Education Agency law and rules. A public high school student receiving instruction at a private cosmetology school in accordance with a contract between the private cosmetology school and the Texas Education Agency is considered to be a public high school student enrolled in a public school cosmetology program for purposes of the Act and Department rules.

(j) Public school students must complete 150 hours of cosmetology training prior to working on clients. No school may offer compensation to any student in any form for cosmetology services performed.

(k) Schools may enroll applicants for a refresher course. A person who holds a valid Texas license may service clients in the school. The school may receive compensation for services performed by a student holding a valid Texas license; however, the student may not receive compensation.

(l) The school principal or program administrator must certify that each public high school student has successfully completed 1,000 clocked cosmetology hours before 500 academic hours can be granted by the Department for successfully passing academically approved courses to include math, lab science and English.

(m) When a student graduates, the school must certify that the student has completed the required curriculum and that all practical applications have been completed.

§83.73. Responsibilities of Students.

(a) Students are responsible for compliance with the sanitation requirements under §83.100.

(b) Students shall wear a uniform of washable material with armpits and chest covered as prescribed by the school. Tank tops, lingerie, see-through fabric, topless or bottomless uniforms, and bare feet are not allowed. Students must wear closed toe and heel shoes.

(c) Students shall not engage in any act that constitutes dishonesty or misrepresentation of or relating to a student's hours accrued under this chapter.

(d) Transfer students.

(1) A student desiring to transfer from one school to another must withdraw from the first school prior to the transfer. Enrollment in two or more schools of cosmetology at the same time is prohibited.

(2) A student transferring to a school who desires to claim hours and practical applications earned must inform the school transferred to prior to enrollment of his/her prior attendance and must furnish to that school and the Department a record of hours claimed and practical applications completed. This record may be in the form of a transcript from the prior school or an extract from records of the Department.

(3) A student may not graduate until all previously accrued hours, upon re-entry to that school or transferring from another school, have been reported on any monthly hour report, but in any event, no later than the month prior to graduation.

(e) Withdrawal from school.

(1) A student may withdraw from school at any time by notifying the school in writing.

(2) Upon withdrawal, and provided that the agreed tuition and fees have been tendered, a student is entitled to an official transcript of hours taken and practical application performed at the school withdrawn from. The transcript and practical applications must be ready for pickup or, if mailed, postmarked within ten calendar days of the school's receipt of notice of withdrawal. A copy of the transcript and practical applications must be kept in the student's file for 48 months and the copy must be made available at the request of the Department.

(3) A student who withdraws from a cosmetology school is entitled to a refund in accordance with Texas Occupations Code, Chapter 1602.

(4) Withdrawal or termination during the first week shall be defined by scheduled clock hours. If scheduled clock hours are 40 hours per week, then the week is defined to be 40 clock hours; for part time students, the amount of scheduled clock hours per week defines the week.

(5) Enrollment is defined as the time elapsed between the actual starting date and the date of the student's last day of attendance.

(6) If a school closes or ceases operation before the class hours are completed, the student is entitled to a tuition refund in accordance with Texas Occupations Code, Chapter 1602.

(A) Any student of an out-of-state private licensed cosmetology school may submit a request to the Department to transfer the completed hours of instruction to a Texas school. A transcript must be submitted on the prescribed form and certified by the school in which the instruction was given. Portions of the curriculum of the Department not taught in another state must be taken in an approved Texas school prior to taking the Texas examination.

(B) A student enrolled for a specialty course may withdraw and transfer hours acquired to the operator course not to exceed the amount of hours of that subject in the operator curriculum. Students enrolled in the operator course may withdraw and transfer up to the maximum specialty hours within the operator curriculum for that course. Once a license is obtained, hours may not be transferred to another course.

§83.75. Responsibilities of Registered Examination Proctors.

(a) Responsibilities of Registrant.

(1) A registrant shall be knowledgeable of and comply with all standards, specifications, and procedures established by the Commission or Department relating to the evaluation or grading of practical examinations.

(2) A registrant shall be knowledgeable of and have expertise in the subject matter(s) of the practical examination. It is the obligation of the registered examination proctor to exercise reasonable judgment and skill in the evaluation or grading of practical examinations conducted under Texas Occupations Code, Chapter 1602.

(3) A registrant shall be professional, honest and trustworthy in the evaluation or grading of practical examinations and any activities related to evaluating or grading practical examinations.

(4) A registrant must hold an active instructor license throughout the entire period of the registration.

(b) Responsibilities of Registrant--Prohibited Acts.

(1) A registrant shall not perform as an examination proctor without an active examination proctor registration.

(2) A registrant shall not evaluate or grade a practical examination of an applicant who is the registrant's current student.

(3) A registrant shall not evaluate or grade a practical examination of an applicant who is the registrant's current employee, employer or co-worker.

(4) A registrant shall not evaluate or grade a practical examination of an applicant who is related to the registrant by family or by other personal or financial interest or relationship.

(5) A registrant shall not knowingly furnish false, misleading, inaccurate, or deceitful information about an applicant or an applicant's performance on a practical examination.

(6) A registrant shall not engage in any act or practice that constitutes a threat, coercion or extortion of an applicant.

(7) A registrant shall not ask for or receive directly from an applicant anything in connection to a registrant's evaluation or grading of an applicant.

(8) A registrant shall not state or imply that the Department will grant or approve an applicant's license or that the applicant will pass the examination.

(9) A registrant shall not engage in any activity that constitutes dishonesty or misrepresentation of or relating to the registrant's responsibilities.

§83.80. Fees.

(a) Application and renewal fees.

- (1) Operator License--\$53
- (2) Facialist Specialty License--\$53
- (3) Manicurist Specialty License--\$53
- (4) Hairweaving/braiding Specialty Certificate--\$53
- (5) Wig Specialty Certificate--\$53
- (6) Shampoo-Conditioning Specialty Certificate--\$53
- (7) Student Permit--\$25
- (8) Instructor License--\$70
- (9) Facial Instructor Specialty License--\$70
- (10) Manicure Instructor Specialty License--\$70
- (11) Student-Instructor Registration--\$70

(12) Examination Proctor Registration--\$25

(b) Beauty Salons and Booth Rental (Independent Contractor) application and renewal fees.

(1) Original application--\$106

(2) Renewal application--\$69

(3) Booth Rental (Independent Contractor) License--\$67

(c) Private Beauty Culture School License application and renewal fees.

(1) Original application--\$500

(2) Renewal application--\$200

(d) Examination fee for retake--\$25

(e) License by Reciprocity or Endorsement--\$153

(f) Inactive License--\$25

(g) Provisional License--\$45

(h) Revised/Duplicate License/Certificate/Permit/Registration--\$53

(i) Law and Rules book--\$14

(j) Inspection Fees (for each occurrence).

(1) Salon--\$35

(2) School (public and private)--\$200

(k) Transcript Fee.

(1) Licensee transcript--\$15

(2) Student transcript--\$5

(l) Registered Examination Proctor Department training course--\$50

(m) Late renewals fees for licenses under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

§83.90. Administrative Sanctions and Penalties.

(a) A person that violates Texas Occupations Code, Chapters 1602 or 1603, a rule, or an order of the Executive Director or Commission relating to Chapters 1602 or 1603, shall be subject to the imposition of administrative sanctions and/or administrative penalties in accordance with Texas Occupations Code, Chapters 51, 1602, or 1603, and 16 Texas Administrative Code, Chapter 60 of this title (relating to the Texas Department of Licensing and Regulation).

(b) Consumer complaints alleging a violation of applicable law or rules shall be submitted through the Department's website or by writing through mail or fax transmission.

§83.100. Technical Requirements--Sanitation.

(a) A licensee may be issued a violation jointly or individually if found in noncompliance with these sanitation rules.

(b) Every cosmetology establishment shall be given a sanitary rating covering the entire establishment and should maintain a sanitary rating on each inspection report of not less than 70% as a minimum satisfactory standard of operation.

(c) General Sanitation Requirements.

(1) Each establishment and work area shall be kept in a clean, orderly, and sanitary condition at all times.

(2) Linoleum or tile flooring must be tight with no broken areas or badly worn spots. Floors shall be constructed of smooth,

hard-finished materials, such as quarry tile, terrazzo, ceramic tile, etc., or covered with washable composition materials. Hair cuttings must be immediately swept up and deposited in a trash container after each haircut. No carpet shall be permitted except in reception or office areas. Walls and fixtures shall be of a sanitary nature. Ceilings must be properly maintained.

(3) Styling stations, working stations, and manicure tables must be cleaned and disinfected with a hospital grade EPA registered disinfectant prior to client services. All drawers and shelves used for the storage of rollers, brushes, combs, pins, nets, and equipment must be disinfected with a hospital grade EPA registered disinfectant solution and shall not be used for storage of non-related cosmetology equipment or supplies. One drawer or cabinet may be designated for storage of personal items and shall be clearly labeled as such.

(4) The premises shall be kept free of rodents, vermin, flies, or other similar insects.

(5) All bathrooms, toilets and adjoining rooms shall be kept in a clean and sanitary condition. Restrooms shall not be used as storage rooms and floors shall be clean and free of trash and rubble.

(6) Trash containers used for the disposal of hair or nail clippings must be covered. All trash containers must be emptied daily and kept clean by washing or using plastic liners.

(7) Furniture, equipment, and other fixtures shall be of a washable material and kept clean and in good repair.

(8) Broken equipment must be removed.

(9) Clean towels shall be used on each client.

(10) After a towel has been used once, it shall be deposited in a partially closed receptacle, container, or basket, and shall not be used again until properly laundered and disinfected.

(11) Used towels shall be laundered in chlorinated hot water either by commercial or non-commercial laundering.

(12) Before servicing each client, each cosmetologist is required to have implements and tools that have been cleaned and disinfected with a hospital grade EPA-registered disinfectant solution.

(13) All cosmetology implements and supplies must be disinfected with a hospital grade EPA registered disinfectant solution, must be clean to sight and touch, and stored in a closed container.

(14) Electrical appliances shall be kept clean by wiping the surface with a towel or cotton pad dampened with a hospital grade EPA registered disinfectant solution. The solution must remain on the surface for at least 10 minutes.

(15) Disposable supplies shall be used whenever possible and must be disposed after each use.

(16) Tools and implements must be cleaned using a wet disinfectant soaking container with a hospital grade EPA registered disinfectant solution. Before immersing objects in a wet disinfectant soaking container, all licensees must remove all debris from the object, pre-clean thoroughly with hot water and soap or cleaning solution, place tools and implements in the wet soaking container for the required time or according to the manufacturer's direction, remove tools and implements after the required time, wipe dry with a clean towel, and store in a labeled dry storage container.

(17) Ultraviolet electrical sanitizers are permissible for use as a dry storage container.

(18) Each licensee shall wash his or her hands thoroughly with liquid soap and hot water or a broad spectrum antimicrobial agent

before attending each client, after touching the skin of any person, after servicing hairgoods, and immediately after using the toilet.

(19) Each licensee must keep his or her body and clothing clean, sanitary, and free of offensive odor.

(20) Licensees shall comply with the following sanitation procedures to arrest bleeding.

(A) Liquid or powder astringents may be employed to arrest bleeding and shall be applied by means of sanitized pieces of gauze or cotton.

(B) Lump alum and styptic pencil are prohibited.

(C) In case of bleeding, a licensee must supply an injured party with liquid spray styptic/antiseptic and a band-aid, if necessary, double bag all blood-soiled (contaminated) articles, and label the bag with a red or orange biohazard warning.

(21) Each cosmetology establishment and independent contractor shall properly label all products used in the conduct of their business in compliance with OSHA. Each cosmetology establishment and independent contractor must maintain a Material Safety Data Sheet on all chemical products used.

(d) Specific Sanitation Requirements.

(1) Curling irons must be clean to sight and touch.

(2) Shampoo bowls will be cleaned and disinfected with a hospital grade EPA registered tuberculocidal disinfectant solution, prior to being used for each client.

(3) Haircutting capes and shampoo capes shall be kept clean. A sanitary neck strip or towel shall be used to keep the capes from coming into direct contact with the client's neck.

(4) When cold wave rods are not in use, they must be covered with a cover or towel, until ready for use. Cold wave rods must be free from any solution, hair end papers, clippies, hairpins, and any additives.

(5) Licensees shall comply with the following sanitation procedures relating to waxing.

(A) Disposable gloves must be worn at all times when removing wax or when doing facial extractions.

(B) All depilatories and all paraffin wax that has been in contact with a client's skin or been removed from the containers must be disposed of after each use. Used wax may not be reused under any circumstances.

(C) All wax pots will be cleaned and disinfected with a hospital grade EPA registered disinfectant solution with no sticks left standing in the wax at any time. The wax remaining in the pot may remain and all wax removed from the pot must be disposed.

(D) All areas of the body being treated in a wax service must be cleaned with a broad spectrum antibacterial agent.

(E) Headrests of chairs shall be cleaned with a hospital grade EPA registered disinfectant solution prior to each service and covered with a clean towel or paper sheet for each client.

(6) Licensees shall comply with the following sanitation procedures relating to whirlpool foot spas:

(A) Before use upon each patron, each whirlpool foot spa shall be cleaned and disinfected in the following manner.

(i) All water shall be drained and all debris shall be removed from the spa basin.

(ii) The spa basin must be cleaned with soap or detergent and water.

(iii) The spa basin must be disinfected with an EPA-registered disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity which must be used according to manufacturer's instructions.

(iv) The spa basin must be wiped dry with a clean towel.

(B) At the end of each day, each whirlpool foot spa shall be cleaned and disinfected in the following manner.

(i) The screen shall be removed, all debris trapped behind the screen shall be removed, and the screen and the inlet shall be washed with soap and water or detergent and water.

(ii) Before replacing the screen, one of the following procedures shall be performed:

(I) The screen shall be washed with a chlorine bleach solution of one teaspoon of 5% chlorine bleach to one (1) gallon of water, or

(II) The screen shall be totally immersed in an EPA-registered disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity which must be used according to manufacturer's instructions.

(III) The spa system shall be flushed with low sudsing soap and warm water for at least ten (10) minutes, after which the spa shall be rinsed and drained.

(C) Every other week (bi-weekly), after cleaning and disinfecting as provided in this subsection, each whirlpool foot spa shall be cleaned and disinfected in the following manner:

(i) The spa basin shall be filled completely with water and one (1) teaspoon of 5% bleach for each one (1) gallon of water.

(ii) The spa system shall be flushed with the bleach and water solution for 5 to 10 minutes and allowed to sit for 6 to 10 hours.

(iii) The spa system shall be drained and flushed with water before use upon a patron. A record shall be made of the date and time of each cleaning and disinfecting as required this subsection indicating whether the cleaning was a daily or bi-weekly cleaning. This record shall be made at or near the time of cleaning and disinfecting. Cleaning and disinfecting records shall be made available upon request by either a patron or a Department representative.

(7) After the initial sale of a hairpiece, and prior to that hairpiece being resold, it must be properly disinfected and bear a tag showing that the proper sanitary procedures have been accomplished.

(8) Licensees shall comply with the following sanitation procedures relating to wigs.

(A) Soiled wigs and hairpieces shall be kept separate by placing in a closed bag to prevent the spread of disease until ready to be disinfected.

(B) Any wig block used to service a hairpiece should be covered with a plastic bag and kept in a sanitized condition after each use. Any wig block used to service hairpieces shall be sprayed with a hospital grade EPA registered disinfectant solution after each use and kept in a sanitary condition. Holders and styling stations used for the purpose of styling wigs, wiglets, etc., shall be kept clean and in a sanitary condition at all times. This shall include the cleaning of wig dryers and related equipment.

(C) Finished wigs and hairpieces shall be placed away from soiled wigs and hairpieces until ready to be returned to the client.

(D) Bowls or containers used to clean or color wigs and hairpieces must be disinfected with a hospital grade EPA registered disinfectant solution after completion of each step in the service.

§83.101. Technical Requirements--Curriculum.

(a) Operator Curriculum

Figure: 16 TAC §83.101(a)

(b) Specialist curriculum Figure:

Figure: 16 TAC §83.101(b)

(c) Student-Instructor Curriculum

Figure: 16 TAC §83.101(c)

(d) Practical Applications of the Curriculum

Figure: 16 TAC §83.101(d)

(e) Field Trips.

(1) Cosmetology related field trips are permitted under the following conditions for students enrolled in the following courses and the guidelines under this subsection must be strictly followed.

(2) A student may obtain the following field trip curriculum hours:

(A) a maximum of 75 hours out of the 1,500 hours operator course;

(B) a maximum of 50 hours out of the 1,000 hours operator course.

(C) a maximum of 30 hours for the manicure course;

(D) a maximum of 30 hours for the facial course; and

(E) a maximum of 30 hours for students taking the 750 hour student-instructor course.

(3) Unless provided by this subsection, field trips are not allowed for specialty courses.

(4) Students must be under the supervision of a licensed instructor from the school where the student is enrolled at all times during the field trip. The instructor-student ratio required in a school is required on a field trip.

(5) Complete documentation is required, including student names, instructor names, activity, location, date, and duration of the activity.

(6) No hours are allowed for travel.

(7) Prior Department approval is not required. The report of hours earned and the documentation will be attached to the monthly hour report for the inspector to audit.

§83.102. Technical Requirements--Facility and Equipment.

(a) All cosmetology establishments are responsible for compliance with the following requirements.

(1) Each establishment shall provide hand washing facilities, including hot and cold running water, located near or adjacent to the toilet room or rooms. Hot air blowers or suitable holders for sanitary towels and dispensers for liquid soap shall be provided and be adequately supplied at all times.

(2) All cosmetology establishments must have a restroom with sink and commode or have a public restroom available on an adjoining property. Restrooms within a cosmetology establishment must meet the sanitary rules under §83.100.

(3) A cosmetology establishment shall not prepare or sell food and/or drink, except by vending machine. This rule does not apply to a beauty salon located in a Department store when the sale of food and drink is not immediately adjacent to the salon.

(4) The use of a cosmetology establishment as living, dining, or sleeping quarters is prohibited. Residential salons shall maintain a separate entrance which shall not open to living, dining, or sleeping quarters. If a door leads into the residence, it shall be a solid door that remains locked during business hours.

(5) Licensees shall have on the premises and utilize a hospital grade EPA registered tuberculocidal disinfectant solution for situations involving blood spills, be in compliance with OSHA rules on blood-borne pathogens, to include blood and body fluids, and follow disinfecting procedures according to manufacturer's instructions for tools or implements that have come in contact with blood or other fluids.

(6) Licensees shall post the following items in public view:

(A) the current salon or school license;

(B) consumer complaint information, prominently displayed in letters no smaller than one inch in height, stating the name, mailing address, and telephone number of the Department;

(C) current law and rules book; and

(D) the last cosmetology establishment inspection report.

(b) Beauty culture schools are responsible for compliance with the following.

(1) Beauty culture schools must have a classroom separated from the laboratory area by walls extending to the ceiling and equipped with the following:

(A) desks and chairs or table space for a minimum of 10 students (plus one desk or chair or table space for additional students enrolled an in attendance per theory class);

(B) charts covering, bones, muscles, nerves, skin, and nails;

(C) medical dictionary;

(D) minimum visual aid requirements: television and VCR; and

(E) a dispensary of not less than 50 contiguous square feet with a double sink with hot and cold running water and space for storage and dispensing of supplies and equipment.

(2) Beauty culture schools must have the following equipment:

(A) six shampoo bowls and six shampoo chairs;

(B) eight hair dryers with chairs;

(C) one heat cap or therapeutic light;

(D) eight dozen cold wave rods;

(E) three electric irons, or marcel stoves and irons;

(F) sixteen styling stations covered with Formica or similar material, with mirror, and 16 styling chairs (swivel or hydraulic);

(G) twelve mannequins with sufficient hair with table or attached to styling stations;

(H) one day/date formatted computer time clock;

(I) one pair of professional hand clippers;

(J) three professional hand held dryers;

(K) four manicure tables and four stools;

(L) one closed cabinet for clean towels;

(M) one covered container for soiled towels;

(N) four covered trash cans in lab area;

(O) one large wet disinfectant soaking container; and

(P) one dry storage container for disinfected implements.

(3) Beauty culture schools are responsible for compliance with the following equipment requirements for the facialist course:

(A) facial chair;

(B) magnifying lamp;

(C) woods lamp;

(D) dry sanitizer;

(E) steamer;

(F) brush machine for cleaning;

(G) vacuum machine that includes spray device;

(H) high frequency for disinfection, product penetration, stimulation;

(I) galvanic for eliminating encrustations, product penetration; and

(J) paraffin bath and paraffin wax.

(4) Beauty culture schools must be properly ventilated with an exhaust fan or air-filtering device extracting fumes and gases out of the facility.

(5) In addition to the posting requirements of this subsection, beauty culture schools shall post a sign at the time clock which states:

(A) Each student must clock in/out for himself/herself. No student may allow another person to clock in or out on behalf of that student.

(B) No credit shall be given for any times written in, except in a documented case of time clock failure.

(C) If a student is in or out of the facility for lunch, he/she must clock out.

(D) Students leaving the facility for any reason, including smoke breaks, must clock out, except when an instructional area on a campus is located outside the approved facility, that area is approved by the Department and students are under the supervision of a licensed instructor.

(6) A private beauty culture school is responsible for compliance with the following:

(A) a floor plan of not less than 3,500 square feet that includes two separate areas, one area for instruction in theory and one area for clinic work, and separate restrooms for male and female;

(B) equipment established by the Department sufficient to instruct a minimum of 50 students;

(C) proof of ownership of building or proof of a lease for the first 12 months of operation;

(D) current inspection report(s) of the fire marshal and electrical inspector approving or confirming compliance with applicable laws and ordinances; and

(E) a copy of the curriculum for each course offered.

(7) Public beauty culture schools are responsible for compliance with the following:

(A) a detailed floor plan showing not less than 2,200 square feet that includes office, dispensary, locker room, classroom space, and at least 1,200 square feet of laboratory space;

(B) current inspection report(s) of the fire marshal and electrical inspector approving or confirming compliance with applicable laws and ordinances;

(C) a statement which must include equipment established by the Department; and

(D) proof of a lease for the first 12 months of operation, if off-campus facilities are used.

(c) Beauty salons.

(1) Beauty salons shall comply with the following requirements:

(A) a minimum of 150 square feet for the first licensee and not less than 30 square feet for each additional licensee. Dispensary, reception areas, restrooms, utility, heating and/or cooling facilities and retail floor space are not included as working floor space;

(B) a sink with hot and cold running water;

(C) an identifiable sign with the salon's name;

(D) closed container(s) for clean towels/linen;

(E) partially closed container(s) for soiled towels/linen;

(F) one wet disinfectant soaking container;

(G) a minimum of one dry storage container;

(H) a minimum of one covered trash container; and

(I) proper ventilation with an exhaust fan or air filtering device that extracts fumes and gases.

(2) Additional requirements by specialty.

(A) Beauty Salon.

(i) one working station for each operator;

(ii) one styling chair for each operator;

(iii) an adequate or sufficient amount of shampoo

bowls; and

(iv) one dryer for each operator.

(B) Manicure Salon.

(i) one manicure table with light for each manicurist;

(ii) one manicure stool for each manicurist; and

(iii) one professional client chair for each manicure

station.

(C) Facial Salon.

(i) one facial couch/chair for each facialist; and

(ii) one mirror for each facialist.

(D) Manicure/Facial Salon.

(i) requirements for manicure salon; and

(ii) requirements for facial salon.

(E) Wig Salon.

(i) mannequin table, station, or styling bar to accommodate a minimum of 10 hairpieces;

(ii) one wig dryer; and

(iii) two canvas wig blocks.

(F) Hairweaving/Braiding Salon.

(i) one work station for each hairweaver/braider;

(ii) one styling chair for each hairweaver/braider;

(iii) an adequate or sufficient amount of shampoo bowls; and

(iv) one chair dryer/handheld dryer for each three hairweaver/braiders.

§83.103. Technical Requirements--Booth Rental (Independent Contractor) Licensees.

(a) All booth rental (independent contractor) licensees must have the following items:

(1) one wet disinfectant soaking container;

(2) one dry storage container for disinfected implements;

and

(3) a covered trash container.

(b) In addition to the requirements in subsection (a), booth rental (independent contractor) licensees must have the following items.

(1) If practicing in a beauty salon, one work station and one styling chair.

(2) If practicing in a facial salon, one facial couch or facial chair and one mirror, wall hung or hand held.

(3) If practicing in a manicure salon, one manicure table with a light, one manicure stool, and one chair, professional in appearance.

(c) Booth rental (independent contractor) licensees must post the original or a duplicate booth rental license issued by the Department at each practice location.

(d) Booth rental (independent contractor) licensees must comply with all state and federal laws relating to independent contractors.

(e) A booth rental (independent contractor) licensee may provide the cosmetology service(s) authorized by the independent contractor's cosmetology 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 September 19, 2005.

TRD-200504159

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: November 6, 2005

For further information, please call: (512) 463-7348

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

**SUBCHAPTER AA. COMMISSIONER'S
RULES ON SCHOOL FINANCE**

19 TAC §61.1018

The Texas Education Agency (TEA) proposes new §61.1018, concerning payment of supplemental compensation. The proposed new section would specify definitions, eligibility criteria, and reporting requirements for the supplemental compensation as well as describe the process of handling the calculation, distribution, and settle-up process for this source of funding.

Senate Bill 1863, 79th Texas Legislature, Regular Session, 2005, added Texas Education Code (TEC), Chapter 22, School District Employees and Volunteers, Subchapter D, Compensation Supplementation. TEC, §22.102, authorizes the TEA to adopt rules to implement provisions relating to the supplemental compensation. Prior to passage of this legislation, rulemaking for supplemental compensation was the responsibility of the Teacher Retirement System of Texas (TRS). However, districts reported their eligible employees to the TEA, and the TEA made the payments of supplemental compensation on behalf of TRS. The statutory change prompting this rule proposal moved the responsibility for the program to the TEA, which is expected to result in more efficient administration of the supplemental compensation.

The proposed new rule would specify definitions, including those for full-time and part-time employees and professional staff; establish reporting requirements; delineate eligibility criteria; and set forth the funding formula, distribution procedures, and settle-up process.

Districts will continue to report their eligible employees to the division at the TEA responsible for state funding as they have for the past four years.

Robert Jocius, senior director for state funding, has determined that for the first five-year period the new section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. No fiscal impact is anticipated because the TEA has gathered the relevant data and processed the supplemental compensation payments over the past four years.

Mr. Jocius has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the section will be that the administration of this program is expected to become more streamlined and efficient by eliminating the need to have supplemental compensation payments approved by the TRS. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the new section.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701,

(512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028. All requests for a public hearing on the proposed new section submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The new section is proposed under the Texas Education Code, §22.102, which authorizes the Texas Education Agency to adopt rules to implement Texas Education Code, Chapter 22, School District Employees and Volunteers, Subchapter D, Compensation Supplementation, added by Senate Bill 1863, 79th Texas Legislature, 2005.

The new section implements the Texas Education Code, §§22.101-22.110.

§61.1018. Payment of Supplemental Compensation.

(a) Purpose. In accordance with the Texas Education Code (TEC), Chapter 22, Subchapter D, each month the Texas Education Agency (TEA) shall distribute funds, subject to the availability of funds, for the purpose of payment of supplemental compensation, as specified by the provisions delineated in this section.

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

(1) Entity--An entity is defined as:

(A) a school district or other educational district whose employees are members of the Teacher Retirement System of Texas (TRS);

(B) a participating charter school; or

(C) a regional education service center.

(2) Full-time employee--An individual is employed as a full-time employee if the individual:

(A) is a participating member of the TRS;

(B) is employed by a school district, other educational district whose employees are members of the TRS, a participating charter school, or a regional education service center;

(C) is not a retiree covered under the Texas Public School Retired Employees Group Benefits Program established under the Texas Insurance Code, Chapter 1575;

(D) is not professional staff; and

(E) works for an entity or any combination of entities for 30 or more hours each week.

(3) Part-time employee--An individual is employed as a part-time employee if the individual:

(A) is a participating member of the TRS;

(B) is employed by a school district, other educational district whose employees are members of the TRS, a participating charter school, or a regional education service center;

(C) is not a retiree covered under the Texas Public School Retired Employees Group Benefits Program established under the Texas Insurance Code, Chapter 1575;

(D) is not professional staff; and

(E) works for an entity or any combination of entities for less than 30 hours each week.

(4) Professional staff--An individual is employed as professional staff if:

(A) the individual is employed by a school district, a charter school, or other eligible entity that is not a regional education service center and 50% or more of the individual's time is reported under any combination of the role identifications in the Public Education Information Management System (PEIMS) specified in this subparagraph, or under any subsequently created role identifications that describe roles that are substantially similar to the ones identified in this subparagraph;

Figure: 19 TAC §61.1018(b)(4)(A)

(B) the individual is employed by a regional education service center and 50% or more of the individual's time is reported under any combination of the role identifications in PEIMS specified in this subparagraph, or under any subsequently created role identifications that describe roles that are substantially similar to the ones identified in this subparagraph; or

Figure: 19 TAC §61.1018(b)(4)(B)

(C) regardless of how the individual's time is reported in PEIMS, 50% or more of the individual's time is reported in a role that is substantially similar to a role set out in subparagraph (A) or (B) of this paragraph, as determined by the reporting entity or combination of entities.

(c) Reporting. For each designated report month, each entity shall report to the TEA the number of full-time and part-time employees eligible to receive supplemental compensation and the total number of professional staff, as determined by the entity in accordance with requirements established by the TEA in this section.

(1) The TEA division responsible for state funding must receive each monthly report by 5:00 p.m. Central Time on the 10th calendar day of each month or, if that date is not a business day, by 5:00 p.m. Central Time on the first business day after the 10th calendar day of the month.

(2) The TEA may dispute, seek verification of, or conduct an investigation regarding the reported number of employees and staff at any time after receiving the report.

(d) Eligibility. For the purposes of this section, an individual is eligible to receive supplemental compensation if the individual:

(1) is a full-time employee, as defined in subsection (b)(2) of this section, or a part-time employee, as defined in subsection (b)(3) of this section;

(2) is not a professional staff member, as defined by subsection (b)(4) of this section; and

(3) has been employed by the eligible entity for a period of at least 91 days.

(e) Funding formula. The TEA will remit funds to an entity if the TEA receives the required report on or before the deadline and does not seek verification of, choose to investigate, or otherwise dispute information in the report upon initial review. The remittance is subject to later adjustment if the TEA determines that there are errors in the report. The TEA will remit to the entity, subject to the availability of funds appropriated for this purpose, the sum of:

(1) an amount equal to the number of full-time employees reported by the entity for the reporting month multiplied by \$500 and divided by 12; and

(2) an amount equal to the number of part-time employees reported by the entity for the reporting month multiplied by \$250 and divided by 12.

(f) Distribution.

(1) If a report is submitted after the deadline specified in subsection (c) of this section, remittance to the reporting entity will be delayed by at least one month even if the TEA does not dispute or seek verification of the numbers reported.

(2) In the first month an individual becomes eligible for the supplement, all entities must begin to distribute the appropriate monthly supplement to each eligible individual employed by the entity, regardless of whether reports are submitted in accordance with the deadlines and other requirements of this section.

(3) Entities must continue to make the appropriate monthly distribution to eligible individuals for the length of time that such individuals are employed, as determined by the entity, for at least one day of the applicable month, provided that the individual did not receive a monthly distribution from another entity for employment that occurred earlier in the same month.

(g) Settle-up.

(1) Entities must submit proposed adjustments to previously reported numbers through September 30 of the fiscal year following the reporting month. The TEA may make adjustments to previously reported numbers and may make a corresponding increase or decrease in funds that would otherwise be remitted to an entity at any time after receipt of a report.

(2) A final determination of supplemental compensation for a school year shall be based on the reports of eligible employees submitted to the TEA division responsible for state funding. Any adjustments to prior year reporting must be completed by September 30 of the following school year.

(A) Additional amounts owed to districts for supplemental compensation shall be added to payments of supplemental compensation in the subsequent school year, and any reductions in payments shall be subtracted from payments of supplemental compensation in the subsequent school year until the overpayment has been recovered.

(B) Any overpayments from a prior year that exceed the amount of supplemental compensation owed to a school district or charter school by March 31 of the following school year will be subtracted from the Foundation School Fund payments owed to that school district or charter school in April and subsequent months until the full amount of overpayment has been recovered. Any overpayments that cannot be subtracted from current payments of supplemental compensation or Foundation School Fund payments will be due and payable upon request from the TEA.

(C) Adjustments to state assistance based on changes in the final number of eligible employees resulting from a subsequent audit or review of the data reported to the TEA or to the TRS must be requested no later than 12 months following the close of the school year for which the adjustment is sought.

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 September 23, 2005.

TRD-200504255

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

Earliest possible date of adoption: November 6, 2005
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

**PART 2. TEXAS STATE BOARD OF
BARBER EXAMINERS**

CHAPTER 51. PRACTICE AND PROCEDURE

The Texas Department of Licensing and Regulation ("Department") proposes the repeal of existing rules at 22 Texas Administrative Code, Chapter 51, Subchapter A, §§51.1 - 51.7; Subchapter B, §§51.11 - 51.21, 51.23 - 51.26, 51.28 - 51.31, 51.34, 51.35, 51.38 - 51.40; Subchapter C, §§51.52, 51.54, 51.57 - 51.64, 51.80, 51.83 - 51.85; Subchapter D, §§51.91 - 51.98; Subchapter E, §51.101; Subchapter F, §51.111; Subchapter H, §51.131; and Subchapter I, §51.141, concerning the Texas State Board of Barber Examiners.

Acts of the 79th Texas Legislature, Senate Bill 411 transferred the functions of the Texas State Board of Barber Examiners ("Board") to the Texas Department of Licensing and Regulation effective September 1, 2005 and abolished the Board. Therefore, the Department proposes to repeal existing administrative rules regarding the regulation of Texas State Board of Barber Examiners under the provisions of Texas Occupations Code, Chapter 1601. The Department in a separate concurrent rule-making action will propose new rules at 16 Texas Administrative Code Chapter 82 that will take the place of the rules affected by the repeal.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed repeal is in effect there will be no cost to state or local government as a result of the repeal.

Mr. Kuntz also has determined that for each year of the first five-year period the repeal is in effect, the public benefit will be reduced confusion because the rules contain obsolete references to the board.

There will be no effect on small or micro-businesses as a result of the proposed repeal. There are no anticipated economic costs to persons required to comply with the proposed repeal.

Comments on the repeal may be submitted to Tamala Fletcher, Legal Secretary, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: tamala.fletcher@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

SUBCHAPTER A. THE BOARD

22 TAC §§51.1 - 51.7

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

The repeal is proposed under Senate Bill 411 Acts of the 79th Texas Legislature and Texas Occupations Code, Chapters 51,

1601, and 1603 which authorizes the Department 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 repeal are those set forth in Texas Occupations Code, Chapters 51, 1601, and 1603. No other statutes, articles, or codes are affected by the repeal.

§51.1. *Regular Meetings and Examinations.*

§51.2. *Quorum.*

§51.3. *Administrative Fines.*

§51.4. *Current Mailing Address and Change of Mailing Address.*

§51.5. *Good Standing Required for License Renewal; Suspension of Certificate, License, or Permit.*

§51.6. *Right of Access.*

§51.7. *Cost of Administrative Hearings.*

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 September 19, 2005.

TRD-200504164

William H. Kuntz, Jr.

Executive Director, Texas Department of Licensing and Regulation

Texas State Board of Barber Examiners

Earliest possible date of adoption: November 6, 2005

For further information, please call: (512) 463-6208

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**SUBCHAPTER B. BARBER COLLEGES,
SCHOOLS, AND STUDENTS**

**22 TAC §§51.11 - 51.21, 51.23 - 51.26, 51.28 - 51.31, 51.34,
51.35, 51.38 - 51.40**

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

The repeal is proposed under Senate Bill 411 Acts of the 79th Texas Legislature and Texas Occupations Code, Chapters 51, 1601, and 1603 which authorizes the Department 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 repeal are those set forth in Texas Occupations Code, Chapters 51, 1601, and 1603. No other statutes, articles, or codes are affected by the repeal.

§51.11. *Barber School Contract.*

§51.12. *Inspection of New Barber School or College.*

§51.13. *Change of Ownership of Barber School.*

§51.14. *Business Hours of Barber School.*

§51.15. *Barber Chairs per Student.*

§51.16. *Equipment for Students.*

§51.17. *Specialty Equipment.*

§51.18. *Classroom Consultants.*

§51.19. *Absence of Teachers.*

§51.20. *Applying for Enrollment.*

§51.21. *Enrollment Application Deadline.*

§51.23. *Student Certificate.*

- §51.24. *Interruption of Attendance.*
- §51.25. *Reenrollment or Transfer.*
- §51.26. *Student Progress Reports.*
- §51.28. *Teacher Course.*
- §51.29. *Mandatory Curriculum.*
- §51.30. *Registered Barber Course.*
- §51.31. *Manicurist Course.*
- §51.34. *Barber Technician Course.*
- §51.35. *Definition of Barber's Technician.*
- §51.38. *Progress Report Barber School Monthly Records of Student Hours.*
- §51.39. *Barber Refresher Course.*
- §51.40. *All Other Businesses Prohibited in a Barber College.*

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

Filed with the Office of the Secretary of State on September 19, 2005.

TRD-200504165
 William H. Kuntz, Jr.
 Executive Director, Texas Department of Licensing and Regulation
 Texas State Board of Barber Examiners
 Earliest possible date of adoption: November 6, 2005
 For further information, please call: (512) 463-6208



SUBCHAPTER C. EXAMINATION AND LICENSING

22 TAC §§51.52, 51.54, 51.57 - 51.64, 51.80, 51.83 - 51.85

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

The repeal is proposed under Senate Bill 411 Acts of the 79th Texas Legislature and Texas Occupations Code, Chapters 51, 1601, and 1603 which authorizes the Department 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 repeal are those set forth in Texas Occupations Code, Chapters 51, 1601, and 1603. No other statutes, articles, or codes are affected by the repeal.

- §51.52. *Name Change.*
- §51.54. *Foreign Language Examinations.*
- §51.57. *Applying for Examination.*
- §51.58. *Deadline for Examination Application.*
- §51.59. *Student Violation Prior to the Examination.*
- §51.60. *Items to Bring to Examination.*
- §51.61. *Failure To Appear at Examination.*
- §51.62. *Notification of Examination Results.*
- §51.63. *Failure of Examination.*
- §51.64. *Deadline for License Application.*

- §51.80. *Transfer of Student Hours from Out of State.*
- §51.83. *Licensing of Felons.*
- §51.84. *Reciprocal Licensing Policy.*
- §51.85. *Reciprocal/Endorsement Licensing of Barbers.*

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 September 19, 2005.

TRD-200504166
 William H. Kuntz, Jr.
 Executive Director, Texas Department of Licensing and Regulation
 Texas State Board of Barber Examiners
 Earliest possible date of adoption: November 6, 2005
 For further information, please call: (512) 463-6208



SUBCHAPTER D. BARBER SHOPS

22 TAC §§51.91 - 51.98

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

The repeal is proposed under Senate Bill 411 Acts of the 79th Texas Legislature and Texas Occupations Code, Chapters 51, 1601, and 1603 which authorizes the Department 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 repeal are those set forth in Texas Occupations Code, Chapters 51, 1601, and 1603. No other statutes, articles, or codes are affected by the repeal.

- §51.91. *Responsibilities of Shop Owner and/or Shop Manager.*
- §51.92. *Barber Pole (Symbol of Barbering Since Ancient Days).*
- §51.93. *Sanitation Rules for Barber Shops, Manicurist Specialty Shops, and Barber Schools and Colleges.*
- §51.94. *Regulation of Dress in a Barber Shop, Specialty Shop, or School.*
- §51.95. *No Other Businesses in a Barber Shop or Specialty Shop.*
- §51.96. *Animals Prohibited in a Barber Shop, Specialty Shop, or School.*
- §51.97. *Booth Rental Permit.*
- §51.98. *State-Mandated Texas Online Authority Fees for Occupational Licensing Transactions.*

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 September 19, 2005.

TRD-200504167
 William H. Kuntz, Jr.
 Executive Director, Texas Department of Licensing and Regulation
 Texas State Board of Barber Examiners
 Earliest possible date of adoption: November 6, 2005
 For further information, please call: (512) 463-6208



SUBCHAPTER E. ADVERTISING

22 TAC §51.101

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

The repeal is proposed under Senate Bill 411 Acts of the 79th Texas Legislature and Texas Occupations Code, Chapters 51, 1601, and 1603 which authorizes the Department 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 repeal are those set forth in Texas Occupations Code, Chapters 51, 1601, and 1603. No other statutes, articles, or codes are affected by the repeal.

§51.101. Barber Advertisements.

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 September 19, 2005.

TRD-200504168

William H. Kuntz, Jr.

Executive Director, Texas Department of Licensing and Regulation

Texas State Board of Barber Examiners

Earliest possible date of adoption: November 6, 2005

For further information, please call: (512) 463-6208



SUBCHAPTER F. CONTESTED CASES

22 TAC §51.111

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

The repeal is proposed under Senate Bill 411 Acts of the 79th Texas Legislature and Texas Occupations Code, Chapters 51, 1601, and 1603 which authorizes the Department 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 repeal are those set forth in Texas Occupations Code, Chapters 51, 1601, and 1603. No other statutes, articles, or codes are affected by the repeal.

§51.111. Admission of Parties.

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 September 19, 2005.

TRD-200504169

William H. Kuntz, Jr.

Executive Director, Texas Department of Licensing and Regulation

Texas State Board of Barber Examiners

Earliest possible date of adoption: November 6, 2005

For further information, please call: (512) 463-6208



SUBCHAPTER H. INFORMAL HEARING DISPOSITION

22 TAC §51.131

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

The repeal is proposed under Senate Bill 411 Acts of the 79th Texas Legislature and Texas Occupations Code, Chapters 51, 1601, and 1603 which authorizes the Department 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 repeal are those set forth in Texas Occupations Code, Chapters 51, 1601, and 1603. No other statutes, articles, or codes are affected by the repeal.

§51.131. Administrative Procedures Regarding Disciplinary Actions Against Licensees.

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 September 19, 2005.

TRD-200504170

William H. Kuntz, Jr.

Executive Director, Texas Department of Licensing and Regulation

Texas State Board of Barber Examiners

Earliest possible date of adoption: November 6, 2005

For further information, please call: (512) 463-6208



SUBCHAPTER I. DEFINITIONS

22 TAC §51.141

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

The repeal is proposed under Senate Bill 411 Acts of the 79th Texas Legislature and Texas Occupations Code, Chapters 51, 1601, and 1603 which authorizes the Department 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 repeal are those set forth in Texas Occupations Code, Chapters 51, 1601, and 1603. No other statutes, articles, or codes are affected by the repeal.

§51.141. Definitions.

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

Filed with the Office of the Secretary of State on September 19, 2005.

TRD-200504171

William H. Kuntz, Jr.

Executive Director, Texas Department of Licensing and Regulation

Texas State Board of Barber Examiners

Earliest possible date of adoption: November 6, 2005

For further information, please call: (512) 463-6208



PART 4. TEXAS COSMETOLOGY COMMISSION

CHAPTER 83. SANITARY RULINGS

22 TAC §§83.1 - 83.6, 83.9 - 83.11, 83.13, 83.14, 83.17, 83.22 - 83.30

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

The Texas Department of Licensing and Regulation ("Department") proposes the repeal of existing rules at 22 Texas Administrative Code, Chapter 83, §§83.1 - 83.6, 83.9 - 83.11, 83.13, 83.14, 83.17, and 83.22 - 83.30 concerning the Texas Cosmetology Commission sanitary rulings.

Acts of the 79th Texas Legislature, Senate Bill 411 transferred the functions of the Texas Cosmetology Commission ("Commission") to the Texas Department of Licensing and Regulation effective September 1, 2005 and abolished the Commission. Therefore, the Department proposes to repeal the Texas Cosmetology Commission's existing administrative rules regarding sanitary rulings. The Department in a separate concurrent rulemaking action will propose new rules at 16 Texas Administrative Code, Chapter 83 that will replace the rules affected by the repeal.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed repeal is in effect there will be no cost to state or local government as a result of the repeal.

Mr. Kuntz also has determined that for each year of the first five-year period the repeal is in effect, the public benefit will be reduced confusion because the Texas Cosmetology Commission's existing rules contain references to the Texas Cosmetology Commission that are obsolete.

There will be no effect on small or micro-businesses as a result of the proposed repeal. There are no anticipated economic costs to persons required to comply with the proposed repeal.

Comments on the repeal may be submitted to Caroline Jackson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: caroline.jackson@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The repeal is proposed under Senate Bill 411 Acts of the 79th Texas Legislature and Texas Occupations Code, Chapters 51, 1602, and 1603 which authorizes the Department 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 repeal are those set forth in Texas Occupations Code, Chapters 51, 1602, and 1603. No other statutes, articles, or codes are affected by the repeal.

§83.1. *Enforcement.*

§83.2. *Sanitary Rating.*

§83.3. *Proper Quarters.*

§83.4. *Toilet; Bathrooms.*

§83.5. *Waste and Refuse.*

§83.6. *Animals in Schools or Establishments.*

§83.9. *Furniture and Equipment.*

§83.10. *Towels.*

§83.11. *Haircutting Capes and Shampoo Capes.*

§83.13. *Implements, Combs, Brushes, and Rollers.*

§83.14. *Disinfection Practices and Procedures.*

§83.17. *Prohibited Medical Practices.*

§83.22. *Infectious Disease.*

§83.23. *Personal Hygiene.*

§83.24. *Maids or Other Unlicensed Persons.*

§83.25. *Arrest Bleeding.*

§83.26. *Hairgoods and Related Equipment.*

§83.27. *Dispensary and Storage Area.*

§83.28. *Violation.*

§83.29. *Shirts and Shoes Required.*

§83.30. *Proper Labeling.*

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 September 19, 2005.

TRD-200504162

William H. Kuntz, Jr.

Executive Director, Texas Department of Licensing and Regulation

Texas Cosmetology Commission

Earliest possible date of adoption: November 6, 2005

For further information, please call: (512) 463-7348



CHAPTER 85. PUBLIC RECORDS

22 TAC §85.1

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

The Texas Department of Licensing and Regulation ("Department") proposes the repeal of an existing rule at 22 Texas Administrative Code, Chapter 85, §85.1 concerning the Texas Cosmetology Commission public records.

Acts of the 79th Texas Legislature, Senate Bill 411 transferred the functions of the Texas Cosmetology Commission ("Commission") to the Texas Department of Licensing and Regulation effective September 1, 2005 and abolished the Commission. The

Department proposes to repeal the Texas Cosmetology Commission's existing administrative rule regarding public records. This rule is no longer necessary because 16 Texas Administrative Code, Chapter 60, §60.81 of the Department rules currently addresses provisions for requesting copies of public records.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed repeal is in effect there will be no cost to state or local government as a result of the repeal.

Mr. Kuntz also has determined that for each year of the first five-year period the repeal is in effect, the public benefit will be less redundancy in that unnecessary rule language has been deleted.

There will be no effect on small or micro-businesses as a result of the proposed repeal. There are no anticipated economic costs to persons required to comply with the proposed repeal.

Comments on the repeal may be submitted to Caroline Jackson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: caroline.jackson@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The repeal is proposed under Senate Bill 411 Acts of the 79th Texas Legislature and Texas Occupations Code, Chapters 51, 1601, and 1603 which authorizes the Department 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 repeal are those set forth in Texas Occupations Code, Chapters 51, 1602, and 1603. No other statutes, articles, or codes are affected by the repeal.

§85.1. *Charges for Public 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 September 19, 2005.

TRD-200504161

William H. Kuntz, Jr.

Executive Director, Texas Department of Licensing and Regulation
Texas Cosmetology Commission

Earliest possible date of adoption: November 6, 2005

For further information, please call: (512) 463-7348



CHAPTER 89. GENERAL RULES AND REGULATIONS

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

22 TAC §§89.1, 89.2, 89.4 - 89.11, 89.13 - 89.20, 89.22 - 89.24, 89.26, 89.28 - 89.36, 89.38 - 89.44, 89.46, 89.47, 89.49 - 89.57, 89.69, 89.71, 89.72, 89.74 - 89.76

The Texas Department of Licensing and Regulation ("Department") proposes the repeal of existing rules at 22 Texas Administrative Code, Chapter 89, §§89.1, 89.2, 89.4 - 89.11, 89.13 -

89.20, 89.22 - 89.24, 89.26, 89.28 - 89.36, 89.38 - 89.44, 89.46, 89.47, 89.49 - 89.57, 89.69, 89.71, 89.72, and 89.74 - 89.76 concerning the Texas Cosmetology Commission's general rules and regulations.

Acts of the 79th Texas Legislature, Senate Bill 411 transferred the functions of the Texas Cosmetology Commission ("Commission") to the Texas Department of Licensing and Regulation effective September 1, 2005 and abolished the Commission. Therefore, the Department proposes to repeal the Texas Cosmetology Commission's existing general rules and regulations administrative rules. The Department in a separate concurrent rulemaking action will propose new rules at 16 Texas Administrative Code, Chapter 83 that will replace the rules affected by the repeal.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed repeal is in effect there will be no cost to state or local government as a result of the repeal.

Mr. Kuntz also has determined that for each year of the first five-year period the repeal is in effect, the public benefit will be reduced confusion because the Texas Cosmetology Commission's existing rules contain references to the Texas Cosmetology Commission that are obsolete.

There will be no effect on small or micro-businesses as a result of the proposed repeal. There are no anticipated economic costs to persons required to comply with the proposed repeal.

Comments on the repeal may be submitted to Caroline Jackson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: caroline.jackson@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The repeal is proposed under Senate Bill 411, Acts of the 79th Texas Legislature and Texas Occupations Code, Chapters 51, 1602, and 1603 which authorizes the Department 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 repeal are those set forth in Texas Occupations Code, Chapters 51, 1602, and 1603. No other statutes, articles, or codes are affected by the repeal.

§89.1. *Schedule of fines.*

§89.2. *Public School Cosmetology Programs.*

§89.4. *Instructor on Duty.*

§89.5. *License Fees.*

§89.6. *New Location or Change in Floor Plan of School.*

§89.7. *Student Work.*

§89.8. *Student Registration.*

§89.9. *Student Permit.*

§89.10. *Monthly Hour Report.*

§89.11. *Daily Attendance Register.*

§89.13. *Reducing, Increasing, or Withholding of Hours.*

§89.14. *Concurrent Enrollments and Make-up Hours.*

§89.15. *Definitions of License Authorizations.*

§89.16. *Educational Programs for Licensees.*

§89.17. *Instructor Applicants.*

§89.18. *Student Instructor-Instructor Ratio.*

§89.19. *Other Services Performed in a Cosmetology or Specialty Salon.*

§89.20. *Length of Courses.*

§89.22. *Transfer of Hours (Out-of-State Students).*

§89.23. *Transfer of Hours Between Courses.*

- §89.24. *General Provisions Regarding Transfer of Hours.*
- §89.26. *Tuition Refund Policy.*
- §89.28. *Withdrawal from School.*
- §89.29. *Practical Applications of the Curriculum.*
- §89.30. *Examination Applications.*
- §89.31. *Examination.*
- §89.32. *Models for Examination.*
- §89.33. *Cosmetology Instructor, Manicure Instructor, Facial Instructor Exam.*
- §89.34. *Applicants for Licensure through Reciprocity.*
- §89.35. *Uniforms.*
- §89.36. *Postmark.*
- §89.38. *Solid Wall.*
- §89.39. *New Salon.*
- §89.40. *Cosmetology Establishment Transfer.*
- §89.41. *Change of Location of a Salon or School.*
- §89.42. *Restrooms.*
- §89.43. *Items to be Posted in Salon or School.*
- §89.44. *Cosmetology Establishments with Other Business.*
- §89.46. *Itinerant Beauty Salons.*
- §89.47. *Definition of Facial Specialty Salon.*
- §89.49. *Definition of a Manicuring Specialty Salon.*
- §89.50. *Resale of Hair Pieces.*
- §89.51. *Cosmetology Services for the Incapacitated and Deceased.*
- §89.52. *Definition of a Complaint.*
- §89.53. *Minimum Requirements for Both Private and Public Cosmetology Schools.*
- §89.54. *Independent Contractor/Booth Rental License.*
- §89.55. *Refresher Courses/Schools Performing Services.*
- §89.56. *Administrative Processing Fees.*
- §89.57. *Disciplinary Hearings.*
- §89.69. *Corporate Ownership of Private Schools or Salons.*
- §89.71. *New Secondary or Post-Secondary Public Cosmetology Certification.*
- §89.72. *Curriculum Posted.*
- §89.74. *Program for Voluntary Continuing Education.*
- §89.75. *Field Trips.*
- §89.76. *Program for Mandatory Continuing Education.*

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

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TRD-200504160

William H. Kuntz, Jr.

Executive Director, Texas Department of Licensing and Regulation

Texas Cosmetology Commission

Earliest possible date of adoption: November 6, 2005

For further information, please call: (512) 463-7348



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 365. INVESTMENT RULES

The Texas Water Development Board (the board) proposes amendments to 31 TAC §365.7 and §365.13, concerning Investment Rules. Amendments to these sections are proposed to clarify and expand the scope of the investments of funds in the board portfolio.

The amendments to §365.7(b) are proposed to expand the strategy to invest monies in the Enterprise, Special Revenue, and debt service funds. Currently the board investment strategy limits the investment of these funds to securities backed by the full faith and credit of the U.S. government and U.S. government agencies in a ladder structure or through the use of pooled funds of state agencies in the Texas State Treasury. The proposed amendments would expand the board investment strategy to allow for the investment of these funds, in a ladder structure, to all authorized investments allowed under board rules, as set out in 31 TAC §365.13(a). This broader investment strategy provides for a greater diversity of investments.

The board proposes adding a new §365.13(a)(6) to include commercial paper as an authorized and suitable investment for funds in the board portfolio. The proposed new paragraph authorizes investment in commercial paper which does not exceed 270 days to maturity and which has received the highest short-term credit rating by Fitch, Moody's and Standard & Poor's and all nationally recognized investment rating firms with ratings for such commercial paper. These standards for investing in commercial paper encompass the requirements under the Public Funds Investment Act (Government Code §2256.023) and the board's Clean Water State Revolving Fund Senior Lien Bond Resolution, which governs some of the funds effected by this proposed new paragraph. The proposed new paragraph also excludes the investment of Texas Water Resources Finance Authority funds, managed by the board pursuant to a contractual agreement, in commercial paper. The investment of Texas Water Resources Finance Authority funds is governed by Texas Water Code §20.002(2), which does not permit investment in commercial paper. The addition of commercial paper as an authorized investment provides additional flexibility in the management of the board portfolio with a potential for increased yields. Current §365.13(a)(6) is amended to be §365.13(a)(7).

James LeBas, Chief Financial Officer, has determined that, for the first five-year period the amendments are in effect, there will be no fiscal implications on state and local government as a result of enforcement and administration of the amended sections.

Mr. LeBas has also determined that, for the first five years the amendments, as proposed, are in effect the public benefit anticipated as a result of enforcing the proposed amendments will be the more efficient investment of funds in the board portfolio. Mr. LeBas has determined there will not be economic costs to small businesses or individuals required to comply with the amendments as proposed.

Comments on the proposal will be accepted for 30 days following publication and may be submitted to Srin Surapanani, Attorney, General Counsel Office, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by e-mail to srin.surapanani@twdb.state.tx.us or by fax at (512) 463-5580.

SUBCHAPTER A. GENERAL PROVISIONS

31 TAC §365.7

The amendments are proposed under the authority of the Texas Water Code §6.101, which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State, and the Texas Government Code, Chapter 2256, which requires each State agency to adopt rules regarding the investment of its funds.

There are no statutory provisions affected by the proposed amendments.

§365.7. *Objectives and Strategies.*

- (a) (No change.)
- (b) Strategy by Fund.

(1) Enterprise Fund--Investments in this fund will be used primarily to match cashflow needs for financial programs and for the payment of debt service. This objective will be accomplished by purchasing authorized investments under §365.13(a) of this title (relating to Authorized and Suitable Investments) in a laddered structure [securities backed by the full faith and credit of the U.S. government and U.S. government agencies in a laddered structure or through the use of pooled funds of state agencies in the Texas State Treasury]. Except for the reserve components of the enterprise fund, which may be invested under §365.17(b) of this title (relating to Maximum Maturities) for up to seven years, the maturities of each security in this fund will be 360 days or less, unless specific approval is received from the board.

(2) Special Revenue Fund--Investments in this fund will be used primarily to match cashflow needs for financial programs. This objective will be accomplished by purchasing authorized investments under §365.13(a) of this title (relating to Authorized and Suitable Investments) in a laddered structure [securities backed by the full faith and credit of the U.S. government and U.S. government agencies in a laddered structure or through the use of pooled funds of state agencies in the Texas State Treasury]. The maturities of each security in this fund will be 360 days or less, unless specific approval is received from the board.

(3) Debt Service--Investments in this fund will be used primarily to match cashflow needs for debt service payments. This objective may be accomplished by purchasing authorized investments under §365.13(a) of this title (relating to Authorized and Suitable Investments) in a laddered structure [securities backed by the full faith and credit of the U.S. government and U.S. government agencies in a laddered structure or through the use of pooled funds of state agencies in the Texas State Treasury]. Except for the reserve components of the debt service fund, which may be invested under §365.17(b) of this title (relating to Maximum Maturities) for up to seven years, the maturities of each security in this fund will be 360 days or less, unless specific approval is received from the board.

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

Filed with the Office of the Secretary of State on September 21, 2005.

TRD-200504215
Jonathan Steinberg
Deputy Counsel
Texas Water Development Board
Proposed date of adoption: November 15, 2005
For further information, please call: (512) 475-2052



SUBCHAPTER B. INVESTMENT PROCEDURES

31 TAC §365.13

The amendments are proposed under the authority of the Texas Water Code §6.101, which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State, and the Texas Government Code, Chapter 2256, which requires each State agency to adopt rules regarding the investment of its funds.

There are no statutory provisions affected by the proposed amendments.

§365.13. *Authorized and Suitable Investments.*

(a) The board is authorized to invest the portfolio in the following securities:

- (1) - (4) (No change.)
- (5) through pooled funds of state agencies in the Texas State Treasury; ~~and~~
- (6) commercial paper that does not exceed 270 days to maturity and has received the highest short-term credit rating by Fitch, Moody's and Standard & Poor's and all nationally recognized investment rating firms with ratings for such commercial paper, except that funds managed by the board on behalf of the authority may not be invested in commercial paper; and

(7) ~~[(6)]~~ any obligations authorized by a bond resolution of the board or authority if such obligation is not listed in subsection (b) of this section and if prior approval of the board is obtained.

- (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 September 21, 2005.

TRD-200504216
Jonathan Steinberg
Deputy Counsel
Texas Water Development Board
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For further information, please call: (512) 475-2052



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER C. APPRAISAL DISTRICT ADMINISTRATION

34 TAC §9.415

The Comptroller of Public Accounts proposes an amendment to §9.415, concerning applications for property tax exemptions.

Changes to subsection (c) are proposed for clarification purposes and 4 model forms are proposed to be amended. To clarify the application for the exemption of goods exported from Texas, the comptroller is amending Model Form 50-113. To implement the requirements of law regarding the inclusion of a person's date of birth on the application for residence homestead exemptions, and to clarify instructions, the comptroller is amending Model Form 50-114. To include certain medical facilities on the application for miscellaneous exemptions, the comptroller is amending Model Form 50-128. To implement the requirements of law regarding the deadline for filing an application for a disabled veteran or survivor exemption, the comptroller is amending Model Form 50-135.

The application for exemption of goods exported from Texas (also known as the freeport exemption) is being amended in response to a request from a vendor to clarify the wording of the third question in step 4 of the form. If inventory is transported for only a portion of the year, it could be eligible for the exemption and space for providing the months during which portions of the inventory were transported is needed. The comptroller is amending Model Form 50-113 to provide additional space for providing this information.

The application for residence homestead exemption is being amended in response to House Bill 2491, 79th Legislature, Regular Session, effective September 1, 2005, requiring that the homestead application form include a space for the applicant to include his or her date of birth. The comptroller is amending Model Form 50-114 to add the space for the date of birth and to provide an explanation that the applicant will be entitled to receive a residence homestead exemption for persons 65 years of age or older without filing another application for that purpose. The model form is being amended to explain that a tax limitation for homeowners who are age 65 or older or disabled is available at the option of counties, cities, or junior college districts and is required for school districts to provide to disabled homeowners. The comptroller is amending Model Form 50-114 to clarify the application instructions concerning tax limitations generally and specifically for surviving spouses of persons age 65 or older or disabled. The model form is also being amended to clarify the description of property in Step 2 concerning the number of acres used for residential occupancy, to amend the instructions concerning applications for the homestead exemption for persons 65 years of age or older, and to correct clerical errors.

The miscellaneous property tax exemption form is being amended to conform to requirements of the law. The comptroller is amending Model Form 50-128 to add medical center developments in populous counties as organizations that may qualify for exemptions from ad valorem taxation and for which annual applications are not required. The amendment also corrects clerical errors on the form.

The application for disabled veteran's or survivor's exemption is being amended in response to Senate Bill 1652, 79th Legislature, Regular Session, effective September 1, 2005. The comptroller is amending Model Form 50-135 to state that an application may be filed no later than one year after the delinquency date for taxes on the property, rather than the first anniversary of the earlier of certain dates.

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

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule would benefit the public by standardizing and streamlining the transmittal of property tax information. The proposed amendment would have no significant fiscal impact on small businesses. There is no anticipated significant economic cost to the public.

Comments on the proposal may be submitted to Buddy Breivogel, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

The amendment is proposed under Tax Code, §11.43(f), which requires the comptroller to prescribe the contents of the application form for each kind of property tax exemption.

The amendment implements Tax Code, §§11.251, 11.43, and 11.439.

§9.415. Applications for Property Tax Exemptions.

(a) With the application for exemption for residence homesteads (Form 50-114), the appraisal office shall:

- (1) provide a list of taxing units served by the appraisal district, together with all residential homestead exemptions each offers; or
- (2) provide the appraisal district's name and appraisal district's phone number on the form, with an instruction that the property owner may call the appraisal district to determine what homestead exemptions are offered by the property owner's taxing units.

(b) If the chief appraiser learns of the death of a person qualified for over-65 or disabled homestead exemptions (Tax Code, §11.13) and it appears that the person's spouse has acquired ownership of the homestead, the chief appraiser should require the surviving spouse to file a new homestead exemption application. Based on the information provided in the new application, the chief appraiser shall determine whether the surviving spouse qualifies for homestead exemptions, including over-65 or disabled exemptions, and whether the surviving spouse may retain the tax ceiling for school tax purposes established on the homestead by the decedent.

(c) The model forms in paragraphs (1) - (25) [~~(1) - (24)~~] of this subsection [~~and the new model forms in paragraph (25) of this subsection~~] are adopted by reference by the Comptroller of Public Accounts. Copies of these forms are available for inspection at the office of the Texas Register or can be obtained from the Comptroller of Public Accounts, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528. Copies may also be requested by calling our toll-free number 1-800-252-9121. In Austin, call (512) 305-9999. From a Telecommunications Device for the Deaf (TDD), call 1-800-248-4099, toll free. In Austin, the local TDD number is (512) 463-4621.[-]

- (1) Application for Transitional Housing Property Tax Exemption (Form 50-140);
- (2) Application for Residence Homesteads (Form 50-114);
- (3) Application for Cemetery Exemption (Form 50-120);
- (4) Application for Charitable Organizations (Form 50-115);
- (5) Application(s) for Charitable Organization Providing Low-Income Housing (Form 50-242 and Form 50-243);
- (6) Application for Youth Spiritual, Mental, and Physical Development Organizations (Form 50-118);
- (7) Application for Religious Organizations (Form 50-117);

(8) Application for Privately Owned Schools (Form 50-119);

(9) Application for Disabled Veteran's or Survivor's Exemption (Form 50-135);

(10) Application for Miscellaneous Property Tax Exemptions (Form 50-128);

(11) Application for Theater School Property Tax Exemption (Form 50-125);

(12) Application for Historic Sites Property Tax Exemption (Form 50-122);

(13) Application for Goods Exported from Texas (freeport exemption) (Form 50-113);

(14) Application for Solar and Wind-Powered Energy Device Exemption (Form 50-123);

(15) Application for Property Tax Abatement Exemption (Form 50-116);

(16) Application for Stored Offshore Drilling Rig Exemption (Form 50-124);

(17) Application for Dredge Disposal Site Exemption (Form 50-121);

(18) Application for Nonprofit Water Supply or Wastewater Services Corporation (Form 50-214);

(19) Application for Pollution Control Property (Form 50-248);

(20) Application for Cotton Stored in a Warehouse (Form 50-245);

(21) Application(s) for Community Housing Development Organizations Improving Property for Low-Income and Moderate-Income Housing Tax Exemption Previously Exempt in 2003 (Form 50-263 and Form 50-264);

(22) Application for Water Conservation Initiatives Property Tax Exemption (Form 50-270);

(23) Application for Ambulatory Health Care Center Assistance Exemption (Form 50-282);

(24) Application for Raw Cocoa and Green Coffee Held in Harris County (Form 50-297); and

(25) Application for Organizations Constructing or Rehabilitating Low-Income Housing for Property Tax Exemption (Form 50-310).

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 September 22, 2005.

TRD-200504234

Martin Cherry

Chief Deputy General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: November 6, 2005

For further information, please call: (512) 475-0387



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 28. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES

SUBCHAPTER H. ACCREDITATION

37 TAC §28.134

The Texas Department of Public Safety proposes amendments to §28.134, concerning List of Recognized Accrediting Bodies. Amendments to the section are necessary in order to provide for the recognition of additional accrediting bodies specifically for forensic urine drug testing laboratories and for a name change and removal of limitations of scope of accreditation for an existing accrediting body.

The amendment to the accrediting body listing in §28.134(a)(2) American Society of Crime Laboratory Directors, Laboratory Accreditation Board (ASCLD/LAB) is a nonsubstantive clarification of the existing rules regarding the disciplines that may be accredited. Specifically, digital evidence is not accreditable under 37 TAC §28.137(b)(5) (relating to Disciplines, Subdisciplines, and Procedures Exempt from Statutory DPS Accreditation) and crime scene search is not subject to accreditation unless it is a forensic analysis under 37 TAC §28.136(2)(B)(iv) (relating to Disciplines, Subdisciplines, and Procedures to Which Statutory DPS Accreditation Does Not Apply).

The amendment to the accrediting body listing in §28.134(a)(3) National Forensic Science Technology Center (NFSTC) was changed to Forensic Quality Services (FQS and FQS-I) because of a name change.

The limitations imposed on the accrediting body listing in §28.134(a)(3) Forensic Quality Services (FQS and FQS-I) formerly known as National Forensic Science Technology Center (NFSTC) was amended to be recognized for accreditation of all disciplines which are eligible for accreditation under this subchapter, pursuant to determination by the director under 37 TAC §28.133 (relating to Recognition Process).

Upon recommendation and pursuant to §28.133, the director has determined that additional accrediting bodies have relevance in the scientific community, have adequate accreditation criteria reasonably likely to ensure trustworthy forensic analysis, have periodic audit or review; and have a process for suspension, revocation, withdrawal, or denial of accreditation to ensure that there is full reliability and accuracy of test results.

Therefore, two additional accrediting bodies were added as new paragraphs (4) and (5).

Oscar Ybarra, Chief of Finance, has determined that for each year of the first-five year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to afford to the general public and users of laboratory services a means by which to identify those laboratories which have demonstrated that they meet

established criteria. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

Comments on the proposal may be submitted to Ron Urbanovsky, Director, Crime Laboratory Service, MSC0460, Department of Public Safety, P.O. Box 4143, Austin, Texas 78765-4143; or by electronic mail at LabQA@txdps.state.tx.us. The department will accept comments for 30 days after publication in the *Texas Register*. For further information, call Ron Urbanovsky at (512) 424-2143.

The amendments are proposed pursuant to Texas Government Code, §411.0205, which authorizes the director by rule shall establish an accreditation process for crime laboratories, including DNA laboratories, and other entities conducting forensic analyses of physical evidence for use in criminal proceedings.

Texas Government Code, §411.0205 is affected by this proposal.

§28.134. *List of Recognized Accrediting Bodies.*

(a) The director recognizes the following accrediting bodies, subject to the stated discipline or subdiscipline limitations:

(1) American Board of Forensic Toxicology (ABFT)--recognized for accreditation of toxicology discipline only.

(2) American Society of Crime Laboratory Directors, Laboratory Accreditation Board (ASCLD/LAB)--recognized for accreditation of all disciplines which are eligible for accreditation under this subchapter [it accredits, except digital evidence and a crime scene search team].

(3) Forensic Quality Services (FQS and FQS-I); formerly known as the National Forensic Science Technology Center (NFSTC)--recognized for accreditation of all disciplines which are eligible for accreditation under this subchapter [biology only, including the subdiscipline of DNA].

(4) Substance Abuse and Mental Health Services Administration of the Department of Health and Human Services (HHS/SAMHA), formerly known as the National Institute on Drug Abuse of the Department of Health and Human Services (HHS/NIDA)--recognized for accreditation of toxicology discipline in the subdiscipline of Urine Drug Testing for all classes of drugs approved by the accrediting body;

(5) College of American Pathologists (CAP)--recognized for accreditation of toxicology discipline only in the subdiscipline of Urine Drug Testing for all classes of drugs approved by the accrediting body.

(b) If an accrediting body is recognized under subsection (a) of this section and the recognized body approves a new discipline, subdiscipline, or procedure, the director may temporarily recognize the new discipline, subdiscipline, or procedure. A temporary approval shall be effective for 120 days.

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 September 22, 2005.

TRD-200504233

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Earliest possible date of adoption: November 6, 2005

For further information, please call: (512) 424-2135

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 15. TEXAS VETERANS COMMISSION

CHAPTER 454. ACCEPTANCE OF GIFTS, GRANTS AND DONATIONS

40 TAC §§454.1 - 454.7

The Texas Veterans Commission ("Commission") proposes new 40 Texas Administrative Code, Part 15, Chapter 454, §§454.1 - 454.7, regarding the acceptance of gifts, grants and donations to the Commission or the Permanent Fund for Veterans Assistance. The purpose of these rules is to establish procedures for the Commission in establishing a Permanent Fund for Veterans Assistance. The rules will also establish guidelines for the Commission to accept gifts and solicit for donations.

These rules are required in accordance with Texas Government Code, §403.108 or §434.016 to allow the Commission to establish rules governing the Permanent Fund for Veterans Assistance and the acceptance of gifts.

James E. Nier, Executive Director, has determined that for the first five-year period the new rules are in effect there will be no cost to state or local government as a result of enforcing or administering the new rules.

Mr. Nier also has determined that for each year of the first five-year period the new rules are in effect, the public benefit will be the enhancement of veterans assistance programs, to include veterans representation and counseling and making grants to local communities to address veterans' needs.

There will be no effect on small or micro-businesses as a result of the proposed new rules. There are no anticipated economic costs to persons who are required to comply with the proposed new rules.

Comments on the proposal may be submitted to James E. Nier, Executive Director, Texas Veterans Commission, P.O. Box 12277, Austin, Texas 78711, facsimile (512) 475-2395, or electronically to info@tvc.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The new rules are proposed under Texas Government Code, Chapter 434 which authorizes the Commission to adopt rules it considers necessary for its administration. All gifts, grants and donations shall be accepted under the authority granted in the Texas Government Code, §403.108 or §434.016.

The statutory provisions affected by the proposal are those set forth in Texas Government Code, §403.108 or §434.016. No other statutes, articles, or codes are affected by the proposal.

§454.1. General Provisions.

(a) Introduction. Private sector donations, gifts and grants to the Texas Veterans Commission or the Permanent Fund for Veterans

Assistance can have a significant impact on the agency's success in enhancing and improving veterans' programs and making grants to local communities to meet veterans' needs. The Texas Veterans Commission is statutorily authorized to accept donations, gifts and grants pursuant to the Texas Government Code, §403.108 and §434.016. It shall be the policy of the Commission to accept only those donations, gifts, and grants that advance the purpose of the Permanent Fund For Veterans Assistance.

(b) Purpose. The purpose of this section is to establish procedures for the acceptance of private donations made to the Commission or the Permanent Fund for Veterans Assistance and to create standards of conduct to govern the relationship between the agency and the donors.

§454.2. Definitions.

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

(1) Commission--Texas Veterans Commission.

(2) Donation--The conveyance of a property, interest or service. Donations may include, among other things, transfers of cash gifts, services, real property, leasehold estates, loaned employees, and grants, as well as in-kind personal gifts such as equipment, books, art, or memorabilia.

(3) Donor--One or more individuals or organizations that offer to give or give a donation to the Commission.

(4) Employee--An individual employed by the department in a full or part-time capacity or a volunteer of the department.

(5) Fund--Permanent Fund for Veterans' Assistance.

(6) Gifts and Grants--Property or money that is donated to the Commission to enhance services or provide assistance to local communities for veterans' assistance.

(7) Officer--The executive director, governing board members, and advisory board members who serve the department.

§454.3. Acceptance, Disposition and Procedures for Accepting Gifts, Grants and Donations.

All donations will be accepted on behalf of the Commission. No officer or employee of the Commission can accept donations in their individual capacity.

§454.4. Acceptance of Gifts, Grants and Donations.

(a) Donations in the amount of less than five hundred dollars may be accepted upon determination of the Commission's Executive Director that the donation is for purposes consistent with Texas Government Code, §403.108 or §434.016.

(b) Gifts, grants and donations valued at five hundred dollars (\$500.00) or more must be accepted by a majority of the board, in an open meeting not later than the 90th day after the date the gift is received by the Commission. The Commission, when it accepts the gifts in open meeting, will record the name of the donor, a description of the gift, and a statement of the purpose of the gift in the minutes of the Commission's meeting.

(c) Donations to the Commission may be for any amount and for specified or unspecified purposes.

§454.5. Disposition of Accepted Gifts, Grants and Donations.

(a) Monetary gift or donation. The Commission will deposit monetary donations in the state treasury, in an approved account, to the credit of the Commission. The money shall be used to carry out the purposes of Texas Government Code, §403.108 or §434.016.

(b) Gift of tangible goods. The Commission will record or inventory and dispose of a gift of tangible goods donated under this section in accordance with Chapter 2225, §2255.001 of the Government Code and established agency procedures.

(c) Real property. A deed that conveys any interest in real property to the State shall be recorded in the real property records of the county in which the real property is located, and shall be inventoried and retained by the Commission in accordance with agency procedures.

§454.6. Procedures for Acceptance of Gifts, Grants and Donations.

(a) Gifts, grants and donation agreement. The donor and the Commission shall execute a donation agreement, which documents the name of the donor, a description of the donation, and the purpose of the donation. Acceptance of donations to the department shall be approved by the governing board in accordance with Texas Government Code, Chapter 434, Subchapter A.

(b) Deposited funds. The commission shall deposit monetary contributions from private sources into a special account designated by the Comptroller in the General Revenue Fund. The Comptroller's Office will earmark the funds at the Commission's request in accordance with applicable state law. The money contributed shall be used to carry out the purposes of the Commission and, to the extent possible, the purposes specified by the donors.

§454.7. Standard of Conduct between Officers or Employees and Private Donors.

(a) An officer or employee shall not accept or solicit any gift, favor, or service from a private donor that might reasonably tend to influence their official conduct or that the officer or employee knows is being offered with the intent to influence official conduct.

(b) An officer or employee shall not accept employment or engage in any business or professional activity with a private donor which the officer or employee might reasonably expect would require or induce them to disclose confidential information acquired by reason of their official position.

(c) An officer or employee shall follow all agency policies and state laws and regulations related to acceptance of gifts, ethical standards, reporting of travel expenses, and use of government property.

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 September 21, 2005.

TRD-200504230

James E. Nier

Executive Director

Texas Veterans Commission

Earliest possible date of adoption: November 6, 2005

For further information, please call: (512) 463-8235



CHAPTER 455. GRANTS

40 TAC §§455.1 - 455.6

The Texas Veterans Commission ("Commission") proposes new 40 Texas Administrative Code, Part 15, Chapter 455, §§455.1 - 455.6, regarding Grants. The purpose of these rules is to establish procedures for the Commission to manage grants made by the Commission to outside entities.

These rules are required in accordance with §403.108(c) of the Texas Government Code to allow the Commission to make grants to local communities to address veterans' needs.

James E. Nier, Executive Director, has determined that for the first five-year period the new rules are in effect there will be no cost to state or local government as a result of enforcing or administering the new rules.

Mr. Nier also has determined that for each year of the first five-year period the new rules are in effect, the public benefit will be the enhancement of veterans assistance programs, to include veterans representation and counseling and making grants to local communities to address veterans' needs.

There will be no effect on small or micro-businesses as a result of the proposed new rules. There are no anticipated economic costs to persons who are required to comply with the proposed new rules.

Comments on the proposal may be submitted to James E. Nier, Executive Director, Texas Veterans Commission, P.O. Box 12277, Austin, Texas 78711, facsimile (512) 475-2395, or electronically to info@tvc.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The new rules are proposed under Texas Government Code, Chapter 434, which authorizes the Commission to adopt rules it considers necessary for its administration.

The statutory provisions affected by the proposal are those set forth in Texas Government Code, Subchapter G, §403.108 and Texas Government Code, Chapter 434. No other statutes, articles, or codes are affected by the proposal.

§455.1. Grant Conditions.

Applicants must apply for funds using the procedures, forms, and certifications prescribed by the Commission. When the Commission determines that a grantee has failed to submit the necessary information or has failed to comply with any commission rule or other relevant statute, rule, or requirement, the Commission may place a special condition on the grant. The special condition allows the commission to place a grantee's funds on hold until the grantee has satisfied the requirements of the special condition.

§455.2. Grant Officials.

Each grant must have three different persons designated to serve as grant officials:

(1) The project director. This person must be (at the applicant's option) an employee of the applicant agency or be from the contractor organization that will be responsible for project operation or monitoring and who will serve as the point-of-contact regarding the project's day-to-day operations;

(2) The financial officer. This person must be the chief financial officer of the applicant agency. A county auditor, city treasurer, comptroller, or the treasurer of a nonprofit corporation's board may serve as the project's financial officer; and

(3) The authorized official. This person must be authorized to apply for, accept, decline, or cancel the grant for the applicant agency. The executive director of a state agency, county judge, mayor, city manager, chairman of a nonprofit board, director of a community supervision and corrections department, or a designee authorized by the governing body in its resolution may serve as the authorized official.

§455.3. Evaluating Project Effectiveness.

Commission grantees must regularly evaluate the effectiveness of their projects. This includes a reassessment of project activities and services to determine whether they continue to be effective. Grantees must show that their activities and services effectively address and achieve the project's stated purpose. The Commission will monitor grantee success through required progress reports, on-site visits, and desk reviews. Grantees must maintain information related to project evaluations in the project's files, and that information must be available for review by commission staff or their representatives.

§455.4. Retention of Records.

(a) Grantees must maintain all financial records, supporting documents, statistical records, and all other records pertinent to the award for at least three years following the closure of the most recent audit report or submission of the final expenditure if the audit report requirement has been waived. Records retention is required for the purposes of federal or state examination and audit. Grantees may retain records in an electronic format. All records are subject to audit or monitoring during the entire retention period.

(b) Grantees must retain records for equipment, non-expendable personal property, and real property for a period of three years from the date of the item's disposition, replacement, or transfer.

(c) If any litigation, claim, or audit is started before the expiration of the three-year records retention period, the grantee must retain the records under review for an additional three years after the resolution of all litigation, claims, or audit findings.

§455.5. Grant Management.

The Commission has oversight responsibility for the grants it awards. The Commission may review the grantee's management and administration of grant funds at any time and may also request records. Grantees must respond to all Commission inquiries or requests and must make all requested records available to the Commission.

§455.6. Remedies for Noncompliance.

If a grantee fails to comply with any term or condition of a grant, the commission may take one or more of the following actions:

- (1) Temporarily withhold all grant payments pending correction of the deficiency by the grantee;
- (2) Disallow all or part of the cost of the activity or action that is not in compliance;
- (3) Impose administrative sanctions, other than fines, on the grantee;
- (4) Withhold further grants from the program or grantee;
- (5) Terminate the grant in whole or in part; or
- (6) Exercise other remedies that may be legally available.

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 September 21, 2005.

TRD-200504231

James E. Nier

Executive Director

Texas Veterans Commission

Earliest possible date of adoption: November 6, 2005

For further information, please call: (512) 463-8235

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CHAPTER 456. USE OF FUNDS FROM THE SALE OF SERVICE ORGANIZATION LICENSE PLATES

40 TAC §456.1

The Texas Veterans Commission ("Commission") proposes new 40 Texas Administrative Code Part 15, Chapter 456, §456.1, regarding the Use of Funds from the Sale of Service Organization License Plates.

The purpose of this rule is to establish procedures for the Commission in distributing the funds generated by the sale of license plates by service organizations.

This rule is in accordance with Texas Transportation Code, Chapter 504 to allow the Commission to establish rules governing the distribution of funds generated by the sale of the respective organizations' license plates.

James E. Nier, Executive Director, has determined that for the first five-year period the new rule is in effect there will be no cost to state or local government as a result of enforcing or administering the new rule.

Mr. Nier also has determined that for each year of the first five-year period the new rule is in effect, the public benefit will be the enhancement of veterans assistance programs, to include veterans representation and counseling and making grants to local communities to address veterans' needs.

There will be no effect on small or micro-businesses as a result of the proposed new rule. There are no anticipated economic costs to persons who are required to comply with the proposed new rule.

Comments on the proposal may be submitted to James E. Nier, Executive Director, Texas Veterans Commission, P.O. Box 12277, Austin, Texas 78711, facsimile (512) 475-2395, or electronically to info@tvc.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The new rule is proposed under Texas Transportation Code, Chapter 504 and Texas Government Code, Chapter 434, which authorizes the Commission to adopt rules it considers necessary for its administration.

The statutory provisions affected by the proposal are those set forth in Texas Transportation Code, §504.13 and §504.630 and Texas Government Code, Chapter 434. No other statutes, articles, or codes are affected by the proposal.

§456.1. Use of Funds from the Sale of Service Organization License Plates.

(a) The purpose of the license plates fund account is to provide grants to the Service Organizations from the revenue generated by the sale of their respective plates.

(b) Fund usage. License plate funds may be used by the respective associations for the purposes designated in Chapter 504 of the Texas Transportation Code.

(c) Request for funds. Grant request must be made through the Commission; the same rules apply as with all other grant request.

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

Filed with the Office of the Secretary of State on September 21, 2005.

TRD-200504232

James E. Nier

Executive Director

Texas Veterans Commission

Earliest possible date of adoption: November 6, 2005

For further information, please call: (512) 463-8235

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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 803. SKILLS DEVELOPMENT FUND

The Texas Workforce Commission (Commission) proposes amendments to rules concerning the Skills Development Fund. Texas Government Code §2001.039 requires that each state agency review and consider for re-adoption each rule adopted by that agency. The Commission has reviewed Chapter 803 and determined that reasons for adopting the chapter exist; however, amendments to the rules are needed in order to update terminology and reflect recent changes in state law.

The Commission proposes amendments to the following sections of Chapter 803, relating to the Skills Development Fund:

Subchapter A, General Provisions Regarding the Skills Development Fund, §§803.1 - 803.3

Subchapter B, Program Administration, §§803.11 - 803.15

The Commission proposes the repeal of the following sections of Chapter 803, relating to the Skills Development Fund:

Subchapter C, Program Administration After Award of Contract, §§803.31 - 803.36

The Commission proposes the following new sections to Chapter 803, relating to the Skills Development Fund:

Subchapter C, Program Administration After Award of Contract, §803.31 and §803.32

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 803 rule change is to:

(1) address additional priorities in awarding Skills Development Fund grants as directed by House Bill (HB) 2421, enacted by the 79th Texas Legislature, Regular Session;

(2) eliminate certain rule language also found in statute;

(3) remove administrative processes and procedures that are unnecessary in rules; and

(4) incorporate minor technical edits throughout the rules for improved clarity and consistency.

The additional requirements for Skills Development Fund grants include concurrent participation with the Skills Development

Fund and the Texas Enterprise Fund with the Office of the Governor Economic Development and Tourism division; training incentives for small businesses; and the availability of funds for incumbent worker training and training focused on economic development.

Effective June 18, 2005, HB 2421 amended Texas Labor Code §303.005 to prohibit an employer from applying for both a Skills Development Fund grant (in conjunction with a community or technical college or the Texas Engineering Extension Service (TEEX)) and a Texas Enterprise Fund grant, unless the employer and the college file an application for concurrent participation.

Additionally, HB 2421 directs the Commission to consider giving priority to training incentives for small businesses. Pursuant to Texas Labor Code §303.003(b)(2), one of the purposes of the Skills Development Fund is to sponsor small businesses, which is addressed in the current rules under Uses of the Fund. The proposed rules add a cross-reference to this existing section under Procedures for Proposal Evaluation to ensure that the purposes of the Skills Development Fund grants are included in the evaluation of proposals.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor, nonsubstantive, editorial changes are made throughout Chapter 803 that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS REGARDING THE SKILLS DEVELOPMENT FUND

§803.2. Definitions.

The Commission proposes removing §803.2(1), the definition of "assessment," and §803.2(2), the definition of "community-based organization," because both terms are defined in Texas Labor Code §303.001(b)(1) and §303.001(b)(2), respectively.

Current §803.2(3), the definition of "customized training project," is reorganized and renumbered as §803.2(1). The Commission amends the definition to state that not only a private business, but also a business consortium, or a community-based organization only in partnership with a public community college, a technical college, or TEEX, may participate in designing the customized training project.

The Commission proposes the deletion of §803.2(4), the definition of "director," because it is defined in §800.2 of this title; therefore, it is unnecessary to redefine the term in this chapter. Further, the Commission proposes to update references to director throughout Chapter 803 to "executive director," to correctly reflect the Chapter 800 definition.

Current §803.2(5), the definition of "grant recipient," is reorganized and renumbered as §803.2(2).

Current §803.2(12), the definition of "training provider," is reorganized and renumbered as §803.2(9). The Commission proposes amending the definition to include a community-based organization only in partnership with a public community college, technical college, or TEEX as a training provider.

§803.3. Uses of the Fund.

The Commission proposes to amend §803.3(a) by specifying that a grant recipient may use the Skills Development Fund as start-up or emergency funds, as specified. Additionally, the Commission proposes to amend §803.3(a)(2) by clarifying that the sponsorship of small and medium-sized business networks

and consortiums is for the purpose of developing customized training.

SUBCHAPTER B. PROGRAM ADMINISTRATION

§803.11. Grant Administration.

The Commission proposes removing §803.11(a) regarding the director's responsibility for grant administration because this information is set forth in Texas Labor Code §303.003(d). Additionally, the Commission proposes removing §803.11(b) because this information is an established grants administration principle not necessary in rule.

The Commission proposes adding new §803.11, which states that grant recipients must enter into an agreement with the Agency to comply with contract requirements, which include, but are not limited to, regulations listed in these paragraphs. The Commission also amends this section by specifying in §803.11(4)(A) that project completion is contingent upon the determination by the executive director, or designee, that a project has met the training objectives, outcomes, and requirements by allowing an attrition rate of up to 15% of the total number of trainees in the contract. Additionally, the Commission adds in §803.11(4)(B) that the contract's final payment will be withheld for 60 days after the completion of training and after the Agency's receipt of verification from the employer that the trainees are employed.

§803.13. Program Objectives.

The Commission proposes amending §803.13(2) by referring to "local workforce development areas" as "workforce areas," as set forth in the definition in §800.2 of this title. Further, the Commission proposes to change references from local workforce development area to workforce area throughout Chapter 803.

The Commission proposes amending §803.13 by including an additional program objective §803.13(6), which allows the Agency, to the greatest extent practicable, to award Skills Development Fund grants as follows: (1) approximately 60% of the funds may be for job retention training; and (2) the remaining funds may be for training for job creation. With the exception of the Skills Development Fund, limited resources have been available to upgrade the skills of existing workers to assist with job retention. Because the Legislature has recognized that the Skills Development Fund is available for training the existing workforce, as well as training to create new jobs, the Commission is establishing a flexible goal to meet the economic needs of the state and the skills' needs of employers.

The Commission proposes removing §803.13(b) because it duplicates information found in §803.13(4).

§803.14. Procedure for Requesting Funding.

For consistency with the definition of "private partner," renumbered as §803.2(4), the Commission proposes amending current §803.14(a) and (c) to remove the term "prospective." Additionally, references to a "joint" proposal in §803.14(a) and (b) are removed to eliminate confusion with references to "concurrent" proposals. Further, in §803.14(a) regarding applicable Boards reviewing and commenting on Skills Development Fund proposals, it is the Commission's intent that "applicable" refer only to the workforce areas where there is a significant impact on job creation or incumbent worker training.

In addition, §803.14(c) is amended and streamlined to state that a training proposal shall not duplicate a training project available in the workforce area in which the private partner is located.

The Commission proposes new §803.14(d), which requires that proposals disclose other grant funds sought or awarded from the Agency or other state or federal entities. This information does not prevent or hinder consideration of applicants' proposals for Skills Development Fund grants, rather it allows the Agency to provide technical assistance to the applicants for locating additional funding sources that might be available, and to better understand the total amount of funding for all training impacting the project.

The Commission proposes new §803.14(e), which states that applicants shall indicate whether they are submitting concurrent proposals for the Skills Development Fund and the Texas Enterprise Fund. Concurrent proposal is defined in this section as (1) a proposal for the Skills Development Fund that has been filed and is pending at the time the applicant submits a proposal for the Texas Enterprise Fund, or (2) a proposal for the Texas Enterprise Fund that has been submitted and is pending at the time the applicant submits a proposal for the Skills Development Fund. The addition of this new subsection reflects the direction of HB 2421, which does not allow an applicant to apply for both Skills Development Fund and Texas Enterprise Fund unless the applicant files for concurrent participation in both programs.

The Commission proposes amending §803.14 to add new §803.14(f)(11), which requires that proposals include an indication of a concurrent proposal as set forth in §803.14(e). Current §803.14(d)(11) is renumbered as §803.14(f)(12).

§803.15. Procedure for Proposal Evaluation.

The Commission proposes amending §803.15(a) by adding a cross-reference to the uses of the funds set forth in §803.3(a) to ensure that small businesses are a factor considered in the proposal evaluation procedure. Additionally, for consistency with the definition of private partner at §803.2(4) of this chapter, the Commission proposes amending §803.15(a) to remove the term "prospective."

SUBCHAPTER C. PROGRAM ADMINISTRATION AFTER AWARD OF CONTRACT

§803.31. Grant Recipient Responsibilities.

The Commission proposes the repeal of §803.31 in order to remove redundant administrative processes and procedures from rule that are set forth in the Skills Development Fund contracts.

§803.32. Contract Completion Reports.

The Commission proposes the repeal of §803.32 in order to remove redundant administrative processes and procedures from rule that are set forth in the Skills Development Fund contracts.

§803.33. Contract Payment.

The Commission proposes the repeal of §803.33 to remove redundant administrative processes and procedures from rule that are set forth in the Skills Development Fund contracts.

§803.34. Notice to Texas Higher Education Coordinating Board.

The Commission proposes the repeal of §803.34 to remove redundant administrative processes and procedures from rule that are set forth in Texas Labor Code §303.34 and in the memorandum of understanding between the Agency and the Texas Higher Education Coordinating Board regarding the Skills Development Fund.

§803.35. Notice to Local Workforce Development Board.

The Commission proposes the repeal of §803.35 and proposes it as new §803.31, which clarifies that the Agency shall inform a Board in the applicable workforce area of final decisions concerning Skills Development Fund grants in the workforce area.

§803.36. Waivers.

The Commission proposes the repeal of §803.36 and proposes it as new §803.32 to clarify that in addition to the executive director, the executive director's designee also has the authority to suspend or waive a section of this chapter that is not statutorily imposed, if there is a showing of good cause and a finding that the public interest would be served by such a suspension or waiver.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and local governments expected as a result of enforcing or administering the rules.

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to persons required to comply with the rules.

There is no anticipated adverse economic impact on small or micro businesses as a result of enforcing or administering the rules.

Mark Hughes, Director of Labor Market Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Luis M. Macias, Director, Workforce Development Division, 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 proposed rules will be to meet the needs of Texas' employers to have a more highly skilled workforce, and provide workers throughout Texas with additional educational and employment opportunities to increase their skills and wages.

PART IV. COORDINATION ACTIVITIES

Comments on the proposed rules may be submitted to TWC Policy Comments, Policy and Development, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS REGARDING THE SKILLS DEVELOPMENT FUND

40 TAC §§803.1 - 803.3

The amended sections are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The amended rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Labor Code, Chapter 303, regarding the Skills Development Fund.

§803.1. *Scope and Purpose.*

(a) Purpose. The purpose of the Skills Development Fund is to enhance the ability of public community and technical colleges and the Texas Engineering Extension Service (TEEX) to respond to industry and workforce training needs and to develop incentives for public community and technical colleges, TEEX, or community-based organizations only in partnership with the public community and technical colleges or [the] TEEX to provide customized assessment and training in a timely and efficient manner.

(b) Goal. The goal of the Skills Development Fund [fund] is to increase the skills level and wages of the Texas workforce.

§803.2. *Definitions.*

In addition to the definitions contained in §800.2 of this title, the [The] following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) Customized training project--A project that:

(A) provides specialized workforce training to employees or prospective employees of the private business or business consortium, or members of the trade union with the intent of either adding to the workforce or preventing a reduction in the workforce; and

(B) is designed by a private business or business consortium, or trade union in partnership with:

(i) a public community college;

(ii) a technical college;

(iii) TEEX; or

(iv) a community-based organization only in partnership with the public community and technical colleges or TEEX.

(2) Grant recipient--A recipient of a Skills Development Fund grant that is:

(A) a public community college;

(B) a technical college;

(C) TEEX; or

(D) a community-based organization only in partnership with the public community and technical colleges or TEEX.

{(1) Assessment--The evaluation of an employer's workforce needs and requirements.}

{(2) Community-based organization--A private nonprofit organization, including a development corporation and faith-based organization, that:}

{(A) provides for education, vocational education, rehabilitation, job training, or internship services or programs; and}

{(B) is exempt from the payment of federal income taxes under §501(a) of the Internal Revenue Code of 1986, and its subsequent amendments, by being listed as an exempt entity under §501(c)(3) of that code.}

{(3) Customized training project--A project designed by a private business or trade union in partnership with a public community or technical college or TEEX for the purpose of providing specialized workforce training to employees or prospective employees of the private business or members of the trade union with the intent of either adding to the workforce or preventing a reduction in the workforce.}

{(4) Director--The Executive Director of the Texas Workforce Commission.}

{(5) Grant recipient--Any public community or technical college, TEEX, or community-based organizations only in partnership with the public community and technical colleges or the TEEX awarded a grant from the Skills Development Fund.}

(3) [(6)] Non-local public community and technical college--A public community college or technical college providing training outside of its local taxing district.

(4) [(7)] Private partner--A [Any] person, sole proprietorship, partnership, corporation, association, consortium, or private organization that enters into a partnership for a customized training project with:

(A) a public community college;

(B) a [or] technical college;[;]

(C) TEEX;[;] or

(D) a community-based organization [organizations] only in partnership with the public community and technical colleges or [the] TEEX.

(5) [(8)] Public community college--A state-funded, [state funded] two-year educational institution primarily serving its local taxing district and service area in Texas and offering vocational, technical, and academic courses for certification or associate's [associate] degrees.

(6) [(9)] Public technical college--A state-funded [state funded] coeducational institution of higher education offering courses of study in vocational and technical education, for certification or associate's [associate] degrees.

(7) [(10)] Texas Engineering Extension Service (TEEX)--A higher education agency and service established by the Board of Regents of the Texas A&M University System.

(8) [(11)] Trade union--An [Any] organization, agency, or employee committee in which employees participate and which exists for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(9) Training provider--An entity or individual that provides training, including:

(A) a public community college;

(B) a technical college;

(C) TEEX;

(D) a community-based organization only in partnership with the public community college or technical college or TEEX; or

(E) a person, sole proprietorship, partnership, corporation, association, consortium, governmental subdivision, or public or private organization with whom a public community or technical college or TEEX has subcontracted to provide training.

~~[(12) Training provider—Any public community or technical college or TEEX that provides training; or any person, sole proprietorship, partnership, corporation, association, consortium, governmental subdivision or public or private organization with whom a public community or technical college or TEEX has subcontracted to provide training.]~~

§803.3. *Uses of the Fund.*

(a) The Skills Development Fund may be used by a grant recipient ~~[public community and technical colleges, TEEX, or community-based organizations only in partnership with the public community and technical colleges or the TEEX]~~ as start-up or emergency funds for the following purposes:

(1) to develop customized training projects for businesses and trade unions; and

(2) to sponsor small and medium-sized business networks and consortiums for the purpose of developing customized training.

(b) TEEX training activities shall focus on projects that are statewide or are not available from a local public community and junior college district, a local technical college, or a consortium of public community and junior college districts. In developing such projects, TEEX may participate in a consortium of public community and junior college districts or with a technical college that provides training under Texas Labor Code, Chapter 303.

(c) Technical college training activities shall focus on projects that are not available from a local public community college, except in the technical college's local service area, and shall be encouraged to focus on projects that are statewide.

(d) The Skills Development Fund may not be used:

(1) to pay the training costs and related costs of an employer ~~that [who]~~ relocates the employer's worksite from one place in Texas to another;

(2) for the purchase of any proprietary or production equipment required for the training project of a single local employer;

(3) for wages for trainees; or

(4) to pay for trainee or instructor travel costs or trainee drug tests.

(e) The Skills Development Fund may not be used to pay for the lease of equipment if any one of the following four criteria is characteristic of the lease transaction:

(1) The [the] lease transfers ownership of the equipment to the lessee at the end of the lease term;

(2) The [the] lease contains a bargain purchase option;

(3) The [the] lease term is equal to 75% or more of the estimated economic life of the leased equipment; or

(4) The [the] present value of the minimum lease payments at the inception of the lease, excluding executory costs, equals at least 90% of the fair value of the leased equipment.

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

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TRD-200504261

Reagan Miller

Deputy Director for Workforce and UI Policy

Texas Workforce Commission

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For further information, please call: (512) 475-0829



SUBCHAPTER B. PROGRAM ADMINISTRATION

40 TAC §§803.11 - 803.15

The amended sections are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The amended rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Labor Code, Chapter 303, regarding the Skills Development Fund.

§803.11. *Grant Administration.*

Grant recipients must enter into an agreement with the Agency to comply with contract requirements that include, but are not limited to:

(1) submitting all required reports, including financial and performance reports, in the format and time frame required by the Agency;

(2) maintaining fiscal data needed for independent verification of expenditures of funds received for the customized training project;

(3) cooperating and complying with Agency monitoring activities as required by Chapter 800, Subchapter H of this title (relating to Agency Monitoring Activities); and

(4) submitting contract completion reports:

(A) Project completion is contingent upon the executive director's, or designee's, determination that a project has met the training objectives, outcomes, and requirements by allowing an attrition rate of up to 15% of the total number of trainees in the contract.

(B) The final payment of the contract will be withheld for 60 days after the completion of training and after receipt by the Agency of verification from the employer that the trainees are employed.

~~[(a) The Director is responsible for the distribution of money from the Skills Development Fund. The Director may designate an employee or employees of the Agency who are knowledgeable in the administration of grants to administer the program.]~~

~~[(b) The Agency is not required to fund all proposals for customized training projects that are submitted.]~~

§803.12. *Limitations on Awards.*

The Agency may impose any or all of the following limitations on the amount of funds awarded under any specific grant:

(1) A [a] limit of \$500,000 for the training project of a single employer;

(2) A [a] limit of 10% of the grant amount for the allowable purchase of any proprietary or production equipment required for the training project;

(3) A [a] limit of 10% for administrative costs related to direct training for the training project of a single employer; or

(4) A [a] limit of 15% for administrative costs related to direct training for the training project of entities other than a single employer.

§803.13. *Program Objectives.*

~~[(a)]~~ The following are the program objectives in administering the Skills Development Fund:

(1) To [tø] ensure that funds from the program are spent in all areas of this state and expand the state's capacity to respond to workforce training needs;

(2) To [tø] develop projects in [løeal] workforce [development] areas through collaboration with the Boards;

(3) To [tø] develop projects that, at completion of the training, will result in wages equal to or greater than the prevailing wage of persons with similar knowledge and experience in that occupation in the local labor market for the participants in the customized training project;

(4) To [tø] prioritize the processing of grant requests from [løeal] workforce [development] areas where the unemployment rate is higher than the state's annual average unemployment rate; and

(5) To [tø] sponsor creation and attraction of high-value [high value], high-skill [high skill] jobs for the state that will facilitate the growth of industry and emerging occupations.

(6) To the greatest extent practicable, the Agency will award Skills Development Fund grants as follows:

(A) Approximately 60% of the funds may be for job retention training; and

(B) The remaining funds may be for training for job creation.

~~[(b) In processing requests referenced in subsection (a)(4) of this section, the Director, or his or her designee, shall give priority in processing to grant requests from local workforce development areas where the unemployment rate is higher than the state's annual average unemployment rate. Notwithstanding the priority in processing, the other objectives within this section apply.]~~

§803.14. *Procedure for Requesting Funding.*

(a) After obtaining the review and comments of the Board in the applicable [løeal] workforce [development] area(s), where there is a significant impact on job creation or incumbent worker training, a [prospective] private partner or a trade union, together with a public community or technical college or TEEEX, shall present to the executive director [Director], or [his or her] designee, a [joint] proposal requesting funding for a customized training project or other appropriate use of the fund.

(b) TEEEX, or the public community or technical college that is a partner to a [joint] training proposal for a grant from the Skills Development Fund, may be non-local.

(c) The training proposal shall ~~[must]~~ not duplicate a training project available in the [løeal] workforce [development] area in which the [prospective] private partner is located. ~~[TEEEX, or the public community or technical college that is a partner to the joint training proposal, the private partner, and the Board must disclose other grant funds sought from the Agency, such as Achieving Performance Excellence (APEX) grants, for the training project covered in the training proposal.]~~

(d) Proposals shall disclose other grant funds sought or awarded from the Agency or other state and federal entities for the proposed job training project.

(e) Applicants shall indicate whether they are submitting concurrent proposals for the Skills Development Fund and the Texas Enterprise Fund. For the purposes of this subsection, "concurrent proposal" shall mean:

(1) a proposal for the Skills Development Fund that has been submitted and is pending at the time an applicant submits a proposal for the Texas Enterprise Fund; or

(2) a proposal for the Texas Enterprise Fund that has been submitted and is pending at the time an applicant submits a proposal for the Skills Development Fund.

~~[(f)]~~ Proposals shall be written and contain the following information:

(1) The [the] number of proposed jobs created and/or retained;

(2) A [a] brief outline of the proposed training project, including the skills acquired through training;

(3) A [a] brief description of the measurable training objectives and outcomes;

(4) The [the] occupation and wages for participants who complete the customized training project;

(5) A [a] budget summary, disclosing anticipated project costs and resource contributions, including the dollar amount the [prospective] private partner is willing to commit to the project;

(6) A [a] signed agreement between the [prospective] private partner and the public community or technical college or TEEEX outlining each entity's roles and responsibilities if a grant is awarded;

(7) A [a] statement explaining the basis for the determination that there is an actual or projected labor shortage in the occupation in which the proposed training project will be provided that is not being met by an existing institution or program in the [løeal] workforce [development] area;

(8) A [a] comparison of costs per trainee for the customized training project and costs for similar instruction at the public community or technical college or TEEEX;

(9) A [a] statement describing the [prospective] private partner's equal opportunity employment policy;

(10) A [a] list of the proposed employment benefits; and

(11) An indication of a concurrent proposal as required by subsection (e) of this section; and

(12) ~~[(11)]~~ Any [any] additional information deemed necessary by the Agency to complete evaluation of a proposal.

§803.15. *Procedure for Proposal Evaluation.*

(a) The executive director ~~[Director], or [his or her] designee,~~ shall evaluate each proposal considering the purposes listed in §803.3(a) of this subchapter, the program objectives listed in §803.13 of this subchapter ~~[(relating to Program Objectives)], and procedures [the factors listed] in §803.14(e) of this subchapter ~~[(relating to Procedure for Requesting Funding)],~~~~ along with the prevailing wage for occupations in the local labor market area, the financial stability of the [prospective] private partner, the regional economic impact, and any other factors unique to the circumstances that [which] the Agency determines are appropriate.

(b) The Agency shall [will] notify the Board in the applicable [local] workforce area [development area(s)] when the Agency is evaluating a proposal so as to inform the Board of potential workforce activities in the workforce area [area(s)].

(c) If the Agency determines that a proposal is appropriate for funding through the Skills Development Fund, the executive director [Director], or [his or her] designee, shall enter into a contract with the grant recipient on behalf of the Agency.

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

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Reagan Miller

Deputy Director for Workforce and UI Policy

Texas Workforce Commission

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For further information, please call: (512) 475-0829

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SUBCHAPTER C. PROGRAM ADMINISTRATION AFTER AWARD OF CONTRACT

40 TAC §§803.31 - 803.36

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

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Labor Code, Chapter 303, regarding the Skills Development Fund.

§803.31. *Grant Recipient Responsibilities.*

§803.32. *Contract Completion Reports.*

§803.33. *Contract Payment.*

§803.34. *Notice to Texas Higher Education Coordinating Board.*

§803.35. *Notice to Local Workforce Development Board.*

§803.36. *Waivers.*

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

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Reagan Miller

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Texas Workforce Commission

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40 TAC §803.31, §803.32

The new rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Labor Code, Chapter 303, regarding the Skills Development Fund.

§803.31. *Notice to Local Workforce Development Board.*

The Agency shall inform the Board in the applicable workforce area of final decisions made regarding Skills Development Fund grants in the workforce area.

§803.32. *Waivers.*

The executive director, or designee, may suspend or waive a section of this chapter, not statutorily imposed, in whole or in part upon a showing of good cause and a finding that the public interest would be served by such a suspension or waiver.

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

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Reagan Miller

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CHAPTER 809. CHILD CARE AND DEVELOPMENT

SUBCHAPTER B. GENERAL MANAGEMENT

40 TAC §809.20

The Texas Workforce Commission (Commission) proposes amendments to the following section of Chapter 809 related to Child Care and Development:

Subchapter B. General Management, §809.20

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The Commission proposes to amend 40 TAC §809.20 relating to leveraging local resources for use as match for federal Child Care and Development Funds (CCDF). The purpose of the proposed amendments is to clarify requirements that private donations, public transfers of funds, and certification of public expenditures must meet in order to be used as match for CCDF. Additionally, the proposed amendments clarify that it is the responsibility of

the Commission, rather than the Boards, to accept and certify donations from private entities.

The Social Security Act (42 U.S.C. 618) provides the federal requirements for states to secure federal matching funds for child care services. Child Care and Development Fund Final Rules, 45 C.F.R. §98.53 further delineates the matching fund provisions by requiring that the funds used as match be for allowable services or activities as described in the CCDF State Plan. Additionally, 45 C.F.R. §98.53 allows states to use funds from both public and private sources in order to secure federal matching funds. However, the federal regulations place different requirements on these two sources of funds in order for the funds to be used as match for CCDF.

Regulations in 45 C.F.R. §98.53(e)(1) specify that public funds used as CCDF match must be:

- appropriated directly to the Lead Agency, or
- transferred from another public agency to the Lead Agency and under its administrative control; or
- certified by the contributing public agency as representing expenditures on CCDF allowable activities eligible for federal match.

In addition, the regulations specify that public funds must:

- not be used to match other federal funds; and
- not be federal funds, or are federal funds authorized by federal law to be used to match other federal funds.

Regulations in 45 C.F.R. §98.53(e)(2) specify that the use of private funds as CCDF match must:

- be donated from private sources;
- be donated without restrictions that would require their use for a specific individual, organization, facility, or institution;
- not revert to the donor's use or facility; and
- not be used to match other federal funds.

In Fiscal Year 2004, the Commission authorized Local Workforce Development Boards (Boards) to secure local match by certifying expenditures on allowable CCDF activities from private sources. Additionally, in January 2004, the Commission amended §809.20 of its Child Care and Development rules to allow for the use of certified expenditures from private sources.

In written guidance to the Texas Workforce Commission issued June 2, 2005, the United States Department of Health and Human Services, Administration for Children and Families (ACF), determined that the state's rules promulgated on January 23, 2004, relating to the child care program [40 TAC §809.20(a)(1)(B)] do not comport with CCDF regulations at 45 C.F.R. §98.53(e) and (f). ACF further stated that in order for private donated funds to be considered for federal match, such funds must be donated to the Commission as the Lead Agency for CCDF and are subject to its administrative control. Private donated funds remaining in the hands of private organizations or under the administrative control of those organizations cannot be considered "donated" for purposes of CCDF matching requirements.

The proposed amendments to Chapter 809 clarify that the only allowable sources of local match are:

- funds donated from a private entity to the Commission;

- funds transferred from a public entity to the Commission; or
- public expenditures on allowable CCDF activities certified by a public entity as expenditures eligible for federal match.

Further, the proposed amendments clarify that the local matching funds must be for activities that are included in the CCDF State Plan and allowable under this chapter.

Additionally, the proposed amendments clearly distinguish between the Boards' responsibility for securing and managing local matching funds and the Boards' responsibility for providing necessary information to the Commission in order for the Commission to receive and certify private donations, and accept certifications of public expenditures and public transfers of funds.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made throughout Chapter 809 that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER B. GENERAL MANAGEMENT

§809.20. Leveraging Local Resources

The Commission proposes to amend §809.20(a) to emphasize that it is the Boards' responsibility to leverage federal matching funds by securing available local resources. The proposed amendment to §809.20(a) will move the types of local funds that are allowable as match from the current §809.20(a) to a new §809.20(b). The purpose of this amendment is to clarify the roles and responsibilities regarding securing and accepting local match. Proposed §809.20(a) states that it is the Boards' responsibility to secure local match, while proposed §809.20(b) provides that it is the Commission's role to accept the local match funds.

Additionally, the Commission proposes to remove the provision, currently in §809.20(a)(1)(B), relating to the certification of private expenditures by a private entity as an allowable source of local match. The elimination of this language implements the guidance the Commission received from ACF clarifying the meaning of 45 C.F.R. §98.53(e)(2), by no longer allowing private certification of expenditures as a source of local match.

Proposed new §809.20(b) describes the types of local funds that the Commission may accept as match for federal child care funds. The section provides that the Commission may accept private donated funds, public transferred funds, and public certifications of expenditures.

Proposed §809.20(b)(1) provides the requirements that must be met for the Commission to accept donations of funds from private entities. The proposed §809.20(b)(1) reflects the requirements under CCDF as specified in the Social Security Act and further delineated in the federal regulations in 45 C.F.R. §98.53(e). Proposed §809.20(b)(1) states that private donated funds must:

- be donated without restrictions that would require their use for a specific individual, organization, facility, or institution, or for an activity not included in the CCDF State Plan or allowed under this chapter;
- not revert to the donor's facility or use;
- not be used to match other federal funds; and
- be certified by both the donor and the Commission as meeting the foregoing requirements.

Proposed §809.20(b)(2) specifies the requirements for transfers of funds from public entities and emulates federal regulations in 45 C.F.R. §98.53(e)(1). The proposed language allows the Commission to accept the transfer of public funds as a source of local match when the public funds are:

- transferred without restrictions that would require their use for an activity not included in the CCDF State Plan or allowed under this chapter;
- not used to match other federal funds; and
- not federal funds or are federal funds authorized by federal law to be used to match other federal funds.

Proposed §809.20(b)(3) sets forth the requirements for the Commission to accept the certifications of expenditures from public entities. Proposed §809.20(b)(3), which emulates federal regulations in 45 C.F.R. §98.53(e)(1), states that expenditures by a public entity may be eligible for federal matching funds when the public entity certifies that the expenditures are:

- for activities included in the CCDF State Plan or allowed under this chapter;
- not used to match other federal funds; and
- not federal funds, or are federal funds authorized by federal law to be used to match other federal funds.

The Commission proposes to renumber current §809.20(b)(1) as §809.20(c)(1) and to modify language to clarify Boards' responsibilities with regard to securing local funds in order to receive federal matching funds in their local workforce development areas (workforce areas). Those responsibilities include the identification of available local funds, securing those funds, and the completion of agreements. Boards have the responsibility to identify available local funds through the use of private donated funds, transfers of funds by public entities, and certification of expenditures by public entities. Boards have further responsibility to secure those identified local funds by obtaining an agreement with the identified contributor and submitting those agreements to the Commission for acceptance by the Commission. Finally, Boards have the responsibility to ensure that the agreements are completed and fulfilled in accordance with the terms specified in the agreement.

The Commission also proposes to renumber §809.20(b)(2) as §809.20(c)(2) and modify language to state that Boards are encouraged to secure additional local funds that exceed the amount required to match federal funds allocated to the Board to maximize its potential to receive additional federal funds--should they become available--rather than requiring the Board to secure additional local funds. The current language implies that the Boards are required to secure more local matching funds than are actually needed to draw down the federal funds allocated to the Boards. The Commission recognizes that requiring Boards to secure additional local match could lead to a situation in which a Board cannot assure contributors that there will be available federal matching dollars to match their donation. This amendment reflects the Commission's intent to encourage Boards to secure extra local matching funds in case pledges are not completed in full, or to position Boards to be able to utilize reallocated additional federal matching funds should they become available.

Further, the Commission proposes to move the current language in §809.20(a)(2), which states that a Board's performance in securing local funds may make the Board eligible for incentive

awards, to §809.20(c)(3). The Commission proposes this change in order to place the provisions related to the Board responsibilities regarding the securing of local resources into §809.20(c).

The Commission proposes to remove §809.20(c) that sets forth the process of submitting and documenting local match agreements. Administrative processes are more appropriate in other documents such as Workforce Development Letters or contract start-up instructions. In conjunction with removing the specific procedures for submitting and documenting local match agreements, the Commission also adds language in §809.20(d) to specify that a Board shall submit private donations, public transfers, and public certifications to the Commission for acceptance, with sufficient information to determine that the funds meet the necessary requirements.

The Commission proposes to amend §809.20(e), regarding completing private donations, public transfers, and public certifications, to specify the three types of sources for local match.

The Commission proposes to remove current §809.20(f), regarding Board reporting requirements related to local match. The Board local match reporting requirements are stipulated in proposed §809.20(c) regarding the submission of local match agreements, and proposed §809.20(d) regarding the completion of local match agreements. Further, Boards are required to submit monthly expenditure reports, including expenditures related to child care local match agreements, in accordance with §800.72 of this title, relating to Reporting Requirements.

Further, the Commission proposes to renumber current §809.20(g) as §809.20(f), and clarifies the types of local match that Boards must monitor.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules.

Mr. Townsend has determined that there are no foreseeable implications relating to costs of the state or local governments as a result of enforcing or administering the rules however, and he estimates the possible loss to local governments (workforce boards, on behalf of their workforce areas) of revenue, which is utilized to satisfy their local federal child care matching targets. Based on the experience during FY 2002 and FY 2003 (during which time certification of eligible expenditures by private entities as a method for securing local child care match was not allowed under TWC rules) and FY 2004 and FY 2005 (during which time certification of eligible expenditures by private entities as a method for securing local child care match was allowed by TWC rules), estimates that for each year during the first five years the rule will be in effect, \$2,559,565 less in local child care match may be achieved. In turn, this corresponds to \$4,933,376 less in federal CCDF matching funds expended each year. This would represent an 11.5 percent reduction in local match achieved and an 11.5 percent reduction in federal child care matching funds contingent on meeting local match targets expended.

Mr. Townsend has determined that enforcing or administering the rule does not have foreseeable implications relating to the cost

of the state or local governments; however, that there may be foreseeable implications to the revenues of local governments (i.e., workforce boards, on behalf of workforce areas), as noted above. There are no foreseeable implications to the revenues of the state, as the Texas Workforce Commission will act to maximize all federal CCDF matching funds available to the state in each grant year available.

Mr. Townsend has determined that there are no anticipated economic costs to persons required to comply with the rules.

Mr. Townsend has also determined that there is no anticipated adverse economic impact on small or microbusinesses as a result of enforcing or administering these rules because they are not regulated by this rule.

Mark Hughes, Director, Labor Market Information, has determined that there is no significant negative impact upon employment conditions in this state as a result of the proposed rules. Mr. Hughes does not expect any significant impact upon overall employment conditions in the state as a result of the proposed rules.

Luis M. Macias, Director, Workforce Development Division, 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 proposed rules will be to ensure that local match funds for child care are secured in a manner consistent with federal guidance in order for the state to receive its full federal allocation from the Child Care and Development Fund and provide necessary child care services for low-income working families.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of Texas' 28 Boards and the Texas Association of Workforce Boards (TAWB). The Commission provided the concept papers regarding these rule amendments to the Boards and TAWB for consideration and review. The Commission also conducted conference calls with Board executive directors and Board staff on June 10, 2005, and August 5, 2005, to discuss the concept papers. Additionally, during the June 14, 2005, Commission meeting, a representative of TAWB and a representative of the Executive Directors' Council provided input to the Commission regarding the impact of this rule change. During the rulemaking process, the Commission considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposal may be submitted to TWC Rules Comments, Policy and Development, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCRulesComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

The amended section is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, the Texas Human Resources Code §44.002, regarding Administrative Rules, and the Texas Labor Code §301.021, which authorizes the Commission to accept donations in an open meeting by a majority of the voting members of the Commission.

§809.20. *Leveraging Local Resources.*

(a) Leveraging Local Funds. The Commission encourages Boards to secure local public and private funds for the purpose of matching federal funds in order to maximize [match to the extent possible to leverage all available] resources for child care needs in the community.

~~[(1) A Board may secure local funds for match in the form of one or more of the methods in order to leverage (match) against federal funds available through the Commission:]~~

~~[(A) donations of funds from a private entity:]~~

~~[(B) certification of expenditures by a private entity that represent expenditures eligible for federal match and that were not restricted in their use for a specific individual, organization, facility or institution:]~~

~~[(C) transfers of funds from a public entity; or]~~

~~[(D) Certifications of expenditures by a public entity that represent expenditures eligible for federal match.]~~

~~[(2) A Board's performance in securing and leveraging local funds for match may make the Board eligible for incentive awards.]~~

(b) Local Funds Accepted by the Commission. The Commission accepts the following as local match:

(1) Funds from a private entity that:

(A) are donated without restrictions that require their use for:

(i) a specific individual, organization, facility, or institution; or

(ii) an activity not included in the CCDF State Plan or allowed under this chapter;

(B) do not revert back to the donor's facility or use;

(C) are not used to match other federal funds; and

(D) are certified by both the donor and the Commission as meeting the requirements of subparagraphs (A)-(C) of this paragraph.

(2) Funds from a public entity that:

(A) are transferred without restrictions that would require their use for an activity not included in the CCDF State Plan or allowed under this chapter;

(B) are not used to match other federal funds; and

(C) are not federal funds, or are federal funds authorized by federal law to be used to match other federal funds.

(3) Expenditures by a public entity certifying that the expenditures:

(A) are for an activity included in the CCDF State Plan or allowed under this chapter;

(B) are not used to match other federal funds; and

(C) are not federal funds, or are federal funds authorized by federal law to be used to match other federal funds.

(c) [(b)] Securing Local Funds to Access Federal Matching Funds from the Commission.

(1) A Board shall secure private [manage the securing of funds, including the selection of pledged and completed] donations, public transfers, and public certifications that are used by the Board to receive federal matching funds through the Commission.

(2) A Board is encouraged to secure additional local [shall ensure that federal matching] funds in excess of the amount required to [are maximized by securing local funds for match in an amount that may exceed the amount required to] match [available] federal funds allocated to the Board in order to maximize its potential to receive additional federal funds should they become available.

(3) A Board's performance in securing and leveraging local funds for match may make the Board eligible for incentive awards.

~~[(e) Documenting Pledged Donations, Transfers and Certifications. A Board shall maintain written documentation of pledged donations, transfers and certifications that contain, at a minimum, the following:]~~

~~[(1) the signature of the representative of the Board;]~~

~~[(2) the signature of the potential contributor;]~~

~~[(3) the potential contributors commitment to fulfill the pledge of the donation, transfer or certification by paying or certifying the funds to the Commission for use in a specific workforce area on a set payment or certification schedule;]~~

~~[(4) the Boards commitment to use the donated or transferred funds as requested by the contributor, as long as it is consistent with federal regulations at 45 CFR §98.53; and]~~

~~[(5) sufficient information to determine that the funds will be used in a manner consistent with 45 CFR §98.53.]~~

(d) Submitting Private [Pledged] Donations, Public Transfers, and Public Certifications to [for Acceptance by] the Commission. A Board shall submit private [pledged] donations, public transfers, and public certifications to the Commission for acceptance, with sufficient information to determine that the funds meet the requirements of subsection (b) of this section.

(e) Completing Private Donations, Public Transfers, and Public Certifications.

(1) A Board shall ensure that:

(A) private donations of cash and public transfers of funds are paid to the Agency; and [that]

(B) public certifications are [also] submitted to the Agency.

(2) Private donations [Donations] and public transfers are considered complete to the extent that the funds have been paid to the Agency.

(3) Public certifications [Certifications] are considered complete to the extent that a signed written instrument is delivered to the Agency that reflects that the public entity has expended a specific amount of funds on eligible child care services.

~~[(f) Reporting. A Board shall report information relating to pledged and completed donations, transfers and certifications as referenced in subsections (d) and (e) of this section and §800.72. Reporting Requirements.]~~

(f) ~~[(g)]~~ Monitoring. A Board shall monitor the funds secured for match and the expenditure of any resulting funds to ensure that expenditures of [unmatched] federal matching funds available through the Commission do not exceed an amount that corresponds to the private donations, public transfers, and public certifications that are completed by the end of the program year.

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 September 23, 2005.

TRD-200504260

Reagan Miller

Deputy Director for Workforce and UI Policy

Texas Workforce Commission

Earliest possible date of adoption: November 6, 2005

For further information, please call: (512) 475-0829



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 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 45. MARKETING PRACTICES SUBCHAPTER D. ADVERTISING AND PROMOTION--ALL BEVERAGES

16 TAC §45.110

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed amended section, submitted by the Texas Alcoholic Beverage Commission has been automatically withdrawn. The amended section as proposed appeared in the March 18, 2005, issue of the *Texas Register* (30 TexReg 1558).

Filed with the Office of the Secretary of State on September 22, 2005.

TRD-200504236



TITLE 22. EXAMINING BOARDS

PART 2. TEXAS STATE BOARD OF BARBER EXAMINERS

CHAPTER 51. PRACTICE AND PROCEDURE SUBCHAPTER D. BARBER SHOPS

22 TAC §51.98

The Texas State Board of Barber Examiners withdraws the proposed repeal of §51.98 which appeared in the August 26, 2005, issue of the *Texas Register* (30 TexReg 4895).

Filed with the Office of the Secretary of State on September 19, 2005.

TRD-200504163

William H. Kuntz, Jr.

Executive Director, Texas Department of Licensing and Regulation
Texas State Board of Barber Examiners

Effective date: September 19, 2005

For further information, please call: (512) 463-6208



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 as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 71. GENERAL POLICIES AND PROCEDURES

SUBCHAPTER A. PRACTICE AND PROCEDURE

1 TAC §71.8, §71.14

The Office of the Secretary of State (the Secretary of State) adopts amendments to §71.8, concerning fees for copies of public information, and §71.14, concerning credit card payment, without changes to the proposed text as published in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4541).

The amendment to §71.8 changes the reference to a rule of Texas Building and Procurement Commission to that of the Office of Attorney General. This is necessary because Senate Bill 727 and Senate Bill 452, 79th Legislature, Regular Session, transfer the duties of the Texas Building and Procurement Commission under the public information law to the Attorney General.

The amendment to §71.14 increases the existing credit card convenience fee from 2.1% to 2.7% in order to continue recovering the expense of providing the credit card payment option.

No comments were received concerning the proposed changes.

Statutory Authority: Chapter 404 of the Government Code.

These amendments implement Government Code, Chapters 404, 552, and 2001.

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 September 19, 2005.

TRD-200504182

Lorna Wassdorf

Director, Business and Public Filings

Office of the Secretary of State

Effective date: October 9, 2005

Proposal publication date: August 12, 2005

For further information, please call: (512) 463-5562



SUBCHAPTER E. NEGOTIATION AND MEDIATION OF CERTAIN CONTRACT DISPUTES

1 TAC §71.83

The Office of the Secretary of State (the Secretary of State) adopts an amendment to §71.83, concerning Definitions. The amendment is adopted without changes to the text as proposed in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4542).

The amendment implements House Bill 297, 79th Legislature, Regular Session, which changes the title of assistant secretary of state to deputy secretary of state.

No comments were received concerning the proposed change.

Statutory Authority: Chapter 404 of the Government Code, as amended by House Bill 297, 79th Legislature Regular Session.

This rule implements Section 405.004, Government Code; Section 221.023(c), Health and Safety Code; Section 303.034(c), Local Government Code; Section 171.355(b), Tax Code; Section B, Article 2.07, Texas Non-Profit Corporation Act (Article 1396-2.07, Vernon's Texas Civil Statutes); Section B, Article 8.09, Texas Non-Profit Corporation Act (Article 1396-8.09, Vernon's Texas Civil Statutes); Section B, Article 2.08, Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes); Section B, Article 2.11, Texas Business Corporation Act; Section B, Article 8.10, Texas Business Corporation Act; Section 10(b), Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes); Sections 1.08(b) and 9.10(b), Texas Revised Limited Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes); Section 10.05(l), Texas Revised Partnership Act (Article 6132b-10.05, Vernon's Texas Civil Statutes); Section 5.20(B), Texas Real Estate Investment Trust Act (Article 6138A, Vernon's Texas Civil Statutes); Article 17A.04(b), Code of Criminal Procedure.

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 September 19, 2005.

TRD-200504183

Lorna Wassdorf

Director, Business and Public Filings

Office of the Secretary of State

Effective date: October 9, 2005

Proposal publication date: August 12, 2005

For further information, please call: (512) 463-5562

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CHAPTER 81. ELECTIONS

SUBCHAPTER A. VOTER REGISTRATION

1 TAC §81.18

The Office of the Secretary of State (the Secretary of State) adopts an amendment to §81.18, concerning Approval Requirements for the Secretary of State. The amendment is adopted without changes to the text as proposed in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4543).

The amendments implement House Bill 297, 79th Legislature, Regular Session, which changes the title of assistant secretary of state to deputy secretary of state. The amendment also reflects a change in the title of the elections director.

No comments were received concerning the proposed change.

Statutory Authority: Chapter 404 of the Government Code, as amended by House Bill 297, 79th Legislature Regular Session.

This rule implements Section 405.004, Government Code; Section 221.023(c), Health and Safety Code; Section 303.034(c), Local Government Code; Section 171.355(b), Tax Code; Section B, Article 2.07, Texas Non-Profit Corporation Act (Article 1396-2.07, Vernon's Texas Civil Statutes); Section B, Article 8.09, Texas Non-Profit Corporation Act (Article 1396-8.09, Vernon's Texas Civil Statutes); Section B, Article 2.08, Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes); Section B, Article 2.11, Texas Business Corporation Act; Section B, Article 8.10, Texas Business Corporation Act; Section 10(b), Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes); Sections 1.08(b) and 9.10(b), Texas Revised Limited Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes); Section 10.05(l), Texas Revised Partnership Act (Article 6132b-10.05, Vernon's Texas Civil Statutes); Section 5.20(B), Texas Real Estate Investment Trust Act (Article 6138A, Vernon's Texas Civil Statutes); Article 17A.04(b), Code of Criminal Procedure.

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 September 19, 2005.

TRD-200504184

Ann McGeehan

Director of Elections

Office of the Secretary of State

Effective date: October 9, 2005

Proposal publication date: August 12, 2005

For further information, please call: (512) 463-5562

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TITLE 4. AGRICULTURE

PART 13. PRESCRIBED BURNING BOARD

CHAPTER 225. GENERAL PROVISIONS

4 TAC §225.1

The Prescribed Burning Board (the Board) adopts amendments to Title 4, Part 13, Chapter 225, §225.1 concerning general provisions for prescribed burning, with changes to the proposal published in the July 8, 2005, issue of the *Texas Register* (30 TexReg 3951). The amendments are adopted to clarify that a Certified Prescribed Burn Manager must have the required liability insurance coverage, and to update the name of the state's natural resource agency and the Texas Agricultural Extension Service. The amendments will also provide the public and affected persons with clearer, updated information on the program. Paragraph (13) is adopted with changes to correct the name of the entity represented by the acronym TCE. The acronym TCE stands for Texas Cooperative Extension.

No comments were received on the proposal.

The amendments to §225.1 are adopted under the Texas Natural Resources Code, §153.046, which provides the Board with the authority to establish standards for prescribed burning and for certification and recertification of burn managers, and establish minimum insurance requirements for certified burn managers.

§225.1. Definitions.

The following words and terms, when used in this chapter, Chapter 226 (relating to Standards for Certified Prescribed Burn Managers), Chapter 227 (relating to Certification, Recertification, and Renewal), Chapter 228 (relating to Continuing Education for Recertification/Renewal of Certification) and Chapter 229 (relating to Educational and Professional Requirements for Lead Instructors) of this title, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Act--Title 6, Natural Resources Code, Chapter 153
- (2) Board--Prescribed Burning Board
- (3) Burn Boss--Individual responsible for the direct application of prescribed fire to a burn unit as detailed in a written prescribed burn plan.
- (4) Commissioner--The Commissioner of Agriculture of the state of Texas, or the Commissioner's designee.
- (5) Certified Prescribed Burn Manager--A person with ultimate authority, responsibility, and liability insurance coverage as required by §226.4 of this title (relating to Insurance Requirements, who has obtained certification under Chapter 227 of this title (relating to Certification, Recertification, and Renewal).
- (6) CEU--Continuing Education Unit
- (7) Lead Instructor--An individual who provides leadership and coordination in the conduct of the board-approved certified prescribed burn manager course and has authority to select all instructors.
- (8) NRCS--Natural Resources Conservation Service of the United States Department of Agriculture
- (9) NWCG--National Wildfire Coordinating Group
- (10) Prescribed Burning--The controlled application of fire to naturally occurring or naturalized vegetative fuels under specified environmental conditions in accordance with a written prescribed burn plan.
- (11) Structures containing sensitive receptors--A man-made structure utilized for human residence or business, the containment of livestock, or the housing of sensitive live vegetation. The term "man-made structure" does not include such things as range fences, roads, bridges, hunting blinds or facilities used solely for the storage of hay or other livestock feeds. The term "sensitive live

vegetation" is defined as vegetation which has potential to be damaged by smoke and heat, examples of which include, but are not limited to: nursery production, mushroom cultivation, pharmaceutical plant production, or laboratory experiments involving plants.

- (12) TAES--Texas Agricultural Experiment Station
- (13) TCE --Texas Cooperative Extension
- (14) TAMU--Texas A & M University
- (15) TDA--Texas Department of Agriculture
- (16) TFS--Texas Forest Service
- (17) TCEQ - Texas Commission on Environmental Quality
- (18) TPWD--Texas Parks and Wildlife Department
- (19) TSSWCB--Texas State Soil and Water Conservation Board
- (20) TTU--Texas Tech University
- (21) USDA--United States Department of Agriculture

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 September 26, 2005.

TRD-200504270
Dolores Alvarado Hibbs
Deputy General Counsel, Texas Department of Agriculture
Prescribed Burning Board
Effective date: October 16, 2005
Proposal publication date: July 8, 2005
For further information, please call: (512) 463-4075



CHAPTER 226. STANDARDS FOR CERTIFIED PRESCRIBED BURN MANAGERS

4 TAC §§226.1 - 226.4, 226.6

The Prescribed Burning Board (the Board) adopts amendments to Title 4, Part 13, Chapter 226, §§226.1 - 226.4, and §226.6, concerning standards for certified prescribed burn managers, without changes to the proposal published in the July 8, 2005, issue of the *Texas Register* (30 TexReg 3952). The amendments are adopted to clarify that a certified prescribe burn manager must carry or be covered by the required liability insurance coverage, and to update the name of the state's natural resource agency. The amendments will also provide the public and affected persons with clearer, updated information on the program.

No comments were received on the proposal.

The amendments to §§226.1 - 226.4 and 226.6 are adopted under the Texas Natural Resources Code, §153.046, which provides the Board with the authority to establish standards for prescribed burning and for certification and recertification of burn managers, and establish minimum insurance requirements for certified burn managers.

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 September 26, 2005.

TRD-200504271
Dolores Alvarado Hibbs
Deputy General Counsel, Texas Department of Agriculture
Prescribed Burning Board
Effective date: October 16, 2005
Proposal publication date: July 8, 2005
For further information, please call: (512) 463-4075



CHAPTER 227. CERTIFICATION, RECERTIFICATION, RENEWAL

The Prescribed Burning Board (the Board) adopts amendments to Title 4, Part 13, Chapter 227, §227.5 and §227.12, concerning certification and recertification of prescribed burn managers, without changes to the proposal published in the July 8, 2005, issue of the *Texas Register* (30 TexReg 3952). The amendments are adopted to clarify proof of insurance requirements and to update the name of the state's natural resource agency and the Texas Agricultural Extension Service. In addition, the amendments will provide the public and affected persons with clearer, updated information on the program.

No comments were received on the proposal.

SUBCHAPTER A. CERTIFICATION REQUIREMENTS

4 TAC §227.5

The amendment to §227.5 is adopted under the Texas Natural Resources Code, §153.046, which provides the Board with the authority to establish standards for prescribed burning and for certification and recertification of burn managers, and establish minimum insurance requirements for certified burn managers.

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 September 26, 2005.

TRD-200504272
Dolores Alvarado Hibbs
Deputy General Counsel, Texas Department of Agriculture
Prescribed Burning Board
Effective date: October 16, 2005
Proposal publication date: July 8, 2005
For further information, please call: (512) 463-4075



SUBCHAPTER B. CONTINUING EDUCATION FOR RECERTIFICATION/RENEWAL OF CERTIFICATION

4 TAC §227.12

The amendment to §227.12 is adopted under the Texas Natural Resources Code, §153.046, which provides the Board with the authority to establish standards for prescribed burning and for

certification and recertification of burn managers, and establish minimum insurance requirements for certified burn managers.

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 September 26, 2005.

TRD-200504273

Dolores Alvarado Hibbs

Deputy General Counsel, Texas Department of Agriculture
Prescribed Burning Board

Effective date: October 16, 2005

Proposal publication date: July 8, 2005

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

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TITLE 22. EXAMINING BOARDS

**PART 1. TEXAS BOARD OF
ARCHITECTURAL EXAMINERS**

CHAPTER 1. ARCHITECTS

**SUBCHAPTER D. CERTIFICATION AND
ANNUAL REGISTRATION**

22 TAC §1.65

The Texas Board of Architectural Examiners adopts an amendment to rule §1.65 for Title 22, Chapter 1, Subchapter D, pertaining to the procedure for registrants to renew registration annually. This rule is being adopted with changes to the proposed text as published in the July 22, 2005, issue of the *Texas Register* (30 TexReg 4172).

The amendment to this rule permits registrants to request, and the agency to provide, the required notice of the upcoming expiration of the registrant's registration and the need to renew registration via e-mail. The amended rule requires each registrant to provide to the agency notice of the registrant's change of address or change of e-mail address within thirty days after the address change so that the annual renewal notice may be sent to the proper address. The registrant must provide the notice of the change of address to the agency in writing. The amended rule explicitly allows the registrant to provide the written notice via e-mail, fax, on the agency's web site, or by U.S. mail. The amended rule eliminates the required signature on the change of address notice, shortens the deadline for registrants to provide the notice to the Board by thirty days, and allows the registrants' notice to be sent to the agency electronically. The change to the amendment, as proposed, is to replace the word "agency's" with the word "Board's" in the second sentence of subsection (a).

The Board received no comments concerning the proposal to amend this rule.

The amendment is adopted pursuant to §1051.202 of Texas Occupations Code Annotated Chapter 1051, which provides the Board with general authority to promulgate rules necessary to the administration of its statutory responsibilities.

The amendment to this section does not affect any other statutes.

§1.65. Annual Renewal Procedure.

(a) The Board shall send an annual registration renewal notice to each Architect. An Architect must notify the Board in writing (e-mail, fax, on the Board's Web site, or by U.S. mail) each time the Architect's address of record changes, and the written notice of the Architect's change of address must be submitted to the Board within thirty (30) days after the effective date of the change of address. Upon request by an Architect, the Board shall send the annual registration renewal notice via e-mail. An Architect who requests receipt of the renewal notice via e-mail must notify the Board in writing (U.S. mail, on the Board's Web site, e-mail, or fax) each time the Architect's e-mail address of record changes no later than thirty (30) days after the effective date of the change of the e-mail address.

(b) An Architect may renew his/her registration prior to its specified annual expiration date by:

(1) remitting the correct fee to the Board; and

(2) providing the information or documentation requested by the annual registration renewal notice.

(c) Each Architect must pay a mandatory \$200 professional fee in addition to the annual registration renewal fee prescribed by the Board.

(d) If an Architect fails to remit a completed registration renewal form and the prescribed fee on or before the specified expiration date of the Architect's registration, the Board shall impose a late payment penalty that must be paid before the Architect's registration may be renewed.

(e) If the Board receives official notice that an Architect has defaulted on the repayment of a loan guaranteed by the Texas Guaranteed Student Loan Corporation (TGSLC), the Board may not renew the Architect's registration unless:

(1) the renewal is the first renewal following the Board's receipt of official notice regarding the default;

(2) the Architect presents to the Board a certificate from TGSLC certifying that the Architect has entered into a repayment agreement for the defaulted loan; or

(3) the Architect presents to the Board a certificate from TGSLC certifying that the Architect is not in default on a loan guaranteed by TGSLC.

(f) If the Board receives official notice that an Architect has failed to pay court ordered child support, the Board may be prohibited from renewing the Architect's registration.

(g) If a registration is not renewed within one (1) year after the specified registration expiration date, the registration shall be cancelled by operation of law on the one-year anniversary of its expiration without an opportunity for a formal hearing. If a registration is cancelled pursuant to this subsection, the registration may not be reinstated. In order to obtain a new certificate of registration, a person whose registration was cancelled pursuant to this subsection must:

(1) submit an application for registration and satisfy all requirements for registration pursuant to Section 1.21, including the successful completion of the registration examination;

(2) submit an application for registration by reciprocal transfer and satisfy all requirements for registration by reciprocal transfer pursuant to Section 1.22, including the successful completion of the registration examination; or

(3) submit an application for registration and demonstrate that he/she moved to another state and is currently licensed or registered

and has been in practice in the other state for at least the two (2) years immediately preceding the date of the application.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 19, 2005.

TRD-200504174

Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Effective date: October 9, 2005

Proposal publication date: July 22, 2005

For further information, please call: (512) 305-8535



SUBCHAPTER J. INTERN DEVELOPMENT TRAINING REQUIREMENT

22 TAC §1.192

The Texas Board of Architectural Examiners adopts an amendment to rule §1.192 for Title 22, Chapter 1, Subchapter J, pertaining to architecture intern development program. The amendment to this rule is being adopted without changes to the proposed text as published in the July 22, 2005, issue of the *Texas Register* (30 TexReg 4173) and will not be republished.

The amendment to this rule will reduce the period during which candidates must work in a full-time capacity in order to earn work credit toward successful completion of the internship. The current rule requires candidates to work no less than thirty-five hours per week for a period of no fewer than ten weeks. The amended rule requires candidates to work for a period of eight weeks.

The Board received no comments concerning the proposal to amend this rule.

The amendment is adopted pursuant to §1051.202 of Texas Occupations Code Annotated Chapter 1051, which provides the Board with general authority to promulgate rules necessary to the administration of its statutory responsibilities. The amendment is also adopted pursuant to §1051.705(a)(2) of Texas Occupations Code Annotated Chapter 1051, which requires the Board to prescribe the satisfactory experience working in an architectural office necessary to qualify to take the architectural registration examination.

The amendment to this section does not affect any other statutes.

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 September 19, 2005.

TRD-200504175

Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Effective date: October 9, 2005

Proposal publication date: July 22, 2005

For further information, please call: (512) 305-8535



CHAPTER 3. LANDSCAPE ARCHITECTS SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

22 TAC §3.65

The Texas Board of Architectural Examiners adopts an amendment to rule §3.65 for Title 22, Chapter 3, Subchapter D, pertaining to the procedure for registrants to renew registration annually. This rule is being adopted with changes to the proposed text as published in the July 22, 2005, issue of the *Texas Register* (30 TexReg 4173).

The amendment to this rule permits registrants to request, and the agency to provide, the required notice of the upcoming expiration of the registrant's registration and the need to renew registration via e-mail. The amended rule requires each registrant to provide to the agency notice of the registrant's change of address or change of e-mail address within thirty days after the address change so that the annual renewal notice may be sent to the proper address. The registrant must provide the notice of the change of address to the agency in writing. The amended rule explicitly allows the registrant to provide the written notice via e-mail, fax, on the agency's web site, or by U.S. mail. The amended rule eliminates the required signature on the change of address notice, shortens the deadline for registrants to provide the notice to the Board by thirty days, and allows the registrants' notice to be sent to the agency electronically. The change to the amendment, as proposed, is to replace the word "agency's" with the word "Board's" in the second sentence of subsection (a).

The Board received no comments concerning the proposal to amend this rule.

The amendment is adopted pursuant to §1051.202 of Texas Occupations Code Annotated Chapter 1051, which provides the Board with general authority to promulgate rules necessary to the administration of its statutory responsibilities.

The amendment to this section does not affect any other statutes.

§3.65. *Annual Renewal Procedure.*

(a) The Board shall send an annual registration renewal notice to each Landscape Architect. A Landscape Architect must notify the Board in writing (e-mail, fax, on the Board's Web site, or by U.S. mail) each time the Landscape Architect's address of record changes, and the written notice of the Landscape Architect's change of address must be submitted to the Board within thirty (30) days after the effective date of the change of address. Upon request by a Landscape Architect, the Board shall send the annual registration renewal notice via e-mail. A Landscape Architect who requests receipt of the renewal notice via e-mail must notify the Board in writing (U.S. mail, on the Board's Web site, e-mail, or fax) each time the Landscape Architect's e-mail address of record changes no later than thirty (30) days after the effective date of the change of the e-mail address.

(b) A Landscape Architect may renew his/her registration prior to its specified annual expiration date by:

(1) remitting the correct fee to the Board; and

(2) providing the information and documentation requested by the annual registration renewal notice.

(c) If a Landscape Architect fails to remit a completed registration renewal form and the prescribed fee on or before the specified expiration date of the Landscape Architect's registration, the Board shall impose a late payment penalty that must be paid before the Landscape Architect's registration may be renewed.

(d) If the Board receives official notice that a Landscape Architect has defaulted on the repayment of a loan guaranteed by the Texas Guaranteed Student Loan Corporation (TGSLC), the Board may not renew the Landscape Architect's registration unless:

(1) the renewal is the first renewal following the Board's receipt of official notice regarding the default;

(2) the Landscape Architect presents to the Board a certificate from TGSLC certifying that the Landscape Architect has entered into a repayment agreement for the defaulted loan; or

(3) the Landscape Architect presents to the Board a certificate from TGSLC certifying that the Landscape Architect is not in default on a loan guaranteed by TGSLC.

(e) If the Board receives official notice that a Landscape Architect has failed to pay court ordered child support, the Board may be prohibited from renewing the Landscape Architect's registration.

(f) If a registration is not renewed within one (1) year after the specified registration expiration date, the registration shall be cancelled by operation of law on the one-year anniversary of its expiration without an opportunity for a formal hearing. If a registration is cancelled pursuant to this subsection, the registration may not be reinstated. In order to obtain a new certificate of registration, a person whose registration was cancelled pursuant to this subsection must:

(1) submit an application for registration and satisfy all requirements for registration pursuant to Section 3.21, including the successful completion of the registration examination;

(2) submit an application for registration by reciprocal transfer and satisfy all requirements for registration by reciprocal transfer pursuant to Section 3.22, including the successful completion of the registration examination; or

(3) submit an application for registration and demonstrate that he/she moved to another state and is currently licensed or registered and has been in practice in the other state for at least the two (2) years immediately preceding the date of the application.

(g) Each Landscape Architect must pay a mandatory \$200 professional fee in addition to the annual registration renewal fee prescribed by the Board.

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 September 19, 2005.

TRD-200504176

Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

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Proposal publication date: July 22, 2005

For further information, please call: (512) 305-8535

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CHAPTER 5. INTERIOR DESIGNERS SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

22 TAC §5.75

The Texas Board of Architectural Examiners adopts an amendment to rule §5.75 for Title 22, Chapter 5, Subchapter D, pertaining to the procedure for registrants to renew registration annually. This rule is being adopted with changes to the proposed text as published in the July 22, 2005, issue of the *Texas Register* (30 TexReg 4174).

The amendment to this rule permits registrants to request, and the agency to provide, the required notice of the upcoming expiration of the registrant's registration and the need to renew registration via e-mail. The amended rule requires each registrant to provide to the agency notice of the registrant's change of address or change of e-mail address within thirty days after the address change so that the annual renewal notice may be sent to the proper address. The registrant must provide the notice of the change of address to the agency in writing. The rule explicitly allows the registrant to provide the written notice via e-mail, fax, on the agency's web site, or by U.S. mail. The amended rule eliminates the required signature on the change of address notice, shortens the deadline for registrants to provide the notice to the Board by thirty days, and allows the registrants' notice to be sent to the agency electronically.

The Board received no comments concerning the proposal to amend this rule.

The amendment is adopted pursuant to §1051.202 of Texas Occupations Code Annotated Chapter 1051, which provides the Board with general authority to promulgate rules necessary to the administration of its statutory responsibilities.

The amendment to this section does not affect any other statutes.

§5.75. *Annual Renewal Procedure.*

(a) The Board shall send an annual registration renewal notice to each Interior Designer. An Interior Designer must notify the Board in writing (e-mail, fax, on the Board's Web site, or by U.S. mail) each time the Interior Designer's address of record changes, and the written notice of the Interior Designer's change of address must be submitted to the Board within thirty (30) days after the effective date of the change of address. Upon request by an Interior Designer, the Board shall send the annual registration renewal notice via e-mail. An Interior Designer who requests receipt of the renewal notice via e-mail must notify the Board in writing (U.S. mail, on the Board's Web site, e-mail, or fax) each time the Interior Designer's e-mail address of record changes no later than thirty (30) days after the effective date of the change of the e-mail address.

(b) An Interior Designer may renew his/her registration prior to its specified annual expiration date by:

(1) remitting the correct fee to the Board; and

(2) providing the information or documentation requested by the annual registration renewal notice.

(c) If an Interior Designer fails to remit a completed registration renewal form and the prescribed fee on or before the specified expiration date of the Interior Designer's registration, the Board shall impose a late payment penalty that must be paid before the Interior Designer's registration may be renewed.

(d) If the Board receives official notice that an Interior Designer has defaulted on the repayment of a loan guaranteed by the Texas Guaranteed Student Loan Corporation (TGS LC), the Board may not renew the Interior Designer's registration unless:

(1) the renewal is the first renewal following the Board's receipt of official notice regarding the default;

(2) the Interior Designer presents to the Board a certificate from TGS LC certifying that the Interior Designer has entered into a repayment agreement for the defaulted loan; or

(3) the Interior Designer presents to the Board a Certificate from TGS LC certifying that the Interior Designer is not in default on a loan guaranteed by TGS LC.

(e) If the Board receives official notice that an Interior Designer has failed to pay court ordered child support, the Board may be prohibited from renewing the Interior Designer's registration.

(f) If a registration is not renewed within one (1) year after the specified registration expiration date, the registration shall be cancelled by operation of law on the one-year anniversary of its expiration without an opportunity for a formal hearing. If a registration is cancelled pursuant to this subsection, the registration may not be reinstated. In order to obtain a new certificate of registration, a person whose registration was cancelled pursuant to this subsection must:

(1) submit an application for registration and satisfy all requirements for registration pursuant to Section 5.31, including the successful completion of the registration examination;

(2) submit an application for registration by reciprocal transfer and satisfy all requirements for registration by reciprocal transfer pursuant to Section 5.32, including the successful completion of the registration examination; or

(3) submit an application for registration and demonstrate that he/she moved to another state and is currently licensed or registered and has been in practice in the other state for at least the two (2) years immediately preceding the date of the application.

(g) Each Interior Designer must pay a mandatory \$200 professional fee in addition to the annual registration renewal fee prescribed by the Board.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Executive Director

Texas Board of Architectural Examiners

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For further information, please call: (512) 305-8535

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CHAPTER 7. ADMINISTRATION

22 TAC §7.10

The Texas Board of Architectural Examiners adopts an amendment to rule §7.10 for Title 22, Chapter 7, pertaining to fees charged by the agency. This rule is being adopted with changes to the proposed text as published in the July 22, 2005, issue of the *Texas Register* (30 TexReg 4175).

The change to the proposed amendment to this rule eliminates all proposed fee increases except for the increases in fees made by the examination providers for the architectural registration examination, the landscape architectural registration examination, and the examination for registration as an interior designer.

The Board received comments from the Texas Society of Architects questioning the need for the proposed fee increases.

The amendment is adopted pursuant to §1051.202 of Texas Occupations Code Annotated Chapter 1051, which provides the Board with general authority to promulgate rules necessary to the administration of its statutory responsibilities. The amendment is also adopted pursuant to §§1051.651, 1052.054, and 1053.052 of Texas Occupations Code Annotated Chapters 1051, 1052, and 103, respectively, which requires the board to set fees reasonable and necessary to cover the costs of administering those chapters.

The amendment to this section does not affect any other statutes.

§7.10. General Fees.

(a) FAILURE TO TIMELY PAY A REGISTRATION RENEWAL WILL RESULT IN THE AUTOMATIC CANCELLATION OF REGISTRATION BY OPERATION OF LAW.

(b) In addition to any fees established elsewhere in these rules, by the Act, or by another provision of Texas law, the following fees shall apply to services provided by the Board:
Figure: 22 TAC §7.10(b)

(c) The Board cannot accept cash as payment for any fee.

(d) An official postmark from the U.S. Postal Service or other delivery service receipt may be presented to the Board to demonstrate the timely payment of any fee.

(e) If a check is submitted to the Board to pay a fee and the bank upon which the check is drawn refuses to pay the check, the fee shall be considered unpaid and any applicable late fees or other penalties accrue. The Board shall impose a processing fee for any check that is returned unpaid by the bank upon which the check is drawn.

(f) A Registrant who is in Good Standing or was in Good Standing at the time the Registrant entered into military service shall be exempt from the payment of any fee during any period of active duty service in the U.S. military. The exemption under this subsection shall continue through the remainder of the fiscal year during which the Registrant's active duty status expires.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
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For further information, please call: (512) 305-8535

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**PART 22. TEXAS STATE BOARD OF
PUBLIC ACCOUNTANCY**

**CHAPTER 501. RULES OF PROFESSIONAL
CONDUCT**

**SUBCHAPTER C. RESPONSIBILITIES TO
CLIENTS**

22 TAC §501.72

The Texas State Board of Public Accountancy adopts an amendment to §501.72 concerning Contingency Fees without changes to the proposed text as published in the July 29, 2005, issue of the *Texas Register* (30 TexReg 4298). The text of the rule will not be republished.

The amendment to §501.72 will correct two typographical errors.

The amendment will function by correcting two typographical errors.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Rande Herrell
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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**SUBCHAPTER D. RESPONSIBILITIES TO
THE PUBLIC**

22 TAC §501.83

The Texas State Board of Public Accountancy adopts the repeal of §501.83 concerning Firm Names without changes to the proposed text as published in the July 29, 2005, issue of the *Texas Register* (30 TexReg 4300).

The repeal of §501.83 will permit the Board to adopt a revised rule regarding firm names.

The repeal will function by replacing this rule with a re-written rule.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Rande Herrell
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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22 TAC §501.83

The Texas State Board of Public Accountancy adopts new rule §501.83 concerning Firm Names without changes to the proposed text as published in the July 29, 2005, issue of the *Texas Register* (30 TexReg 4301). The text of the rule will not be republished.

The new rule §501.83 will establish the general rules applicable to all firms when establishing a firm name.

The new rule will function by improving understanding of the Board's standards for firm names as applicable to all firms as well as the additional requirements based on legal form of ownership or in circumstances when an owner is prohibited from practicing public accountancy.

One comment was received by the Board. The Texas Society of CPAs supported the proposed new rule and commented that the new rule offers both clarification and modernization.

The new rule is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Rande Herrell
General Counsel
Texas State Board of Public Accountancy
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CHAPTER 505. THE BOARD

22 TAC §505.10

The Texas State Board of Public Accountancy adopts an amendment to §505.10 concerning Board Committees without changes to the proposed text as published in the July 29, 2005, issue of the *Texas Register* (30 TexReg 4303). The text of the rule will not be republished.

The amendment to §505.10 will modify the frequency with which the peer assistance oversight committee reports to the Board.

The amendment will function by aligning of the committee's requirement to report to the Board with the need for such reports based on the volume of information provided by the committee.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Rande Herrell
General Counsel
Texas State Board of Public Accountancy
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CHAPTER 511. CERTIFICATION AS A CPA SUBCHAPTER C. EDUCATIONAL REQUIREMENTS

22 TAC §511.57

The Texas State Board of Public Accountancy adopts an amendment to §511.57 concerning Definition of Accounting Courses without changes to the proposed text as published in the July 29, 2005, issue of the *Texas Register* (30 TexReg 4303). The text of the rule will not be republished.

The amendment to §511.57 will expand and clarify the means by which an individual may comply with the Board's accounting course requirements.

The amendment will function by providing greater understanding of how an individual may meet the Board's accounting course requirements.

Two comments were received in support of the amendment to the rule. The Texas Society of CPAs commented that the changes to this rule offer both clarification and modernization of the rule. The University of Texas at Austin wrote in support of the expansion of §511.57(12) for the following reasons: (1) It allows candidates applying for the CPA exam in Texas greater flexibility in meeting their educational requirements. They will now have greater freedom in their selection of accounting courses and where those courses are taken; (2) Because the accounting curriculum is constantly changing and evolving, by revising this rule to allow for three hours of accounting that have "substantial merit in the context of a career in public accounting" the rule change allows for this evolution. The accounting profession is not static in nature, so this rule revision allows for this change; (3) The revision to rule 511.57(12) finally allows for innovations both in the classroom and curriculum to be incorporated into the educational requirements of the CPA exam. Now, there is a mechanism in place to evaluate those courses that go beyond the "traditional" accounting topics. As the profession responds to real world situations, so too, must accounting curriculums. This revision will accomplish this task and (4) The revision to rule 511.57(12) is a response to the "institutional lag" in interpretation and evaluation between "traditional" accounting topics and what the profession is really doing or what it may need. Courses that are "non-traditional" in nature now have a fair chance to be evaluated on their merits and how they apply to the accounting profession.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Rande Herrell
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CHAPTER 515. LICENSES

22 TAC §515.8

The Texas State Board of Public Accountancy adopts an amendment to §515.8 concerning Retirement Status or Permanent Disability without changes to the proposed text as published in the July 29, 2005, issue of the *Texas Register* (30 TexReg 4305). The text of the rule will not be republished.

The amendment to §515.8 will clarify the requirements and procedures for a certificate or registration holder to claim and maintain retirement or permanent disability status.

The amendment will function by be improving the understanding of the requirements to claim and maintain retirement or permanent disability status.

One comment was received by the Board. The Texas Society of CPAs supported the proposed amendment and commented that the changes to this rule offer both clarification and modernization of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Rande Herrell

General Counsel

Texas State Board of Public Accountancy

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CHAPTER 521. FEE SCHEDULE

22 TAC §521.2

The Texas State Board of Public Accountancy adopts the repeal of §521.2 concerning Examination Fees without changes to the proposal as published in the July 29, 2005, issue of the *Texas Register* (30 TexReg 4306).

The repeal of §521.2 will remove a rule that is no longer necessary. The fees shown in the rule are not collected by the Board; therefore the rule is not needed.

The repeal will function by removing a rule that is no longer necessary.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Rande Herrell
General Counsel
Texas State Board of Public Accountancy

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CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

SUBCHAPTER B. CONTINUING PROFESSIONAL EDUCATION RULES FOR INDIVIDUALS

22 TAC §523.112

The Texas State Board of Public Accountancy adopts an amendment to §523.112 concerning Mandatory CPE Attendance with a non-substantive change to the proposed text as published in the July 29, 2005, issue of the *Texas Register* (30 TexReg 4307). The change is in paragraph (3)(A) in which the "maximum of 200" has been changed to "minimum of 40". This change is necessary to be consistent with the other amendment that was made.

The amendment to §523.112 will further define the term "association with accounting work" and establish a minimum requirement for CPE to obtain reinstatement.

The amendment will function by improving understanding of what activities are considered an "association of accounting work" and establishing a minimum requirement for CPE for reinstatement.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

§523.112. *Mandatory CPE Attendance.*

A licensee shall complete at least 120 hours of CPE in each three-year period, and a minimum of 20 hours in each one-year period. For all CPE completed after January 1, 2005, except as provided by board rule, this CPE shall be offered by board contracted CPE sponsors. The exception to this requirement is an initial licensee, one who has been certified or registered for less than 12 months.

(1) The exception to the requirement of 120 hours of CPE is an initial licensee, one who is paying the license fee for the first time.

(A) To be issued a license that is less than twelve months from the date of certification or registration, the licensee does not have a CPE hour requirement. The first twelve-month period begins on the date of certification and ends with the last day of the licensee's birth month.

(B) To be issued a license for the first full twelve-month license period, the licensee does not have a CPE accrual requirement and can report zero hours.

(C) To be issued a license for the second full twelve-month period, the licensee must report a minimum of 20 CPE hours. The hours must be accrued in the 12 months preceding the license period.

(D) To be issued a license for the third full twelve-month license period, the licensee must report a total of at least 60 CPE hours that were accrued in the 24 months preceding the license period. At least 20 hours of the requirement must be accrued in the 12 months preceding the license period.

(E) To be issued a license for the fourth full twelve-month period, the licensee must report 100 CPE hours that were accrued in the 36 months preceding the license period. At least 20 hours of the requirement must be accrued in the 12 months preceding the license period.

(F) To be issued a license for the fifth and subsequent license periods, the licensee must report a total of at least 120 CPE hours that were accrued in the 36 months preceding the license period, and at least 20 hours of the requirement must be accrued in the 12 months preceding the license period.

(2) A former licensee whose certificate or registration has been revoked for failure to pay the license fee and who makes application for reinstatement, must pay the required fees and penalties and must accrue the minimum CPE credit hours missed.

(3) The board may consider granting an exemption from the CPE requirement on a case-by-case basis if:

(A) a licensee completes and forwards to the board a sworn affidavit indicating that the licensee will not be employed during the period for which the exemption is requested. A licensee who has been granted this exemption and who re-enters the work force shall be required to report CPE hours missed as a result of the exemption subject to a minimum of 40 hours. Such CPE hours shall be accrued from the technical area as described in §523.103 and §523.130 of this title (relating to Standards for CPE Program Development and Board Rules and Ethics Course);

(B) a licensee completes and forwards to the board a sworn affidavit indicating no association with accounting work. The affidavit shall include, as a minimum, a brief description of the duties performed, job title, and verification by the licensee's immediate supervisor;

(i) For purposes of this section, the term "association with accounting work" shall include the following:

(I) working or supervising work performed in the areas of financial accounting and reporting; tax compliance, planning or advice; management advisory services; accounting information systems; treasury, finance, or audit; or

(II) representing to the public, including an employer, that the licensee is a CPA or public accountant in connection with the sale of any services or products involving accounting work, including such designation on a business card, letterhead, promotional brochure, advertisement, or office; or

(III) offering testimony in a court of law purporting to have expertise in accounting and reporting, auditing, tax, or management services; or

(IV) for purposes of making a determination as to whether the licensee fits one of the categories listed in this subclause and subclauses (I)-(III) of this clause, the questions shall be resolved in favor of inclusion of the work as "association with accounting work."

(ii) A licensee who has been granted this exemption and who loses the exemption shall accrue CPE hours missed as a result of the exemption subject to a minimum of 40 hours. Such CPE hours shall be earned in the technical area as described in §523.103

and §523.130 of this title (relating to Standards for CPE Program Development and Board Rules and Ethics Course).

(C) a licensee not residing in Texas, who submits a sworn statement to the board that the licensee does not serve Texas clients from out of state;

(D) a licensee shows reasons of health, certified by a medical doctor, that prevent compliance with the CPE requirement. A licensee must petition the board for the exemption and provide documentation that clearly establishes the period of disability and the resulting physical limitations;

(E) a licensee is on extended active military duty during the period for which the exemption is requested, and files a copy of orders to active military duty with the board; or

(F) a licensee shows reason which prevents compliance, that is acceptable to the board.

(4) A licensee who has been granted the retired or disabled status under §515.8 of this title (relating to Retirement Status or Permanent Disability) is not required to report any CPE hours.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Rande Herrell

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



TITLE 25. HEALTH SERVICES

PART 7. TEXAS MEDICAL DISCLOSURE PANEL

CHAPTER 601. INFORMED CONSENT

25 TAC §§601.2 - 601.5, 601.8

The Texas Medical Disclosure Panel (panel) adopts amendments to §§601.2 - 601.5 and 601.8, concerning informed consent. Section 601.2 is adopted with changes to the proposed text as published in the April 22, 2005, issue of the *Texas Register* (30 TexReg 2362). Sections 601.3 - 601.5 and 601.8 are adopted without changes, and therefore the sections will not be republished.

BACKGROUND AND PURPOSE

These amendments are adopted in accordance with the Texas Civil Practice and Remedies Code, §74.102, which requires the panel to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure. The sections cover procedures requiring full disclosure of specific risks and hazards - list A, procedures requiring no disclosure of specific risks and hazards -

list B, disclosure and consent form for medical and surgical procedures, disclosure and consent form for radiation therapy, and disclosure and consent form for hysterectomy.

SECTION-BY-SECTION SUMMARY

Amendments to §601.2 add procedures and risks and hazards for the cardiovascular system and nervous system treatments and procedures. Amendments to §601.3 remove procedures relating to the nervous system and radiology that the panel proposes be moved to §601.2. Amendments to §601.4 and §601.5 add a Spanish language version of the disclosure and consent form for medical and surgical procedures, and the disclosure and consent form for radiation therapy. An amendment to §601.8 makes editorial corrections to the disclosure and consent for hysterectomy form and corrects a difference between the English and Spanish language versions of the form.

COMMENTS

The panel did not receive any public comments concerning the proposal during the comment period. However, the panel is making the following minor changes due to stakeholder input received from the Texas Osteopathic Medical Association prior to the proposed rules being published in the *Texas Register*. Change: Concerning §601.2(m)(1)(B), (H) and (I), risks and hazards were added for craniotomy, craniectomy or cranioplasty, and wording was also changed to be consistent with text previously used with the section. Also, risks and hazards were also added for transphenoidal hypophysectomy or other pituitary gland operations in §601.2(m)(5)(E) and (F).

STATUTORY AUTHORITY

The amendments are adopted under the Texas Civil Practice and Remedies Code, §74.102, which provides the Texas Medical Disclosure Panel with the authority to prepare lists of medical treatments and surgical procedures that do and do not require disclosure by physicians and health care providers of the possible risks and hazards and to prepare the form(s) for the treatments and procedures which do require disclosure. The amendments affect Texas Civil Practice and Remedies Code, §74.102.

LEGAL CERTIFICATION

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

§601.2. *Procedures Requiring Full Disclosure of Specific Risks and Hazards--List A.*

(a) Anesthesia.

(1) Epidural.

(A) Risks are enumerated in the form in §601.4 of this title (relating to Disclosure and Consent Form).

(B) No other risks are assigned at this time.

(2) General.

(A) Risks are enumerated in the form in §601.4 of this title.

(B) No other risks are assigned at this time.

(3) Spinal.

(A) Risks are enumerated in the form in §601.4 of this title.

(B) No other risks are assigned at this time.

(b) Cardiovascular system.

(1) Cardiac.

(A) Surgical.

(i) Coronary artery bypass, valve replacement.

(I) Acute myocardial infarction.

(II) Hemorrhage.

(III) Kidney failure.

(IV) Stroke.

(V) Sudden death.

(VI) Infection of chest wall/chest cavity.

(VII) Valve related delayed onset infection.

(ii) Heart transplant.

(I) Infection.

(II) Rejection.

(III) Death.

(B) Non-Surgical--Coronary angioplasty, coronary stent insertion, pacemaker insertion, AICD insertion, and cardioversion.

(i) Acute myocardial infarction.

(ii) Rupture of myocardium.

(iii) Life threatening arrhythmias.

(iv) Necessity for emergency open heart surgery.

(v) Hemorrhage.

(vi) Stroke.

(vii) Sudden death.

(viii) Device related delayed onset infection.

(C) Diagnostic.

(i) Cardiac catheterization.

(I) Allergic sensitivity reaction to injected contrast media.

(II) Acute myocardial infarction.

(III) Kidney damage from IV contrast medium.

(IV) Arrhythmias.

(V) Stroke.

(VI) Injury to vessels that may require immediate surgical intervention.

(ii) Electrophysiologic studies.

(I) Cardiac perforation.

(II) Life threatening arrhythmias.

(III) Injury to vessels that may require immediate surgical intervention.

(iii) Stress testing--Acute myocardial infarction.

(iv) Transesophageal echocardiography--Esophageal perforation.

- (2) Vascular.
 - (A) Open surgical repair of aortic, subclavian, and iliac, artery aneurysms or occlusions, and renal artery bypass.
 - (i) Hemorrhage.
 - (ii) Paraplegia.
 - (iii) Kidney damage.
 - (iv) Stroke.
 - (v) Acute myocardial infarction.
 - (vi) Infection of graft.
 - (B) Endovascular stenting of any portion of the aorta, iliac or carotid artery.
 - (i) Hemorrhage.
 - (ii) Injury to vessels that may require immediate surgical intervention.
 - (iii) Conversion of procedure to open procedure.
 - (iv) Failure to deliver stent/endoluminal graft.
 - (v) Stent migration.
 - (vi) Paraplegia (for thoracic aorta procedures only).
 - (vii) Vessel occlusion.
 - (viii) Pseudo aneurysm.
 - (ix) Irreversible kidney damage.
 - (x) Impotence (for abdominal aorta and iliac artery procedures only).
 - (xi) Stroke (for carotid artery procedures only).
 - (xii) Seizure (for carotid artery procedures only).
 - (C) Vascular thrombolysis.
 - (i) Hemorrhage.
 - (ii) Embolus.
 - (iii) Pulmonary complications.
 - (iv) Shock.
- (c) Digestive system treatments and procedures.
 - (1) Cholecystectomy with or without common bile duct exploration.
 - (A) Pancreatitis.
 - (B) Injury to the tube between the liver and the bowel.
 - (C) Retained stones in the tube between the liver and the bowel.
 - (D) Narrowing or obstruction of the tube between the liver and the bowel.
 - (E) Injury to the bowel and/or intestinal obstruction.
 - (2) Other procedures. No other procedures are assigned at this time.
- (d) Ear treatments and procedures.
 - (1) Stapedectomy.
 - (A) Diminished or bad taste.
 - (B) Total or partial loss of hearing in the operated ear.
 - (C) Brief or long-standing dizziness.
 - (D) Eardrum hole requiring more surgery.
 - (E) Ringing in the ear.
 - (2) Reconstruction of auricle of ear for congenital deformity or trauma.
 - (A) Less satisfactory appearance compared to possible alternative artificial ear.
 - (B) Exposure of implanted material.
 - (3) Tympanoplasty with mastoidectomy.
 - (A) Facial nerve paralysis.
 - (B) Altered or loss of taste.
 - (C) Recurrence of original disease process.
 - (D) Total loss of hearing in operated ear.
 - (E) Dizziness.
 - (F) Ringing in the ear.
 - (e) Endocrine system treatments and procedures.
 - (1) Thyroidectomy.
 - (A) Injury to nerves resulting in hoarseness or impairment of speech.
 - (B) Injury to parathyroid glands resulting in low blood calcium levels that require extensive medication to avoid serious degenerative conditions, such as cataracts, brittle bones, muscle weakness and muscle irritability.
 - (C) Lifelong requirement of thyroid medication.
 - (2) Other procedures. No other procedures are assigned at this time.
 - (f) Eye treatments and procedures.
 - (1) Eye muscle surgery.
 - (A) Additional treatment and/or surgery.
 - (B) Double vision.
 - (C) Partial or total loss of vision.
 - (2) Surgery for cataract with or without implantation of intraocular lens.
 - (A) Complications requiring additional treatment and/or surgery.
 - (B) Need for glasses or contact lenses.
 - (C) Complications requiring the removal of implanted lens.
 - (D) Partial or total loss of vision.
 - (3) Retinal or vitreous surgery.
 - (A) Complications requiring additional treatment and/or surgery.
 - (B) Recurrence or spread of disease.
 - (C) Partial or total loss of vision.
 - (4) Reconstructive and/or plastic surgical procedures of the eye and eye region, such as blepharoplasty, tumor, fracture, lacrimal surgery, foreign body, abscess, or trauma.

- (A) Worsening or unsatisfactory appearance.
- (B) Creation of additional problems.
 - (i) Poor healing or skin loss.
 - (ii) Nerve damage.
 - (iii) Painful or unattractive scarring.
 - (iv) Impairment of regional organs, such as eye or lip function.
- (C) Recurrence of the original condition.
- (5) Photocoagulation and/or cryotherapy.
 - (A) Complications requiring additional treatment and/or surgery.
 - (B) Pain.
 - (C) Partial or total loss of vision.
- (6) Corneal surgery, such as corneal transplant, refractive surgery and pterygium.
 - (A) Complications requiring additional treatment and/or surgery.
 - (B) Possible pain.
 - (C) Need for glasses or contact lenses.
 - (D) Partial or total loss of vision.
- (7) Glaucoma surgery by any method.
 - (A) Complications requiring additional treatment and/or surgery.
 - (B) Worsening of the glaucoma.
 - (C) Pain.
 - (D) Partial or total loss of vision.
- (8) Removal of the eye or its contents (enucleation or evisceration).
 - (A) Complications requiring additional treatment and/or surgery.
 - (B) Worsening or unsatisfactory appearance.
 - (C) Recurrence or spread of disease.
- (9) Surgery for penetrating ocular injury, including intraocular foreign body.
 - (A) Complications requiring additional treatment and/or surgery, including removal of the eye.
 - (B) Chronic pain.
 - (C) Partial or total loss of vision.
- (g) Female genital system treatments and procedures.
 - (1) Abdominal hysterectomy (total).
 - (A) Uncontrollable leakage of urine.
 - (B) Injury to bladder.
 - (C) Sterility.
 - (D) Injury to the tube (ureter) between the kidney and the bladder.
 - (E) Injury to the bowel and/or intestinal obstruction.
 - (2) Vaginal hysterectomy.
 - (A) Uncontrollable leakage of urine.
 - (B) Injury to bladder.
 - (C) Sterility.
 - (D) Injury to the tube (ureter) between the kidney and the bladder.
 - (E) Injury to the bowel and/or intestinal obstruction.
 - (F) Completion of operation by abdominal incision.
 - (3) All fallopian tube and ovarian surgery with or without hysterectomy, including removal and lysis of adhesions.
 - (A) Injury to the bowel and/or bladder.
 - (B) Sterility.
 - (C) Failure to obtain fertility (if applicable).
 - (D) Failure to obtain sterility (if applicable).
 - (E) Loss of ovarian functions or hormone production from ovary(ies).
 - (4) Reserved.
 - (5) Removing fibroids (uterine myomectomy).
 - (A) Uncontrollable leakage of urine.
 - (B) Injury to bladder.
 - (C) Sterility.
 - (D) Injury to the tube (ureter) between the kidney and the bladder.
 - (E) Injury to the bowel and/or intestinal obstruction.
 - (6) Uterine suspension.
 - (A) Uncontrollable leakage of urine.
 - (B) Injury to bladder.
 - (C) Sterility.
 - (D) Injury to the tube (ureter) between the kidney and the bladder.
 - (E) Injury to the bowel and/or intestinal obstruction.
 - (7) Removal of the nerves to the uterus (presacral neurectomy).
 - (A) Uncontrollable leakage of urine.
 - (B) Injury to bladder.
 - (C) Sterility.
 - (D) Injury to the tube (ureter) between the kidney and the bladder.
 - (E) Injury to the bowel and/or intestinal obstruction.
 - (F) Hemorrhage, complications of hemorrhage, with additional operation.
 - (8) Removal of the cervix.
 - (A) Uncontrollable leakage of urine.
 - (B) Injury to bladder.
 - (C) Sterility.

(D) Injury to the tube (ureter) between the kidney and the bladder.

(E) Injury to the bowel and/or intestinal obstruction.

(F) Completion of operation by abdominal incision.

(9) Repair of vaginal hernia (anterior and/or posterior colporrhaphy and/or enterocele repair).

(A) Uncontrollable leakage of urine.

(B) Injury to bladder.

(C) Sterility.

(D) Injury to the tube (ureter) between the kidney and the bladder.

(E) Injury to the bowel and/or intestinal obstruction.

(10) Abdominal suspension of the bladder (retropubic urethropexy).

(A) Uncontrollable leakage of urine.

(B) Injury to bladder.

(C) Injury to the tube (ureter) between the kidney and the bladder.

(D) Injury to the bowel and/or intestinal obstruction.

(11) Conization of cervix.

(A) Hemorrhage with possible hysterectomy to control.

(B) Sterility.

(C) Injury to bladder.

(D) Injury to rectum.

(E) Failure of procedure to remove all of cervical abnormality.

(12) Dilation and curettage of uterus (diagnostic/therapeutic).

(A) Hemorrhage with possible hysterectomy.

(B) Perforation of the uterus.

(C) Sterility.

(D) Injury to bowel and/or bladder.

(E) Abdominal incision and operation to correct injury.

(13) Surgical abortion/dilation and curettage/dilation and evacuation.

(A) Hemorrhage with possible hysterectomy to control.

(B) Perforation of the uterus.

(C) Sterility.

(D) Injury to the bowel and/or bladder.

(E) Abdominal incision and operation to correct injury.

(F) Failure to remove all products of conception.

(14) Medical abortion/non-surgical.

(A) Hemorrhage with possible need for surgical intervention.

(B) Failure to remove all products of conception.

(C) Sterility.

(h) Hematic and lymphatic system.

(1) Transfusion of blood and blood components.

(A) Fever.

(B) Transfusion reaction which may include kidney failure or anemia.

(C) Heart failure.

(D) Hepatitis.

(E) AIDS (acquired immune deficiency syndrome).

(F) Other infections.

(2) Other procedures. No other procedures are assigned at this time.

(i) Integumentary system treatments and procedures.

(1) Radical or modified radical mastectomy. (Simple mastectomy excluded).

(A) Limitation of movement of shoulder and arm.

(B) Swelling of the arm.

(C) Loss of the skin of the chest requiring skin graft.

(D) Recurrence of malignancy, if present.

(E) Decreased sensation or numbness of the inner aspect of the arm and chest wall.

(2) Reconstruction and/or plastic surgical operations of the face and neck.

(A) Worsening or unsatisfactory appearance.

(B) Creation of several additional problems.

(i) Poor healing or skin loss.

(ii) Nerve damage.

(iii) Painful or unattractive scarring.

(iv) Impairment of regional organs, such as eye or lip function.

(C) Recurrence of the original condition.

(j) Male genital system.

(1) Orchidopexy (reposition of testis(es)).

(A) Removal of testicle.

(B) Atrophy (shriveling) of the testicle with loss of function.

(2) Orchiectomy (removal of the testis(es)).

(A) Decreased sexual desire.

(B) Difficulties with penile erection.

(3) Vasectomy.

(A) Loss of testicle.

(B) Failure to produce permanent sterility.

(k) Maternity and related cases.

(1) Delivery (vaginal).

(A) Injury to bladder and/or rectum, including a hole (fistula) between bladder and vagina and/or rectum and vagina.

(B) Hemorrhage possibly requiring blood administration and/or hysterectomy and/or artery ligation to control.

(C) Sterility.

(D) Brain damage, injury or even death occurring to the fetus before or during labor and/or vaginal delivery whether or not the cause is known.

(2) Delivery (cesarean section).

(A) Injury to bowel and/or bladder.

(B) Sterility.

(C) Injury to tube (ureter) between kidney and bladder.

(D) Brain damage, injury or even death occurring to the fetus before or during labor and/or cesarean delivery whether or not the cause is known.

(E) Uterine disease or injury requiring hysterectomy.

(l) Musculoskeletal system treatments and procedures.

(1) Arthroplasty of all joints with mechanical device.

(A) Impaired function such as shortening or deformity of an arm or leg, limp or foot drop.

(B) Blood vessel or nerve injury.

(C) Pain or discomfort.

(D) Fat escaping from bone with possible damage to a vital organ.

(E) Failure of bone to heal.

(F) Bone infection.

(G) Removal or replacement of any implanted device or material.

(2) Mechanical internal prosthetic device.

(A) Impaired function such as shortening or deformity of an arm or leg, limp or foot drop.

(B) Blood vessel or nerve injury.

(C) Pain or discomfort.

(D) Fat escaping from bone with possible damage to a vital organ.

(E) Failure of bone to heal.

(F) Bone infection.

(G) Removal or replacement of any implanted device or material.

(3) Open reduction with internal fixation.

(A) Impaired function such as shortening or deformity of an arm or leg, limp or foot drop.

(B) Blood vessel or nerve injury.

(C) Pain or discomfort.

(D) Fat escaping from bone with possible damage to a vital organ.

(E) Failure of bone to heal.

(F) Bone infection.

(G) Removal or replacement of any implanted device or material.

(4) Osteotomy.

(A) Impaired function such as shortening or deformity of an arm or leg, limp or foot drop.

(B) Blood vessel or nerve injury.

(C) Pain or discomfort.

(D) Fat escaping from bone with possible damage to a vital organ.

(E) Failure of bone to heal.

(F) Bone infection.

(G) Removal or replacement of any implanted device or material.

(5) Ligamentous reconstruction of joints.

(A) Failure of reconstruction to work.

(B) Continued loosening of the joint.

(C) Degenerative arthritis.

(D) Continued pain.

(E) Increased stiffening.

(F) Blood vessel or nerve injury.

(G) Cosmetic and/or functional deformity.

(6) Children's orthopedics (bone, joint, ligament or muscle).

(A) Growth deformity.

(B) Additional surgery.

(m) Nervous system treatments and procedures.

(1) Craniotomy, craniectomy or cranioplasty.

(A) Additional loss of brain function including memory.

(B) Recurrence, continuation or worsening of the condition that required this operation.

(C) Stroke.

(D) Blindness, deafness, inability to smell, double vision, coordination loss, seizures, pain, numbness and paralysis.

(E) Cerebral spinal fluid leak with potential for meningitis and severe headaches.

(F) Meningitis.

(G) Brain abscess.

(H) Persistent vegetative state.

(I) Heart attack.

(2) Cranial nerve operations.

(A) Numbness, impaired muscle function or paralysis.

(B) Recurrence, continuation or worsening of the condition that required this operation.

(C) Seizures.

(D) New or different pain.

(3) Spine operation, including laminectomy, decompression, fusion, internal fixation or procedures for nerve root or spinal cord compression; diagnosis; pain; deformity; mechanical instability;

injury; removal of tumor, abscess or hematoma (excluding coccygeal operations).

- (A) Pain, numbness or clumsiness.
- (B) Impaired muscle function or paralysis.
- (C) Incontinence, impotence or impaired bowel function.
- (D) Unstable spine.
- (E) Recurrence, continuation or worsening of the condition that required the operation.
- (F) Injury to major blood vessels.
- (G) Hemorrhage.

(4) Peripheral nerve operation; nerve grafts, decompression, transposition or tumor removal; neurorrhaphy, neurectomy or neurolysis.

- (A) Numbness.
- (B) Impaired muscle function.
- (C) Recurrence, continuation or worsening of the condition that required the operation.
- (D) Continued, increased or different pain.

(5) Transphenoidal hypophysectomy or other pituitary gland operation.

- (A) Spinal fluid leak.
- (B) Necessity for hormone replacement.
- (C) Recurrence or continuation of the condition that required this operation.
- (D) Nasal septal deformity or perforation.
- (E) Facial numbness and disfigurement.
- (F) Blindness.

(6) Cerebral spinal fluid shunting procedure or revision.

- (A) Shunt obstruction, migration or infection.
- (B) Seizure disorder.
- (C) Recurrence or continuation of brain dysfunction.
- (D) Injury to internal organs.
- (E) Possible brain injury or hemorrhage.

(n) Radiology.

(1) Angiography, aortography, arteriography (arterial injection of contrast media-diagnostic).

- (A) Injury to artery.
- (B) Damage to parts of the body supplied by the artery with resulting loss of function or amputation.
- (C) Swelling, pain, tenderness or bleeding at the site of the blood vessel perforation.
- (D) Aggravation of the condition that necessitated the procedure.
- (E) Allergic sensitivity reaction to injected contrast media.

(2) Myelography.

- (A) Chronic pain.
- (B) Transient headache, nausea, vomiting.
- (C) Numbness.
- (D) Impaired muscle function.

(3) Angiography with occlusion techniques-therapeutic.

- (A) Injury to artery.
- (B) Loss or injury to body parts.
- (C) Swelling, pain, tenderness or bleeding at the site of the blood vessel perforation.
- (D) Aggravation of the condition that necessitated the procedure.
- (E) Allergic sensitivity reaction to injected contrast media.

(4) Angioplasty (intravascular dilatation technique).

- (A) Swelling, pain tenderness, or bleeding at the site of vessel puncture.
- (B) Damage to parts of the body supplied by the artery with resulting loss of function or amputation.
- (C) Injury to the vessel that may require immediate surgical intervention.
- (D) Recurrence or continuation of the original condition.
- (E) Allergic sensitivity reaction to injected contrast media.

(5) Splenoportography (needle injection of contrast media into the spleen).

- (A) Injury to the spleen requiring blood transfusion and/or removal of the spleen.
- (B) No other risks are assigned at this time.

(o) Respiratory system treatments and procedures.

(1) Excision of lesion of larynx, vocal cords, trachea. No risks or hazards assigned at this time.

(2) Rhinoplasty or nasal reconstruction with or without septoplasty.

- (A) Deformity of skin, bone or cartilage.
- (B) Creation of new problems, such as septal perforation or breathing difficulty.

(3) Submucous resection of nasal septum or nasal septoplasty.

- (A) Persistence, recurrence or worsening of the obstruction.
- (B) Perforation of nasal septum with dryness and crusting.
- (C) External deformity of the nose.

(p) Urinary system.

(1) Partial nephrectomy (removal of part of the kidney).

- (A) Incomplete removal of stone(s) or tumor, if present.
- (B) Obstruction of urinary flow.

- (C) Leakage of urine at surgical site.
 - (D) Injury to or loss of the kidney.
 - (E) Damage to adjacent organs.
- (2) Radical nephrectomy (removal of kidney and adrenal gland for cancer).
- (A) Loss of the adrenal gland.
 - (B) Incomplete removal of tumor.
 - (C) Damage to adjacent organs.
- (3) Nephrectomy (removal of kidney).
- (A) Incomplete removal of tumor if present.
 - (B) Damage to adjacent organs.
 - (C) Injury to or loss of the kidney.
- (4) Nephrolithotomy and pyelolithotomy (removal of kidney stone(s)).
- (A) Incomplete removal of stone(s).
 - (B) Obstruction of urinary flow.
 - (C) Leakage of urine at surgical site.
 - (D) Injury or loss of the kidney.
 - (E) Damage to adjacent organs.
- (5) Pyeloureteroplasty (pyeloplasty or reconstruction of the kidney drainage system).
- (A) Obstruction of urinary flow.
 - (B) Leakage of urine at surgical site.
 - (C) Injury to or loss of the kidney.
 - (D) Damage to adjacent organs.
- (6) Exploration of kidney or perinephric mass.
- (A) Incomplete removal of stone(s) or tumor, if present.
 - (B) Leakage of urine at surgical site.
 - (C) Injury to or loss of the kidney.
 - (D) Damage to adjacent organs.
- (7) Ureteroplasty (reconstruction of ureter (tube between kidney and bladder)).
- (A) Leakage of urine at surgical site.
 - (B) Incomplete removal of the stone or tumor (when applicable).
 - (C) Obstruction of urine flow.
 - (D) Damage to other adjacent organs.
 - (E) Damage to or loss of the ureter.
- (8) Ureterolithotomy (surgical removal of stone(s) from ureter (tube between kidney and bladder)).
- (A) Leakage of urine at surgical site.
 - (B) Incomplete removal of stone.
 - (C) Obstruction of urine flow.
 - (D) Damage to other adjacent organs.
 - (E) Damage to or loss of ureter.
- (9) Ureterectomy (partial/complete removal of ureter (tube between kidney and bladder)).
- (A) Leakage of urine at surgical site.
 - (B) Incomplete removal of tumor (when applicable).
 - (C) Obstruction of urine flow.
 - (D) Damage to other adjacent organs.
- (10) Ureterolysis (partial/complete removal of ureter (tube between kidney and bladder from adjacent tissue)).
- (A) Leakage of urine at surgical site.
 - (B) Obstruction to urine flow.
 - (C) Damage to other adjacent organs.
 - (D) Damage to or loss of ureter.
- (11) Ureteral reimplantation (reinserting ureter (tube between kidney and bladder) into the bladder).
- (A) Leakage of urine at surgical site.
 - (B) Obstruction to urine flow.
 - (C) Damage to or loss of ureter.
 - (D) Backward flow of urine from bladder into ureter.
 - (E) Damage to other adjacent organs.
- (12) Prostatectomy (partial or total removal of prostate).
- (A) Leakage of urine at surgical site.
 - (B) Obstruction to urine flow.
 - (C) Incontinence (difficulty with urinary control).
 - (D) Semen passing backward into bladder.
 - (E) Difficulty with penile erection (possible with partial and probable with total prostatectomy).
- (13) Total cystectomy (removal of urinary bladder).
- (A) Probable loss of penile erection and ejaculation in the male.
 - (B) Damage to other adjacent organs.
 - (C) This procedure will require an alternate method of urinary drainage.
- (14) Partial cystectomy (partial removal of urinary bladder).
- (A) Leakage or urine at surgical site.
 - (B) Incontinence (difficulty with urinary control).
 - (C) Backward flow of urine from bladder into ureter (tube between kidney and bladder).
 - (D) Obstruction of urine flow.
 - (E) Damage to other adjacent organs.
- (15) Urinary diversion (ileal conduit, colon conduit).
- (A) Blood chemistry abnormalities requiring medication.
 - (B) Development of stones, strictures or infection.
 - (C) Routine lifelong medical evaluation.
 - (D) Leakage of urine at surgical site.

- (E) Requires wearing a bag for urine collection.
- (16) Ureterosigmoidostomy (placement of kidney drainage tubes into the large bowel).
 - (A) Blood chemistry abnormalities requiring medication.
 - (B) Development of stones, strictures or infection.
 - (C) Routine lifelong medical evaluation.
 - (D) Leakage of urine at surgical site.
 - (E) Difficulty in holding urine in the rectum.
- (17) Urethroplasty (construction/reconstruction of drainage tube from bladder).
 - (A) Leakage of urine at surgical site.
 - (B) Stricture formation.
 - (C) Additional operations(s).
- (q) Psychiatric procedures.
 - (1) Electroconvulsive therapy with modification by intravenous muscle relaxants and sedatives.
 - (A) Memory changes of events prior to, during, and immediately following the treatment.
 - (B) Fractures or dislocations of bones.
 - (C) Significant temporary confusion requiring special care.
 - (2) Other Procedures. No other procedures are assigned at this time.
- (r) Radiation therapy. A child is defined for the purpose of this subsection as an individual who is not physiologically mature as determined by the physician using the appropriate medical parameters.
 - (1) Head and neck.
 - (A) Early reactions.
 - (i) Reduced and sticky saliva, loss of taste and appetite, altered sense of smell, nausea.
 - (ii) Sore throat, difficulty swallowing, weight loss, fatigue.
 - (iii) Skin changes: redness, irritation, scaliness, blistering or ulceration, color change, thickening, hair loss.
 - (iv) Hoarseness, cough, loss of voice, and swelling of airway.
 - (v) Blockage and crusting of nasal passages.
 - (vi) Inflammation of ear canal, feeling of "stopped up" ear, hearing loss, dizziness.
 - (vii) Dry and irritable eye(s).
 - (viii) In children, these reactions are likely to be intensified by chemotherapy before, during or after radiation therapy.
 - (ix) In children, depression of blood count leading to increased risk of infection and/or bleeding is more common.
 - (B) Late reactions.
 - (i) Dry mouth and altered sense, or loss, of taste.
 - (ii) Tooth decay and gum changes.

- (iii) Bone damage, especially in jaws.
- (iv) Stiffness and limitation of jaw movement.
- (v) Changes in skin texture and/or coloration, permanent hair loss, and scarring of skin.
- (vi) Swelling of tissues, particularly under the chin.
- (vii) Throat damage causing hoarseness, pain or difficulty breathing or swallowing.
- (viii) Eye damage causing dry eye(s), cataract, loss of vision, or loss of eye(s).
- (ix) Ear damage causing dryness of ear canal, fluid collection in middle ear, hearing loss.
- (x) Brain, spinal cord or nerve damage causing alteration of thinking ability or memory, and/or loss of strength, feeling or coordination in any part of the body.
- (xi) Pituitary or thyroid gland damage requiring long-term hormone replacement therapy.
- (xii) In children, there may be additional late reactions.
 - (I) Disturbance of bone and tissue growth.
 - (II) Bone damage to face causing abnormal development.
 - (III) Brain damage causing a loss of intellectual ability, learning capacity, and reduced intelligence quotient (IQ).
 - (IV) Second cancers developing in the irradiated area.
- (2) Central nervous system.
 - (A) Early reactions.
 - (i) Skin and scalp reaction with redness, irritation, scaliness, blistering, ulceration, change in color, thickening, hair loss.
 - (ii) Nausea, vomiting, headaches.
 - (iii) Fatigue, drowsiness.
 - (iv) Altered sense of taste or smell.
 - (v) Inflammation of ear canal, feeling of "stopped-up" ear, hearing loss, dizziness.
 - (vi) Depression of blood count leading to increased risk of infection and/or bleeding.
 - (vii) In children, these reactions are likely to be intensified by chemotherapy before, during or after radiation therapy.
 - (viii) In children, depression of blood count leading to increased risk of infection and/or bleeding is more common.
 - (B) Late reactions.
 - (i) Permanent hair loss of variable degrees, altered regrowth, texture and color of hair.
 - (ii) Persistent drowsiness and tiredness.
 - (iii) Brain damage causing a loss of some degree of thinking ability or memory, or personality changes.
 - (iv) Scarring of skin.
 - (v) Spinal cord or nerve damage causing loss of strength, feeling or coordination in any part of the body.

(vi) Damage to eye(s), or optic nerve(s) causing loss of vision.

(vii) Ear damage causing dryness of ear canal, fluid collection in middle ear, hearing loss.

(viii) Pituitary gland damage requiring long-term hormone replacement therapy.

(ix) In children, there may be additional late reactions.

(I) Disturbances of bone and tissue growth.

(II) Bone damage to spine, causing stunting of growth, curvature and/or reduction in height.

(III) Bone damage to face, or pelvis causing stunting of bone growth and/or abnormal development.

(IV) Brain damage causing a loss of intellectual ability, learning capacity, and reduced intelligence quotient (IQ).

(V) Second cancers developing in the irradiated area.

(3) Thorax.

(A) Early reactions.

(i) Skin changes: redness, irritation, scaliness, ulceration, change in color, thickening, hair loss.

(ii) Inflammation of esophagus causing pain on swallowing, heartburn, or sense of obstruction.

(iii) Loss of appetite, nausea, vomiting.

(iv) Weight loss, weakness, vomiting.

(v) Inflammation of the lung with pain, fever and cough.

(vi) Inflammation of the heart sac with chest pain and palpitations.

(vii) Bleeding or creation of a fistula resulting from tumor destruction.

(viii) Depression of blood count leading to increased risk of infection and/or bleeding.

(ix) Intermittent electric shock-like feelings in the lower spine or legs on bending the neck.

(x) In children, these reactions are likely to be intensified by chemotherapy before, during or after radiation therapy.

(xi) In children, depression of blood count leading to increased risk of infection and/or bleeding is more common.

(B) Late reactions.

(i) Changes in skin texture and/or coloration, permanent hair loss and scarring of skin.

(ii) Lung scarring or shrinkage causing shortness of breath.

(iii) Narrowing of esophagus causing swallowing problems.

(iv) Constriction of heart sac which may require surgical correction.

(v) Damage to heart muscle or arteries leading to heart failure.

(vi) Fracture of ribs.

(vii) Nerve damage causing pain, loss of strength or feeling in arms.

(viii) Spinal cord damage causing loss of strength or feeling in arms and legs, and/or loss of control of bladder and rectum.

(ix) In children, there may be additional late reactions.

(I) Disturbances of bone and tissue growth.

(II) Bone damage to spine, causing stunting of growth, curvature and/or reduction in height.

(III) Underdevelopment or absence of development of female breast.

(IV) Second cancers developing in the irradiated area.

(4) Breast.

(A) Early reactions.

(i) Skin changes: redness, irritation, scaliness, blistering, ulceration, coloration, thickening, and hair loss.

(ii) Breast changes including swelling, tightness, or tenderness.

(iii) Inflammation of the esophagus causing pain or swallowing, heartburn, or sense of obstruction.

(iv) Lung inflammation with cough.

(v) Inflammation of heart sac with chest pain and palpitations.

(B) Late reactions.

(i) Changes in skin texture and/or coloration, permanent hair loss, scarring of skin.

(ii) Breast changes including thickening, firmness, tenderness, shrinkage.

(iii) Swelling of arm.

(iv) Stiffness and discomfort in shoulder joint.

(v) Rib or lung damage causing pain, fracture, cough, shortness of breath.

(vi) Nerve damage causing pain, loss of strength or feeling in arm.

(vii) Damage to heart muscle or arteries or heart sac leading to heart failure.

(5) Abdomen.

(A) Early reactions.

(i) Skin changes: redness, irritation, scaliness, ulceration, coloration, thickening, hair loss.

(ii) Loss of appetite, nausea, vomiting.

(iii) Weight loss, weakness, fatigue.

(iv) Inflammation of stomach causing indigestion, heartburn, and ulcers.

(v) Inflammation of bowel causing cramping and diarrhea.

(vi) Depression of blood count leading to increased risk of infections and/or bleeding.

(vii) In children, these reactions are likely to be intensified by chemotherapy before, during and after radiation therapy.

(viii) In children, depression of blood count leading to increased risk of infection and/or bleeding is more common.

(B) Late reactions.

(i) Changes in skin texture and/or coloration, permanent hair loss, scarring of skin.

(ii) Stomach damage causing persistent indigestion, pain, and bleeding.

(iii) Bowel damage causing narrowing or adhesions of bowel with obstruction, ulceration, or bleeding which may require surgical correction, chronic diarrhea, or poor absorption of food elements.

(iv) Kidney damage leading to kidney failure and/or high blood pressure.

(v) Liver damage leading to liver failure.

(vi) Spinal cord or nerve damage causing loss of strength or feeling in legs and/or loss of control of bladder and/or rectum.

(vii) In children, there may be additional late reactions.

(I) Disturbances of bone and tissue growth.

(II) Bone damage to spine causing stunting of growth, curvature and/or reduction in height.

(III) Bone damage to pelvis causing stunting of bone growth and/or abnormal development.

(IV) Second cancers developing in the irradiated area.

(6) Female pelvis.

(A) Early reactions.

(i) Inflammation of bowel causing cramping and diarrhea.

(ii) Inflammation of rectum and anus causing pain, spasm, discharge, bleeding.

(iii) Bladder inflammation causing burning, frequency, spasm, pain, bleeding.

(iv) Skin changes: redness, irritation, scaliness, blistering or ulceration, coloration, thickening, hair loss.

(v) Disturbance of menstrual cycle.

(vi) Vaginal discharge, pain, irritation, bleeding.

(vii) Depression of blood count leading to increased risk of infection and/or bleeding.

(viii) In children, these reactions are likely to be intensified by chemotherapy before, during, or after radiation therapy.

(ix) In children, depression of blood count leading to increased risk of infection and/or bleeding is more common.

(B) Late reactions.

(i) Bowel damage causing narrowing or adhesions of the bowel with obstruction, ulceration, bleeding, chronic diarrhea, or

poor absorption of food elements and may require surgical correction or colostomy.

(ii) Bladder damage with loss of capacity, frequency of urination, blood in urine, recurrent urinary infections, pain, or spasm which may require urinary diversion and/or removal of bladder.

(iii) Changes in skin texture and/or coloration, permanent hair loss, scarring of skin.

(iv) Bone damage leading to fractures.

(v) Ovarian damage causing infertility, sterility, or premature menopause.

(vi) Vaginal damage leading to dryness, shrinkage, pain, bleeding, or sexual dysfunction.

(vii) Swelling of the genitalia or legs.

(viii) Nerve damage causing pain, loss of strength or feeling in legs, and/or loss of control of bladder or rectum.

(ix) Fistula between the bladder and/or bowel and/or vagina.

(x) In children, there may be additional late reactions.

(I) Disturbances of bone and tissue growth.

(II) Bone damage to pelvis and hips causing stunting of bone growth and/or abnormal development.

(III) Second cancers developing in the irradiated area.

(7) Male pelvis.

(A) Early reactions.

(i) Inflammation of bowel causing cramping and diarrhea.

(ii) Inflammation of rectum and anus causing pain, spasm, discharge, bleeding.

(iii) Bladder inflammation causing burning, frequency, spasm, pain, and/or bleeding.

(iv) Skin changes: redness, irritation, scaliness, blistering or ulceration, coloration, thickening, hair loss.

(v) Depression of blood count leading to increased risk of infection and/or bleeding.

(vi) In children, these reactions are likely to be intensified by chemotherapy before, during or after radiation therapy.

(vii) In children, depression of blood count leading to increased risk of infection and/or bleeding is more common.

(B) Late reactions.

(i) Bowel damage causing narrowing or adhesions of the bowel with obstruction, ulceration, bleeding, chronic diarrhea, or poor absorption of food elements and may require surgical correction or colostomy.

(ii) Bladder damage with loss of capacity, frequency of urination, blood in urine, recurrent urinary infections, pain, or spasm which may require urinary diversion and/or removal of bladder.

(iii) Changes in skin texture and/or coloration, permanent hair loss, scarring of skin.

(iv) Bone damage leading to fractures.

(v) Testicular damage causing reduced sperm counts, infertility, sterility, or risk of birth defects.

(vi) Impotence (loss of erection) or sexual dysfunction.

(vii) Swelling of the genitalia or legs.

(viii) Nerve damage causing pain, loss of strength or feeling in legs, and/or loss of control of bladder or rectum.

(ix) Fistula between the bowel and other organs.

(x) In children, there may be additional late reactions.

(I) Disturbances of bone and tissue growth.

(II) Bone damage to pelvis and hips causing stunting of bone growth and/or abnormal development.

(III) Second cancers developing in the irradiated area.

(8) Skin.

(A) Early reactions.

(i) Redness, irritation, or soreness.

(ii) Scaliness, ulceration, crusting, oozing, discharge.

(iii) Hair loss.

(iv) These reactions are likely to be intensified by chemotherapy.

(B) Late reactions.

(i) Changes in skin texture causing scaly or shiny smooth skin, thickening with contracture, puckering, scarring of skin.

(ii) Changes in skin color.

(iii) Prominent dilated small blood vessels.

(iv) Permanent hair loss.

(v) Chronic or recurrent ulcerations.

(vi) Damage to adjacent tissues including underlying bone or cartilage.

(vii) In children, second cancers may develop in the irradiated area.

(9) Extremities.

(A) Early reactions.

(i) Skin changes: redness, irritation, scaliness, ulceration, coloration, thickening, hair loss.

(ii) Inflammation of soft tissues causing tenderness, swelling, and interference with movement.

(iii) Inflammation of joints causing pain, swelling and limitation of joint motion.

(iv) In children, these reactions are likely to be intensified by chemotherapy before, during or after radiation therapy.

(v) In children, depression of blood count leading to increased risk of infection and/or bleeding is more common.

(B) Late reactions.

(i) Changes in skin reaction and/or coloration, permanent hair loss and scarring of the skin.

(ii) Scarring or shrinkage of soft tissues and muscle causing loss of flexibility and movement, swelling of the limb.

(iii) Nerve damage causing loss of strength, feeling or coordination.

(iv) Bone damage causing fracture.

(v) Joint damage causing permanent stiffness, pains and arthritis.

(vi) Swelling of limb below the area treated.

(vii) In children, there may be additional late reactions.

(I) Disturbances of bone and tissue growth.

(II) Bone damage to limbs causing stunting of bone growth and/or abnormal development.

(III) Second cancers developing in the irradiated area.

(10) Total body irradiation.

(A) Early reactions.

(i) Loss of appetite, nausea, vomiting.

(ii) Diarrhea.

(iii) Reduced and sticky saliva, swelling of the salivary gland(s), loss of taste.

(iv) Hair loss.

(v) Sore mouth and throat, difficulty swallowing.

(vi) Permanent destruction of bone marrow leading to infection, bleeding, and possible death.

(vii) Inflammation of the lung with fever, dry cough and difficulty breathing with possible fatal lung failure.

(viii) Damage to liver with possible fatal liver failure.

(ix) In children, these reactions are likely to be intensified by chemotherapy before, during or after radiation therapy.

(x) In children, depression of blood count leading to increased risk of infection and/or bleeding is more common.

(B) Late reactions.

(i) Lung scarring causing shortness of breath, infection, and fatal lung failure.

(ii) Cataract formation in the eyes, possible loss of vision.

(iii) Testicular damage in males causing sterility.

(iv) Ovarian damage in females causing premature menopause and sterility.

(v) Increased risk of second cancer.

(s) Endoscopic surgery.

(1) Abdominal endoscopy/laparoscopy procedures. The following shall be in addition to risks and hazards of the same surgery when done as an open procedure.

(A) Damage to intra-abdominal structures (e.g., bowel, bladder, blood vessels, or nerves).

(B) Intra-abdominal abscess and infectious complications.

(C) Trocar site complications (e.g., hematoma/bleeding, leakage of fluid, or hernia formation).

(D) Conversion of the procedure to an open procedure.

(E) Cardiac dysfunction.

(2) Endoscopic surgery of the thorax. The following shall be in addition to risks and hazards of the same surgery when done as an open procedure.

(A) Postoperative pneumothorax.

(B) Subcutaneous emphysema.

(C) Conversion of the procedure to an open procedure.

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 September 26, 2005.

TRD-200504268

Melba W.G. Swafford, M.D.

Chairperson

Texas Medical Disclosure Panel

Effective date: October 16, 2005

Proposal publication date: April 22, 2005

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



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING

SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §15.2, §15.6

The General Land Office (GLO) adopts the proposed amendments to Title 31, Part 1, Chapter 15, relating to Coastal Area Planning, §15.2 relating to Definitions, and §15.6, relating to Concurrent Dune Protection and Beachfront Construction Standards. The amendments are adopted without changes to the proposed text as published in the July 15, 2005, issue of the *Texas Register* (30 TexReg 4113) and will not be republished. These rule amendments have been undertaken as a result of the comprehensive review of the GLO's rules mandated by Texas Government Code §2001.039, and will ensure that the rules are clear, necessary, and updated.

The adopted amendment of §15.2(6) updates the definition of "Beach/Dune Rules." The definition currently refers to the Beach/Dune rules as §§15.1 - 15.10. Section 15.12 has been added to the Beach/Dune Rules, so the proposed amendment updates the definition to include §15.12.

The adopted amendment of §15.2(69) updates the definition of "Unique flora and fauna." The definition currently refers to endangered or threatened species listed "at" the Endangered Species

Act of 1973 (Act) and/or Texas Parks and Wildlife Code Chapter 68. The proposed amendment clarifies that the species are not listed in these statutes, but are listed "pursuant to" the authority granted in these statutes. In addition, the proposed amendment corrects the citation to the Act, which currently reads "16 United States Code Annotated, §1531." The Act is codified in §§1531-1544, so the phrase "et seq." is added to indicate that the Act is codified in multiple sections.

The adopted amendment of §15.6(b) adds a period at the end of the sentence.

The adopted amendment of §15.6(c) and (d) updates the citation to the Coastal Coordination Council's rule related to Policies for Construction in the Beach/Dune System, which has been renumbered. The proposed amendments reflect the renumbering of 31 TAC §501.14(k)(2) to 31 TAC §501.26(b).

No comments were received regarding any of the proposed amendments to §15.2 and §15.6.

Pursuant to Texas Government Code §2001.0225, a regulatory analysis is not required for the rulemaking as a "major environmental rule." Under the Government Code, a "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. A regulatory analysis is required only when a major environmental rule exceeds a standard set by federal law, exceeds an express requirement of state law, exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program, or are adopted solely under the general powers of the GLO. The rulemaking will not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The rulemaking does not exceed a standard set by federal law, does not exceed an express requirement of state law, does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program, and is not adopted solely under the general powers of the GLO.

The rule amendments are adopted under the authority granted in the Open Beaches Act, Texas Natural Resources Code §61.011, which provides the Commissioner of the GLO the authority to adopt rules for the public beach easement; and the Dune Protection Act, Texas Natural Resources Code §63.121, which authorizes the Commissioner of the General Land Office to adopt rules for protection of critical dune areas.

The adopted amendments are necessary to implement Texas Natural Resources Code §33.204, and the Open Beaches Act and Dune Protection Act, Texas Natural Resources Code Chapters 61 and 63.

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 September 20, 2005.

TRD-200504194

Trace Finley
Policy Director
General Land Office
Effective date: October 10, 2005
Proposal publication date: July 15, 2005
For further information, please call: (512) 475-1859



PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 368. FLOOD MITIGATION ASSISTANCE PROGRAM

31 TAC §368.8, §368.9

The Texas Water Development Board (board) adopts amendments to 31 TAC §368.8 and §368.9, concerning the Flood Mitigation Assistance Program, without changes to the proposed text as published in the August 5, 2005, issue of the *Texas Register* (30 TexReg 4451) and will not be republished. These amendments are adopted in order to provide clarification consistent with directives from the Federal Emergency Management Agency (FEMA).

The new §368.8(c) is to account for a new process utilized by FEMA. Under the Pre-Disaster Mitigation program, FEMA may approve a grant but fund it with Flood Mitigation Assistance funds. In such instances, FEMA will direct the executive administrator of the board to execute a contract with the approved grantee even though the grantee did not apply for Flood Mitigation Assistance funds pursuant to Chapter 368. This rule amendment merely explains that the board will execute Flood Mitigation Assistance contracts with a community as directed by FEMA. Current subsection (c) is amended to be subsection (d).

The amendments to §368.9 have two purposes. The amendment to §368.9(b) is simply to correct an error that exists in the current rule. The board had previously approved the language but an error caused the phrase "unless a time extension is granted by the board" to be left off of the official publication of the rule. This amendment corrects that error.

The new §368.9(c) has the same purpose as the new §368.8(c). Under the Pre-Disaster Mitigation program, FEMA may approve a grant but fund it with Flood Mitigation Assistance funds. In such instances, FEMA will direct the executive administrator of the board to execute a contract with the approved grantee even though the grantee did not apply for Flood Mitigation Assistance funds pursuant to Chapter 368. This rule amendment merely explains that the board will execute Flood Mitigation Assistance contracts with a community as directed by FEMA.

There were no comments received on the proposed amendments.

The amendments are adopted under the authority of the Texas Water Code §6.101 and Chapter 15, Subchapter F, which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties of the board and for administration of the research and planning fund and under Texas Government Code, Chapter 742 which provides for state coordination of local applications for federal funds.

The statutory provisions affected by the amendments are Texas Water Code Chapter 15.

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 September 21, 2005.

TRD-200504214
Ron Pigott
Attorney
Texas Water Development Board
Effective date: October 11, 2005
Proposal publication date: August 5, 2005
For further information, please call: (512) 475-2052



REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Agency Rule Review Plan

Teacher Retirement System of Texas

Title 34, Part 3

Rule Review Plan at <http://www.sos.state.tx.us/texreg/review/2005/index.shtml>

TRD-200504253

Filed: September 23, 2005

Proposed Rule Review

Teacher Retirement System of Texas

Title 34, Part 3

The Teacher Retirement System of Texas (TRS) files this notice of intention to review and to consider for readoption, amendment, or repeal of Chapter 53 (Certification by Companies Offering Qualified Investment Products), Title 34, Part 3, of the Texas Administrative Code. This review and consideration is being conducted in accordance with §2001.039 of the Texas Government Code, which requires TRS and other governmental bodies to review their rules every four years. The review will include, at a minimum, an assessment as to whether the reasons for adopting or readopting the rules in Chapter 53 continue to exist. With this proposed rule review, TRS has also contemporaneously filed a rule review plan, which will be made available on the Secretary of State's Web site at www.sos.state.tx.us.

Written comments pertaining to this proposed rule review must be submitted to Ronnie Jung, Executive Director, Teacher Retirement System of Texas, 1000 Red River Street, Austin, Texas 78701. The deadline for written comments is 30 days after publication in the *Texas Register*. In addition, the public will be given opportunity to comment on the proposed rule review at the November 4, 2005 meeting of the TRS Board of Trustees.

Any changes to these rules proposed because of the rule review will be published in the Proposed Rule section of the *Texas Register*. The proposed rule changes will be open for public comment before final adoption or repeal by TRS in accordance with the requirements of the Administrative Procedure Act, Chapter 2001 of the Texas Government Code.

TRD-200504254

Ronnie G. Jung

Executive Director

Teacher Retirement System of Texas

Filed: September 23, 2005

Adopted Rule Review

Prescribed Burning Board

Title 4, Part 13

The Prescribed Burning Board (the Board) adopts without changes the rule review proposed for Title 4, Texas Administrative Code, Part 13, Chapter 225, concerning General Provisions, Chapter 226, concerning Standards for Certified Prescribed Burn Managers, Chapter 227, concerning Certification, Recertification and Renewal, Chapter 228, concerning Continuing Education for Recertification/Renewal of Certification, and Chapter 229, concerning Educational and Professional Requirements for Lead Instructors, pursuant to the Texas Government Code, §2001.039. The proposed noticed of intent to review for Chapters 225 - 229 was published in the July 8, 2005, issue of the *Texas Register* (30 TexReg 4018). No comments were received on the proposal.

Section 2001.039 requires state agencies to review each of their rules every four years and consider the rules under review for readoption, revision or repeal. The review must include an assessment of whether the original justification for the rules continues to exist.

As part of the review process, the Board proposed the amendment of Title 4, Part 13, §§225.1, 226.1 - 226.4, 226.6, 227.5 and 227.12. The proposed amendments were also published in the July 8, 2005, issue of the *Texas Register* (30 TexReg 3951).

The assessment of Title 4, Part 13, Chapters 225 - 229 by the Board at this time indicates that with the addition of the adopted amendments to §§225.1, 226.1 - 226.4, 226.6, 227.5 and 227.12, the original justification for the rules continues to exist and the Board is readopting without changes all remaining sections in Chapters 225 - 229 without changes.

TRD-200504269

Dolores Alvarado Hibbs

Deputy General Counsel, Texas Department of Agriculture

Prescribed Burning Board

Filed: September 26, 2005

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: 1 TAC §81.116(a)

The formula for estimating turnout for the 2006 primary elections is:

$$A \times B + C = D$$

- Where:
- A = the percentage of voter turnout for governor or another statewide race in the 2002 party primary (percentage is the sum of all votes cast for all candidates for governor or other statewide office in the 2002 primary divided by the number of registered voters).
 - B = the number of registered voters as of October 2005.
 - C = 25% of the number resulting when you multiply A x B.
 - D = Preliminary Estimated 2006 Turnout.

Figure: 1 TAC §81.117(a)

Number of Election Workers
Per Voting Precinct
(Includes one judge and one alternate judge who serves as a clerk)

Estimated Turnout per Polling Location	Paper Ballot (primary voting method)	Electronic Voting System (primary voting method)
200 or fewer	3	3
201 - 400	5	4
401 - 700	6	5
701 - 1,100	8	6
1,101 or more	12	8

Figure: 1 TAC §81.125(a)

Number of Direct Record Electronic (DRE) Units, and/or Precinct Ballot Counters

Estimated Voter Turnout Per Voting Precinct	DRE Units	Precinct Ballot Counters
300 or fewer	2	1
301 - 600	4	1
601 - 900	6	1
For each additional: 300 voters	2	0

Figure: 1 TAC §81.149(c)

Number of Election Workers
Per Joint-Voting Precinct
(Includes two co-judges and two alternate judges who serve as a clerk)

Estimated Turnout per Joint-Polling Location	Paper Ballot (primary voting method)	Electronic Voting System (primary voting method)
200 or fewer	4	4
201 - 400	6	5
401 - 700	7	6
701 - 1,100	9	7
1,101 or more	13	9

Figure: 1 TAC §81.152(a)

The formula for estimating turnout for the 2006 joint primary elections is:

$$(A \times B) + C + D = E$$

- Where:
- A = the percentage of voter turnout for governor or another statewide race in the 2002 party primary (percentage is the sum of all votes cast for all candidates for governor or other statewide office in the 2002 primary divided by the number of registered voters).
 - B = the number of registered voters as of October 2005.
 - C = 25% of the number resulting when you multiply A x B.
 - D = Other party's estimated turnout figure.
 - E = Preliminary Estimated 2006 Turnout for Joint-Primary Election.

Figure 1: 16 TAC §65.100(h)(1)

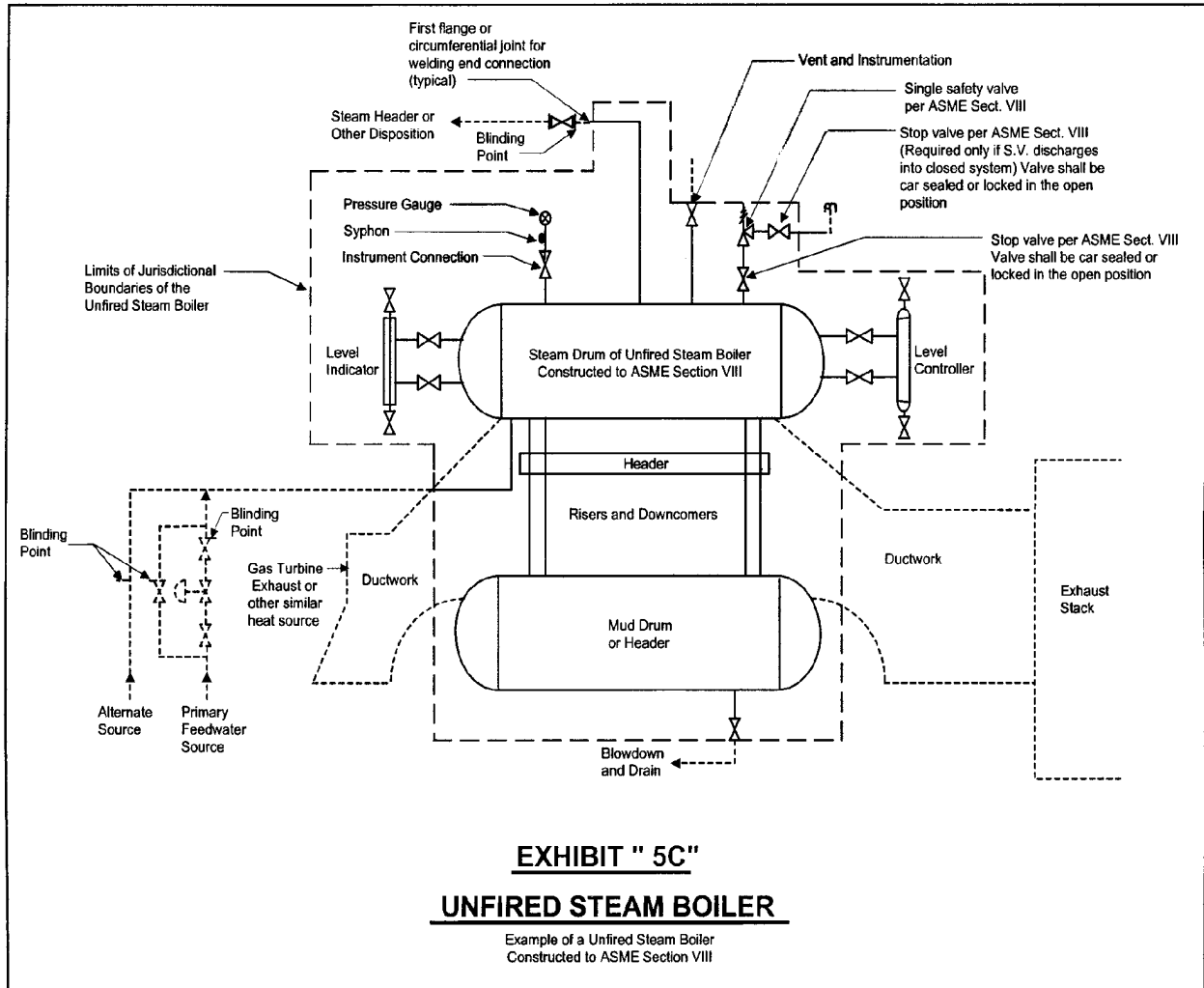


Figure 2: 16 TAC §65.100(h)(1)

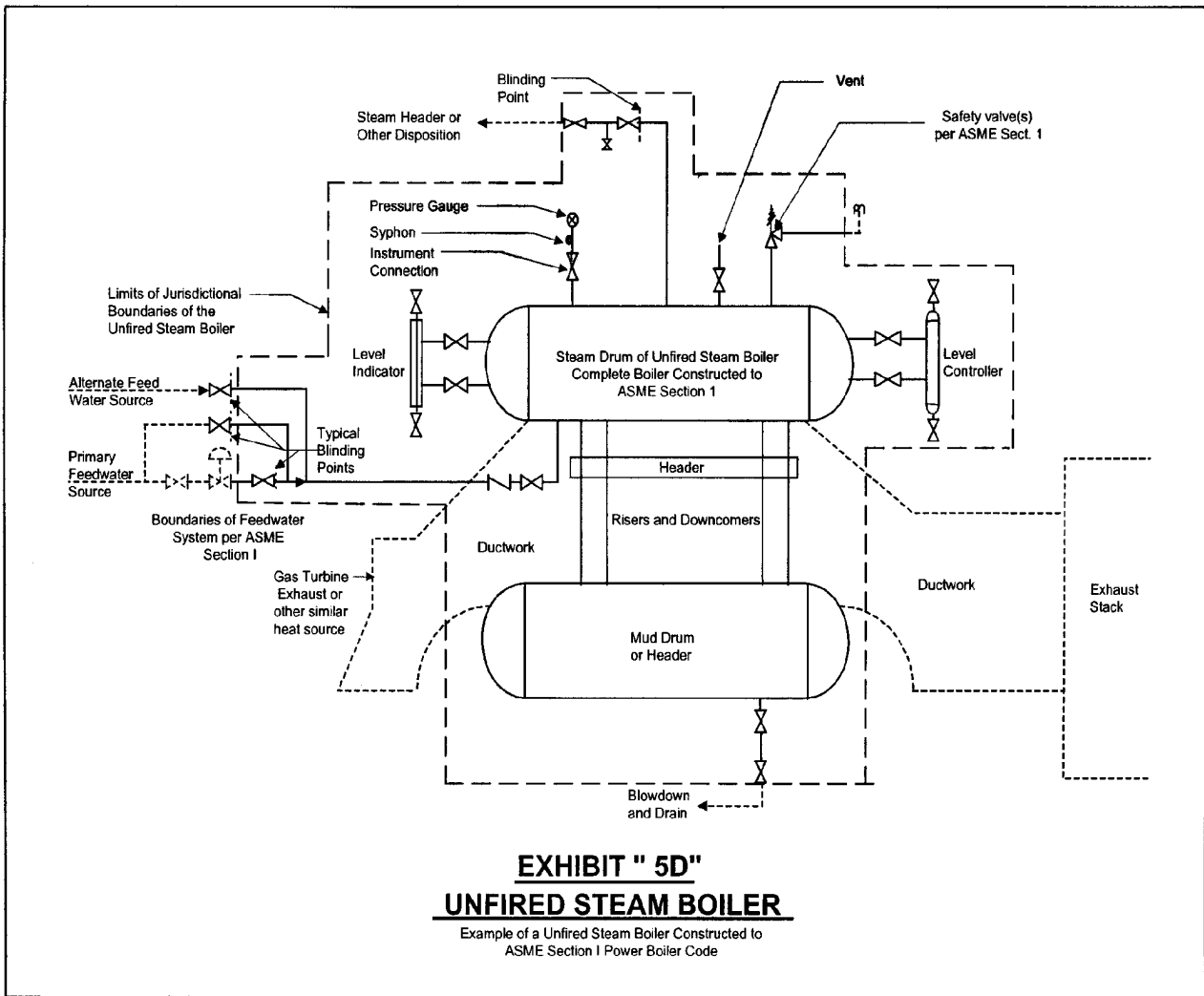


Figure 1: 16 TAC §65.100(i)(1)

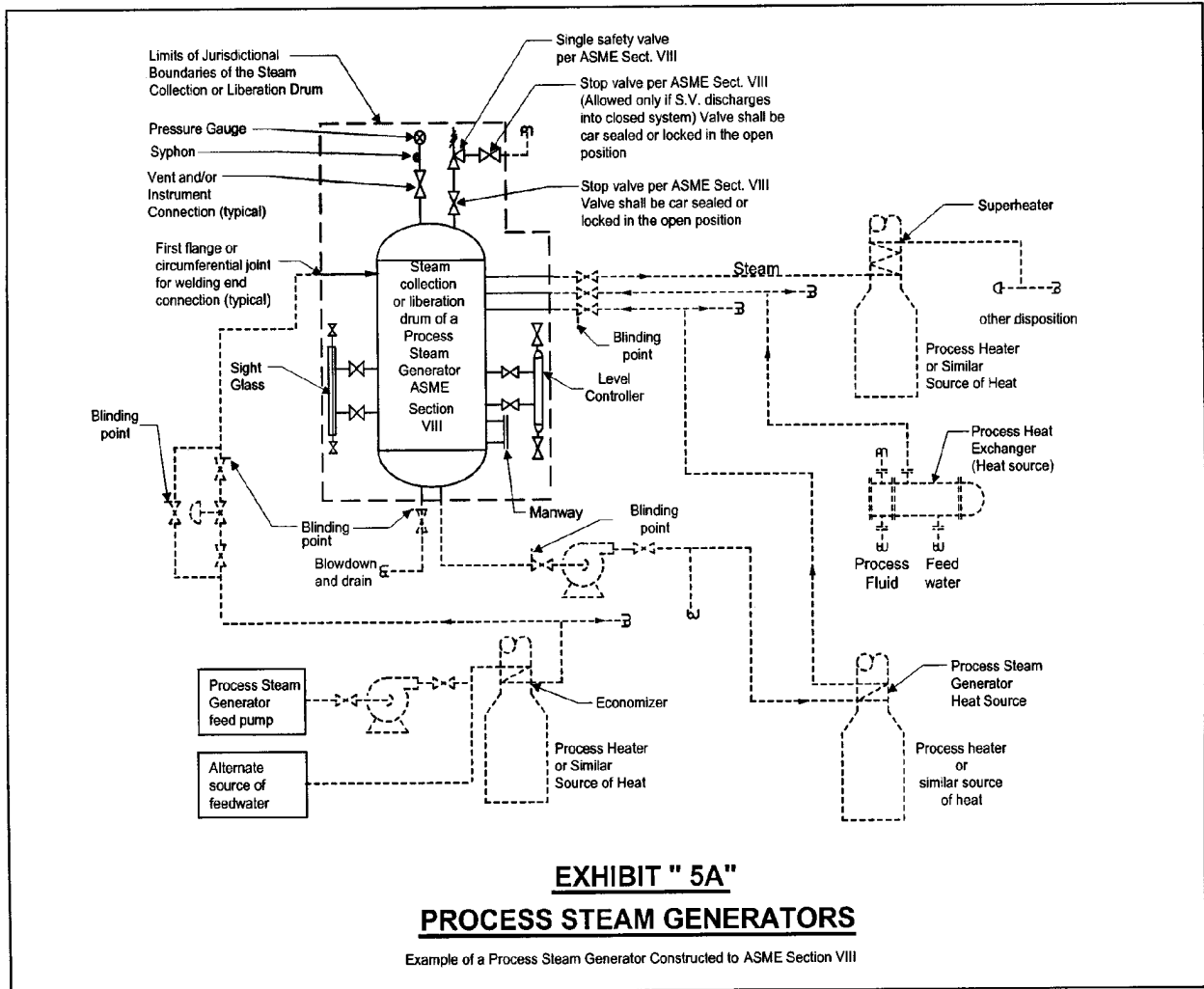


Figure 2: 16 TAC §65.100(i)(1)

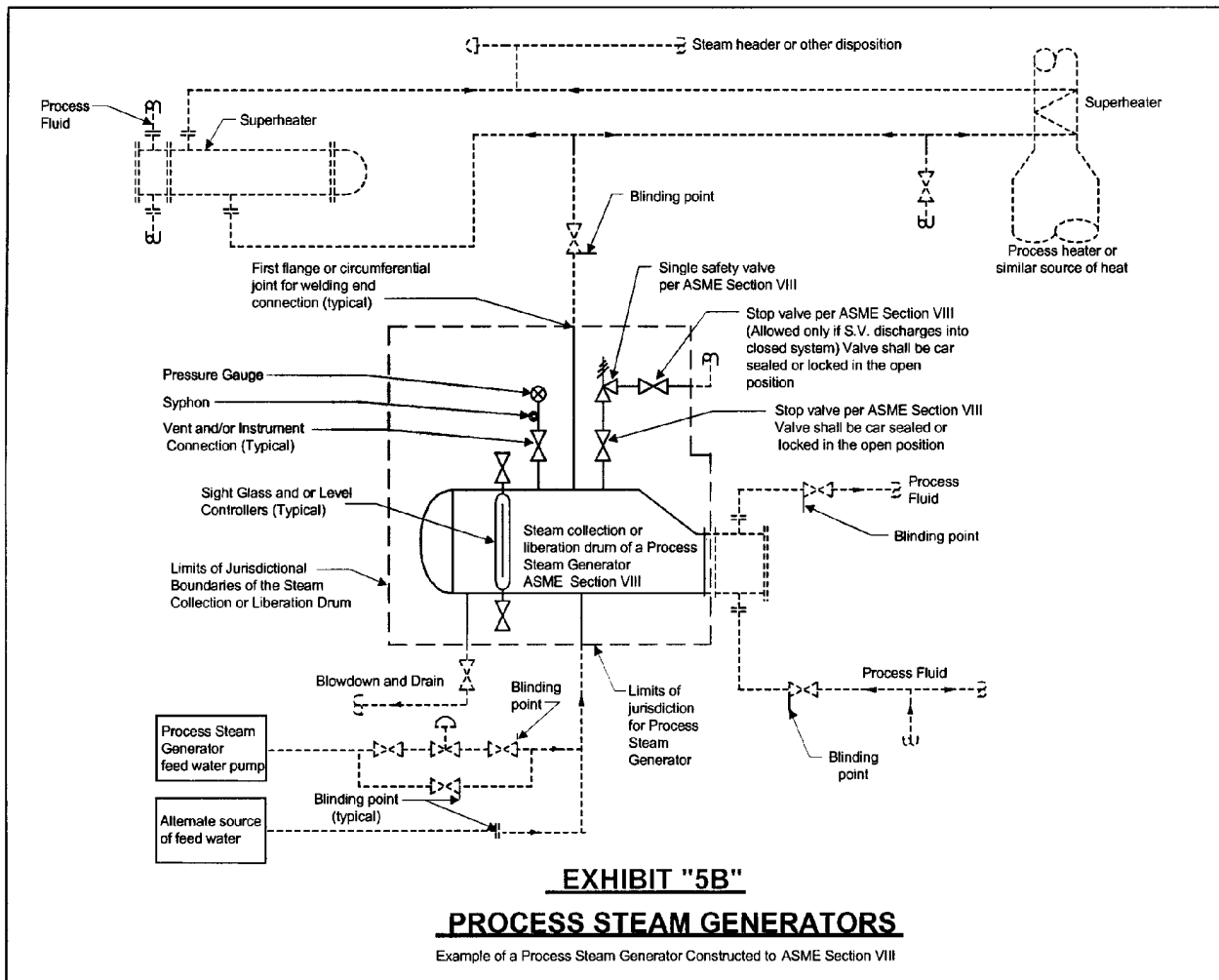


Figure: 16 TAC §65.100(j)(6)

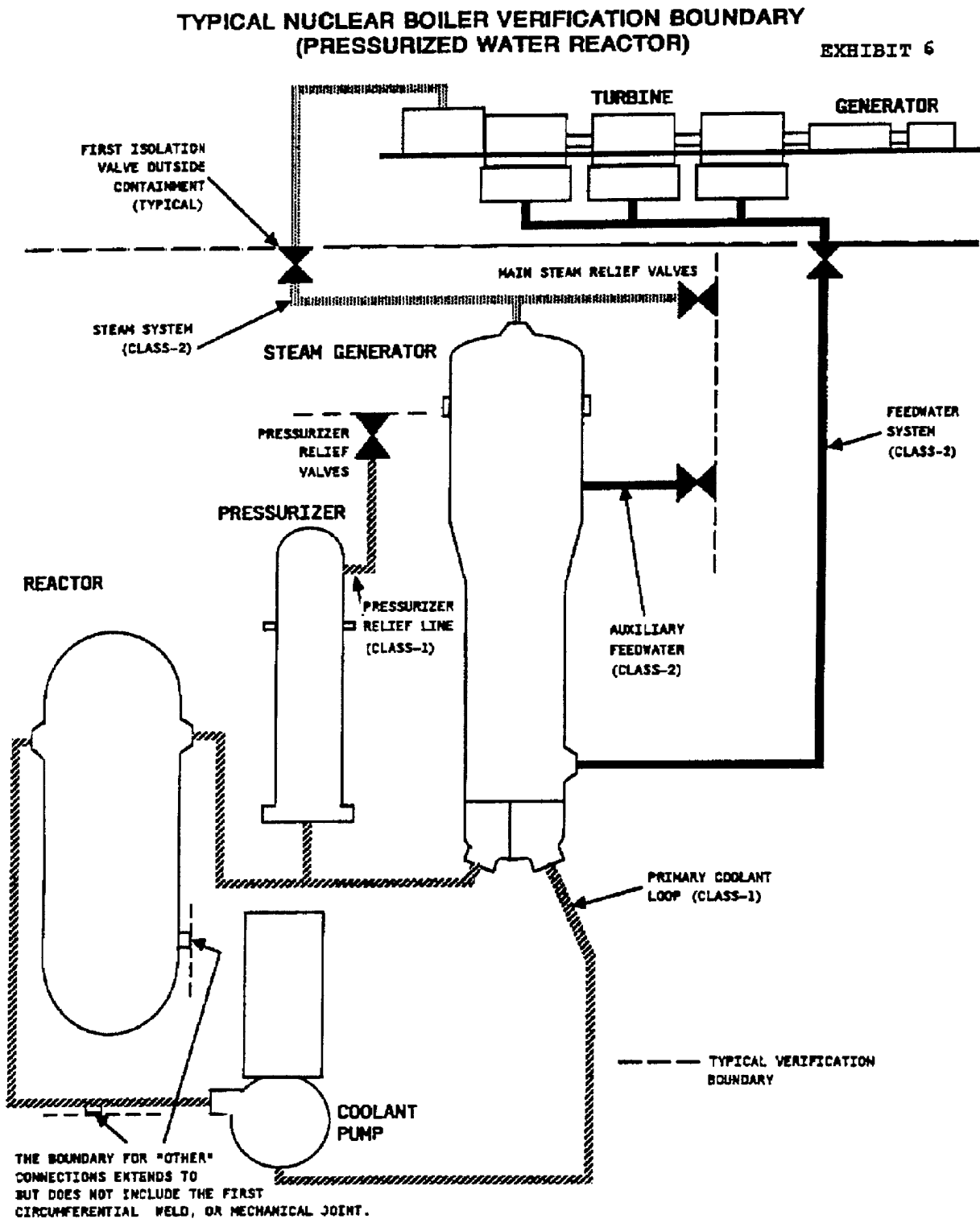


Figure: 16 TAC §65.100(o)(1)(A)(v)

Table 1

**Minimum Pounds of Steam Per Hour
Per Square Foot (Meter) of Heating Surface**

	Firetube Boilers	Watertube Boilers
Boiler Heating Surface		
Hand fired	5 (24)	6 (29)
Stoker fired	7 (34)	8 (39)
Oil, gas or pulverized fuel fired	8 (39)	10 (49)
Waterwall Heating Surface		
Hand fired	8 (39)	8 (39)
Stoker fired	10 (49)	12 (59)
Oil, gas, or pulverized fuel fired	14 (68)	16 (78)

Note: The minimum safety valve or safety relief valve relieving capacity for electric boilers shall be 3 ½ lb/hr/kw (1.6 kg/hr/kw) input.

Table 2

Size of Bottom Blowoff Piping, Valves, and Cocks

Minimum Required Safety Valve Capacity lb. (kg) of Steam/Hr.	Blowoff Piping Valves, and Cocks Size, min. in. (mm)
(Note) Up to 500 (226)	¾ (20)
501 to 1,250 (227 to 567)	1 (25)
1,251 to 2,500 (568 to 1184)	1 ¼ (32)
2,501 to 6,000 (1185 to 2721)	1 ½ (40)
6,001 (2722) and Larger	2 (50)

Note: To determine the discharge capacity of safety relief valves in terms of Btu, the relieving capacity in lbs. of steam/hr. is multiplied by 1,000.

Figure: 16 TAC §82.101(e)

Curriculum to Prepare a Student for the Examination for the Teacher's Certificate 1,000 hours		
(1)	orientation, consisting of	8 hours
	(A) rules and regulations of the school	
	(B) introductions to school personnel and students	
	(C) layout of school facilities	
(2)	instruction in theory, consisting of	125 hours
	(A) lesson planning	15
	(B) personality and professional conduct	15
	(C) development of a barber course	15
	(D) student learning principles	10
	(E) principles of teaching	10
	(F) basic teaching methods	10
	(G) teaching aids	10
	(H) testing	10
	(I) self evaluation	10
	(J) teaching adults	10
	(K) classroom problems	5
	(L) classroom management	5
(3)	instruction in practical work, consisting of	867 hours
	(A) assisting with senior students	346
	(B) assisting with junior students	321
	(C) theory class (assisting teacher, observing, teaching)	125
	(D) learning office procedures and state laws	50
	(E) grading test papers (assisting teacher, observing, grading)	25

Figure: 16 TAC §82.101(f)

Curriculum to Prepare a Student for the Examination for the Class A Barber Certificate 1,500 Hours			
(1)	orientation, consisting of		8 hours
	(A)	rules and regulations of the school	
	(B)	introduction to school personnel and students	
	(C)	outlay of school facilities conducted	
(2)	theory, consisting of		180 hours
	(A)	anatomy, physiology, and histology, consisting of the study of	50 hours
	(i)	Hair	
	(ii)	Skin	
	(iii)	Muscles	
	(iv)	Nerves	
	(v)	Cells	
	(vi)	circulatory system	
	(vii)	Digestion	
	(viii)	Bones	
	(B)	Texas Barber Law	35
	(C)	bacteriology, sterilization, and sanitation	30
	(D)	disorders of the skin, scalp, and hair	10
	(E)	Salesmanship	5
	(F)	barbershop management	5
	(G)	chemistry	5
	(H)	Shaving	5
	(I)	scalp, hair treatments and skin	5
	(J)	Sanitary professional techniques	4
	(K)	professional ethics	4
	(L)	Scientific fundamentals of barbering	4
	(M)	cosmetic preparations	3
	(N)	shampooing and rinsing	2
	(O)	cutting and processing curly and over-curly hair	2
	(P)	haircutting, male and female	2
	(Q)	theory of massage of scalp, face and neck	2
	(R)	hygiene and good grooming	1
	(S)	barber implements	1
	(T)	honing and stropping	1
	(U)	mustaches and beards	1
	(V)	facial treatments	1

	(W)	electricity and light therapy	1
	(X)	history of barbering	1
(3)		instruction in practical work, consisting of the study of:	1312 hours
	(A)	dressing the hair, consisting of:	800
		(i) men's haircutting	
		(ii) children's haircutting	
		(iii) women's haircutting	
		(iv) cutting and processing curly and over-curly hair	
		(v) razor cutting	
	(B)	Shaving	80
	(C)	Styling	55
	(D)	shampooing and rinsing	40
	(E)	bleaching and dyeing of the hair	30
	(F)	waving hair	28
	(G)	Straightening	25
	(H)	Cleansing	25
	(I)	professional ethics	22
	(J)	barbershop management	22
	(K)	hair weaving and hairpieces	17
	(L)	Processing	15
	(M)	Clipping	15
	(N)	beards and mustaches	15
	(O)	Shaping	15
	(P)	Dressing	15
	(Q)	Curling	15
	(R)	first aid and safety precautions	11
	(S)	scientific fundamentals of barbering	10
	(T)	barber implements	10
	(U)	haircutting or the process of cutting, tapering, trimming, processing, and molding and scalp, hair treatments, and tonics	10
	(V)	massage and facial treatments	10
	(W)	Arranging	10
	(X)	Beautifying	10
	(Y)	Singeing	7
	(Z)	Manicuring	Optional

Figure: 16 TAC §82.101(g)

Curriculum to Prepare a Student for the Examination for the Manicurist License		
600 hours--minimum of 16 weeks		
(1)	orientation, consisting of	8 hours
	(A) rules and regulations of the school	
	(B) introduction to school personnel and students	
	(C) layout of school facilities	
(2)	instruction in theory, consisting of	37 hours
	(A) bacteriology, sterilization, and sanitation	8
	(B) manicuring, equipment, and procedures	4
	(C) the nail and disorders	4
	(D) Texas barber laws	4
	(E) anatomy and physiology	4
	(F) skin	4
	(G) professional ethics	3
	(H) hygiene and good grooming	3
	(I) advanced nail techniques	3
(3)	instruction in practical work, consisting of:	555 hours
	(A) shaping nails	96
	(B) applying polish	74
	(C) trimming cuticle and buffing nails	59
	(D) hand and arm massage	57
	(E) removal of polish	57
	(F) application of artificial and gel nails	44
	(G) applying cuticle remover and loosening	40
	(H) preparation of manicure table	40
	(I) softening cuticle	37
	(J) bleaching under free edge	18
	(K) cleaning under free edge	18
	(L) applying cuticle oil or cream	15

Figure: 16 TAC §82.101(h)

Curriculum to Prepare a Student for the Examination for the Barber Technician License		
300 hours		
(1)	orientation, consisting of	8 hours
	(A) rules and regulations of the school	
	(B) introduction to school personnel and students	
	(C) layout of school facilities	
(2)	instruction in theory, consisting of	37 hours
	(A) hygiene, bacteriology, sterilization, and sanitation	10
	(B) common disorders of the skin; facial treatments	4
	(C) shampooing, equipment, and procedures	4
	(D) Texas barber laws	4
	(E) cosmetic applications and massage	3
	(F) professional ethics	3
	(G) good grooming; preparing patron and making appointments	3
	(H) theory of massage, and structure of head, neck, and face	2
	(I) rinsing, types and procedures	2
	(J) scalp and hair treatments	2
(3)	instruction in practical work, consisting of	255 hours
	(A) application of shampoo and shampooing	45
	(B) application of rinses and removal	35
	(C) makeup application	33
	(D) facial manipulations	20
	(E) application of conditioner and rinsing	20
	(F) scalp manipulations	20
	(G) brushing and drying	18
	(H) sanitation and sterilization	15
	(I) draping and scalp examination	11
	(J) application and removal of creams	10
	(K) application and removal of packs	8
	(L) set-up for facial	8
	(M) preparation of work area for shampooing	7
	(N) patron protection	5

Figure: 16 TAC §82.101(i)

Curriculum for a Barber Refresher Course		
300 Hours		
(1)	theory instruction in Texas barber laws	10 hours
(2)	of instruction in practical work, to include	290 hours
	(A) Haircutting	160
	(B) permanent waving and chemical application	75
	(C) styling, curling, and blow-drying	55

Figure: 16 TAC §83.101(a)

Operator Curriculum

Private, Public Post-Secondary Cosmetology Schools, and Adult Education Programs		
(1,500 hours)		
(A)	haircutting, styling and related theory	500 hours
(B)	hair coloring and related theory	200 hours
(C)	cold waving and related theory	200 hours
(D)	orientation, rules and laws	100 hours
(E)	manicuring and related theory	100 hours
(F)	shampoo and related theory	100 hours
(G)	chemistry	75 hours
(H)	salon management and practices	75 hours
(I)	hair and scalp treatment and related theory	50 hours
(J)	chemical hair relaxing and related theory	50 hours
(K)	facials and related theory	50 hours
Public Secondary Program for High School Students		
(1,000 hours)		
(A)	haircutting, styling, and related theory	400 hours
(B)	hair coloring and related theory	150 hours
(C)	cold waving and related theory	100 hours
(D)	manicuring and related theory	100 hours
(E)	orientation, rules and laws	75 hours
(F)	shampoo and related theory	75 hours
(G)	chemical hair relaxing and related theory	50 hours
(H)	facials and related theory	25 hours
(I)	hair and scalp treatment and related theory	25 hours

Figure: 16 TAC §83.101(b)

Specialist Curriculum

Facial Curriculum (750 hours)		
(A)	facial treatment, cleansing, masking, therapy	225 hours
(B)	anatomy and physiology	90 hours
(C)	electricity, machines, and related equipment	75 hours
(D)	makeup	75 hours
(E)	orientation, rules and laws	50 hours
(F)	chemistry	50 hours
(G)	care of client	50 hours
(H)	sanitation, safety, and first aid	40 hours
(I)	management	35 hours
(J)	superfluous hair removal	25 hours
(K)	aroma therapy	15 hours
(L)	nutrition	10 hours
(M)	color psychology	10 hours
Manicure Curriculum (600 hours)		
(A)	procedures:	320 hours
	basic manicure and pedicure, oil manicure, removal of stains, repair work, hand and arm massage, buffing, application of polish, application of artificial nails, application of cosmetic fingernails, preparation to build new nail, and application of nail extensions, sculptured nails, tips, wraps, fiberglass/gels and odorless products	
(B)	bacteriology, sanitation and safety:	100 hours
	definitions, importance, rules, laws, methods, safety measures, hazardous chemicals and ventilation odor in salons	
(C)	professional practices:	80 hours
	manicuring as a profession, vocabulary, ethics, salon procedures, hygiene and grooming, professional attitudes, salesmanship and public relations	
(D)	arms and hands:	70 hours
	major bones and functions, major muscles and functions, major nerves and functions, skin structure, functions, appendages, conditions and lesions, nails structure, composition, growth, regeneration, irregularities and diseases	
(E)	orientation, rules, laws and preparation	15 hours
(F)	equipment, implements and supplies	15 hours

Hairweaving/Braiding Curriculum (300 hours)		
(A)	hairweaving/braiding:	150 hours
	basic hairweaving/braiding, repair on hairweaving/braiding, removal of weft, sizing and finishing by hand of hair ends or by using mechanical equipment	
(B)	shampooing client, weft and extensions:	50 hours
	basic shampooing, basic conditioners, semi-permanent and weakly rinses, basic hair drying, draping	
(C)	professional practices:	40 hours
	hairweaving/braiding as a profession, vocabulary, ethics, salon procedures, hygiene, grooming, professional attitudes, salesmanship, public relations, hairweaving/braiding skills, including purpose, effect, equipment, implements, supplies, and preparation	
(D)	anatomy and physiology-scalp:	30 hours
	major bones and functions, major muscles and functions, major nerves and functions, skin structures, functions, appendages, conditions and lesions, hair or fiber used, structure, composition, hair regularities, hair and scalp diseases	
(E)	chemistry in hairweaving/braiding:	10 hours
	elements, compounds, and mixtures, composition and uses of cosmetics in hairweaving/braiding	
(F)	sanitation and safety measures:	10 hours
	definitions, importance, sanitary rules and laws, sterilization methods of unused hair and fiber droppings	
(G)	safety measures: client protection	10 hours
Wig Curriculum (300 hours)		
(A)	combing out	50 hours
(B)	styling	50 hours
(C)	coloring, tinting, bleaching	37 hours
(D)	rolling	30 hours
(E)	cutting and shaping, scissors and razor	20 hours
(F)	hot iron	19 hours
(G)	cleaning	10 hours
(H)	alterations, installation of elastic	10 hours
(I)	conditioning	10 hours
(J)	brushing technique prior to styling	10 hours

(K)	identification and recognition definition-wigs, wiggery, wigology-pertaining to any human, synthetic, or animal hairpiece	10 hours
(L)	sanitation, disinfecting, required rules and laws	10 hours
(M)	eye tabbing	10 hours
(N)	sizing	5 hours
(O)	drying	5 hours
(P)	measuring head for proper size	5 hours
(Q)	preparation of wig on block	5 hours
(R)	history, background, and salesmanship	3 hours
(S)	knowledge of coloring: J L	1 hour
Shampoo and Conditioning Curriculum (150 hours)		
(A)	procedures:	100 hours
	basic shampooing techniques on all types of shampoo, application and removal of all types of conditioners, removal of hair color stains; application of weekly rinses or semi-permanent rinses, removal of bleaches requiring shampoo, scalp and neck massage, removing hair tints requiring shampoo, cleansing and conditioning of all hair goods, hair and scalp analysis, and scalp and hair manipulations	
(B)	scalp and neck, anatomy and physiology:	10 hours
	major bones and functions; major muscles and functions, major nerves and functions, major blood vessels and functions, skin structure, functions, appendages, conditions and lesions	
(C)	chemistry of shampoo and conditioner	10 hours
	elements, compounds, mixtures, acid and alkali (pH), chemistry of water, composition and uses of shampoo and conditioner	
(D)	sanitation and safety:	10 hours
	definitions, rules, laws, and methods	
(E)	shampooing and conditioning skills:	10 hours
	purposes and effects, preparation, equipment, implements and supplies	
(F)	professional practices	5 hours
	shampooing as a profession, vocabulary and ethics	
(G)	salon procedures:	5 hours
	hygiene, grooming, professional attitudes, salesmanship and public relations	

Figure: 16 TAC §83.101(c)

Student-Instructor Curriculum

Student-Instructor Curriculum (750 hours)		
(A)	instruction and theory and lab/clinic operation	350 hours
(B)	teaching and lab/clinic management	350 hours
(C)	orientation, rules and laws	50 hours
Student/Instructor with Two Years Experience Curriculum (250 hours)		
(A)	lesson plans	60 hours
(B)	methods of teaching	60 hours
(C)	classroom management	30 hours
(D)	evaluation techniques	30 hours
(E)	state laws and forms	20 hours
(F)	visual aids preparation and use	20 hours
(G)	learning theory	20 hours
(H)	orientation, rules, and laws	10 hours

Figure: 16 TAC §83.101(d)

Practical Applications of the Curriculum

Each cosmetology student must complete practical applications of the curriculum according to the school's published rules on minimum practical applications or by the following schedule, whichever is greater		
(A)	client protection	600 applications
(B)	hairdressing: arranging, cutting, dressing, shampooing, curling, pressing, and fingerwaving	600 applications
(C)	sanitation	500 applications
(D)	haircoloring: temporary, semi-permanent, permanent, bleaching and dimensional, coloring, color mixing	100 applications
(E)	chemical hair services: minimum of 15 services in each category: (i) restructuring (ii) permanent waving (iii) straightening and relaxing	100 applications
(F)	facials: minimum of 5 services in each category: (i) skin analysis and care (ii) manipulation and massage (iii) skin care (iv) removal of hair by wax, tweezers, or depilatories (v) make-up and brow arch	30 applications
(G)	scalp and hair treatments	30 applications
(H)	manicuring and pedicuring	30 applications
THE ABOVE PRACTICAL APPLICATIONS MAY BE PERFORMED ON A MANNEQUIN, A STUDENT OR A PATRON AND MOCK APPLICATIONS MAY BE USED WHERE APPROPRIATE AND NECESSARY. IT SHALL BE THE RESPONSIBILITY OF THE STUDENT TO KEEP A RECORD OF THE NUMBER OF PRACTICAL APPLICATIONS PERFORMED, BUT SHALL BE VERIFIED BY AN INSTRUCTOR SIGNATURE.		

Figure: 19 TAC §61.1018(b)(4)(A)

Central Administrators	
004	Ass't/Assoc. Superintendent
012	Instructional Officer (Central Office)
027	Superintendent/CAO/CEO/President
028	Teacher Supervisor (Central Office)
032	Vocational Education Coordinator (Central Office)
040	Athletic Director (Central Office)
043	Business Manager
044	Tax Assessor and/or Collector
045	Director – Personnel/Human Resources
055	Registrar (Central Office)
Campus Administrators	
003	Assistant Principal
012	Instructional Officer (not Central Office)
020	Principal
028	Teacher Supervisor
032	Vocational Education Coordinator (not Central Office)
040	Athletic Director (not Central Office)
055	Registrar (not Central Office)

Figure: 19 TAC §61.1018(b)(4)(B)

60	Executive Director
61	Assistant/Associate/Deputy Executive Director
62	Component/Department Director
63	Coordinator/Manager/Supervisor

Figure: 22 TAC §7.10(b)

Fee Description	Landscape		Interior
	Architects	Architects	Designers
Exam Application	\$100	\$100	\$100
Examination	1071	***	**
Registration by Examination - Resident	155	*355	*355
Registration by Examination - Nonresident	180	*380	*380
Reciprocal Application	150	150	150
Reciprocal Registration	*400	*400	*400
Active Renewal - Resident	*310	*310	*310
Active Renewal - Nonresident	*400	*400	*400
Active Renewal 1-90 days late - Resident	*465	*465	*465
Active Renewal 91-365 days late - Resident	*620	*620	*620
Active Renewal 1-90 days late - Nonresident	*600	*600	*600
Active Renewal 91-365 days late - Nonresident	*800	*800	*800
Emeritus Renewal - Resident	50	N/A	N/A
Emeritus Renewal- Nonresident	183	N/A	N/A
Emeritus Renewal 1-90 days late - Resident	75	N/A	N/A
Emeritus Renewal 91-365 days late - Resident	100	N/A	N/A
Emeritus Renewal 1-90 days late - Nonresident	274.50	N/A	N/A
Emeritus Renewal 91-365 days late - Nonresident	366	N/A	N/A
Inactive Renewal - Resident	50	50	50
Inactive Renewal - Nonresident	125	125	125
Inactive Renewal 1-90 days late - Resident	75	75	75
Inactive Renewal 91-365 days late - Resident	100	100	100
Inactive Renewal 1-90 days late - Nonresident	187.50	187.50	187.50
Inactive Renewal 91-365 days late - Nonresident	250	250	250
Reciprocal Reinstatement	620	620	620
Change in Status - Resident	65	65	65
Change in Status - Nonresident	95	95	95
Reinstatement - Resident	685	685	685
Reinstatement - Nonresident	775	775	775
Certificate of Standing - Resident	30	30	30
Certificate of Standing - Nonresident	40	40	40
Replacement or Duplicate Wall Certificate - Resident	80	80	80
Replacement of Duplicate Wall Certificate - Nonresident	90	90	90
Duplicate Pocket Card	15	15	15
Reopen Fee for closed candidate files	25	25	25
Examination - Administrative Fee	-	40	-
Examination - Record Maintenance	25	25	25
Returned Check Fee	25	25	25
Application by Prior Examination	-	-	100
Administrative Fee for 1.5 Hour LARE Review	-	22	-
Administrative Fee for 1 Hour LARE Review	-	17	-

*These fees include a \$200 professional fee required by the State of Texas and deposited with the State Comptroller of Public Accounts into the General Revenue Fund. The fee for initial architectural registration by examination does not include the \$200 professional fee. Under the statute, the professional fee is imposed only upon each renewal of architectural registration.

**NCIDQ fee: 2005--\$695; 2006--\$710; 2007--\$720. Specified amounts are maximum estimates made by NCIDQ, the examination provider for the entire examination. Contact the Board or the examination provider for the fee for each section of the examination.

***LARE fee: Fiscal year 2006--\$860; Fiscal year 2007--\$885. Specified amounts are estimates made by CLARB, the examination provider for the entire examination. Contact the Board or the examination provider for the fee for each section of the examination.

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.

Office of the Attorney General

Notice of Settlement of a Texas Solid Waste Disposal and Clean Air Act Enforcement Action

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code and Texas Commission on Environmental Quality (TCEQ or Commission) Underground Storage Tank regulations. Before the State may settle a judicial enforcement action, pursuant to the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Acts.

Case Title and Court: Settlement Agreement in *State of Texas v. Soheb Corp., dba Lassess Food Mart*; Cause No. GV-304648 in the 53rd District Court of Travis County, Texas.

Background: The State, on behalf of TCEQ, filed this suit alleging violations of a 2002 default order taken by the Commission for violations of the Texas Water Code and rules adopted thereunder that regulate underground storage tanks (USTs). In the alternative, the suit alleges violations of the Texas Water Code and UST rules from October 1999 to June 2003. The defendant is Soheb Corporation, a Texas corporation and the registered owner of two USTs at 2703 Lassess Blvd., San Antonio, Bexar County, Texas from March 1993 to June 2003. The violations arise from Soheb's failure to maintain financial assurance and perform a number of monitoring activities that would alert the owner to a leak from the USTs.

Nature of Settlement: The proposed settlement with Soheb requires it to pay \$28,750.00 in administrative penalties; \$1,163.64 in UST facility fees; \$25,000.00 in civil penalties; and \$7,000.00 in attorney's fees to the State of Texas.

For a complete description of the proposed settlement, the Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to Mary Smith, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication, contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

TRD-200504274

Stacey Schiff

Deputy Attorney General

Office of the Attorney General

Filed: September 26, 2005



Texas Solid Waste Disposal Act Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Solid Waste Disposal Act. Before the State may settle a judicial enforcement action under the Solid Waste Disposal Act, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

Case Title and Court: *State of Texas v. Wise County Recycling, Inc.*, No. GV400202 in the 201st District Court of Travis County, Texas.

Nature of Defendant's Operations: Defendant operated a municipal solid waste transfer facility in Wise County, Texas.

Proposed Agreed Judgment: The judgment contains an injunction that prohibits violations of the Texas Solid Waste Disposal Act. The judgment also requires the defendant to pay \$5,000 in civil penalties and \$5,362 in attorney's fees to the State.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to David Preister, Assistant Attorney General, Office of the Texas Attorney General, P. O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication, contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

TRD-200504318

Stacey Schiff

Deputy Attorney General

Office of the Attorney General

Filed: September 28, 2005



Texas Building and Procurement Commission

Request for Proposal

The Texas Building and Procurement Commission (TBPC), on behalf of the Department of Family and Protective Services, announces the issuance of **Request for Proposals (RFP) #303-6-10143**. TBPC seeks a five-year lease of approximately 6,979 square feet of office space in Kaufman, Kaufman County, Texas.

The deadline for questions is October 14, 2005 and the deadline for proposals is October 21, 2005 at 3:00 P.M. The award date is November 1, 2005. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC 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 TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Kenneth Ming at (512) 463-2743. A copy of the revised RFP may be downloaded from the *Electronic State Business Daily* at http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=61312.

TRD-200504258

Kenneth Ming

Purchaser

Texas Building and Procurement Commission

Filed: September 23, 2005



Request for Proposal

The Texas Building and Procurement Commission (TBPC), on behalf of the Comptroller of Public Accounts and Texas Lottery Commission, announces the issuance of **Request for Proposals (RFP) #303-6-10142**. TBPC seeks a five-year lease of approximately 5,448 square feet of office space in Beaumont, Texas.

The deadline for questions is October 12, 2005 and the deadline for proposals is October 19, 2005 at 3:00 P.M. The award date is November 1, 2005. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC 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 TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Kenneth Ming at (512) 463-2743. A copy of the revised RFP may be downloaded from the *Electronic State Business Daily* at http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=61281.

TRD-200504259

Kenneth Ming

Purchaser

Texas Building and Procurement Commission

Filed: September 23, 2005



Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of September 16, 2005, through September 22, 2005. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on September 28, 2005. The public comment period for these projects will close at 5:00 p.m. on October 28, 2005.

FEDERAL AGENCY ACTIONS:

Applicant: Harris County Public Infrastructure Department; Location: The project is located on the San Jacinto River, at 21505 Rio

Villa Park, in Houston, Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Highlands, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 299947; Northing: 3301500. Project Description: The applicant proposes to construct a trail, fishing pier, and canoe launch. The fishing pier will be 40-foot long with a 12-foot wide walkway and a 32-foot long T-head. The fishing pier T-head will be located in 4.7 feet of water. The canoe launch will be 36 feet long and located 0 to 3 feet out from the mean high tide, requiring 8.5 cubic yards of fill below mean high tide. The canoe launch and associated trail will impact 750 square feet of wetlands. The pier and associated trail will impact 146 square feet of wetlands. The total amount of tidally influenced wetland impacts will be 0.02 acre, from the construction of the canoe launch, trail, and pier. The applicant proposes to mitigate for the proposed impacts by creating 0.04 acre of tidally influenced wetlands. CCC Project No.: 05-0459-F1; Type of Application: U.S.A.C.E. permit application #23932 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Calhoun County Navigation District; Location: The project is located along Indianola-Magnolia Beach shoreline, which is on the west shore of Matagorda Bay, south of Indian Point and north of Powderhorn Lake, at the mouth of Coloma Creek. The project can be located on the U.S.G.S. quadrangle map entitled: Port Lavaca East, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 743466; Northing: 3158567. Project Description: The applicant proposes to construct a shoreline stabilization project to protect a road (State Highway 316), the La Salle Historic Landmark, and the marshes west of the road. CCC Project No.: 05-0460-F1; Type of Application: U.S.A.C.E. permit application #22787(01) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Program Specialist, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200504308

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office

Coastal Coordination Council

Filed: September 27, 2005



Comptroller of Public Accounts

Notice of Contract Awards

Pursuant to Chapter 403, Chapter 2254, Subchapter A, Texas Government Code, and Chapter 111, Texas Tax Code, the Comptroller of Public Accounts (Comptroller) announces this notice of contract awards.

The Comptroller's Request for Qualifications 172k (RFQ) related to these contract awards was published in the July 1, 2005, *Texas Register* (30 TexReg 3897-3900).

The contractors will provide Professional Contract Auditing Services as authorized by Subchapter A, Chapter 111, §111.0045 of the Texas Tax Code as described in the Comptroller's RFQ.

The Comptroller announces that twenty-two (22) contracts were awarded as of September 20, 2005 as follows:

A contract is awarded to Carolyn Z. Cantu, 5026 W. Circle Park Street, Pasadena, TX 77504. Examinations will be assigned in \$60,000, \$75,000 or \$90,000 increments or packages but no contract examiner shall have examination packages totaling more than \$150,000 in fees during any one state fiscal year during the contract term or any extension thereof. The term of the contract is September 20, 2005 through August 31, 2006.

A contract is awarded to Anthony D. Turner, 3602 Lakearries Lane, Katy, TX 77449. Examinations will be assigned in \$60,000, \$75,000 or \$90,000 increments or packages but no contract examiner shall have examination packages totaling more than \$150,000 in fees during any one state fiscal year during the contract term or any extension thereof. The term of the contract is September 20, 2005 through August 31, 2006.

A contract is awarded to Charles F. Hobbs, 3830 FM 967, Buda, TX 78610. Examinations will be assigned in \$60,000, \$75,000 or \$90,000 increments or packages but no contract examiner shall have examination packages totaling more than \$150,000 in fees during any one state fiscal year during the contract term or any extension thereof. The term of the contract is September 20, 2005 through August 31, 2006.

A contract is awarded to David L. Underwood, 3346 Meadow Oaks Drive, Garland, TX 75043. Examinations will be assigned in \$60,000, \$75,000 or \$90,000 increments or packages but no contract examiner shall have examination packages totaling more than \$150,000 in fees during any one state fiscal year during the contract term or any extension thereof. The term of the contract is September 20, 2005 through August 31, 2006.

A contract is awarded to Deborah A. Jones, 3818 Trappers Forest Dr., Houston, TX 77088-7442. Examinations will be assigned in \$60,000, \$75,000 or \$90,000 increments or packages but no contract examiner shall have examination packages totaling more than \$150,000 in fees during any one state fiscal year during the contract term or any extension thereof. The term of the contract is September 20, 2005 through August 31, 2006.

A contract is awarded to Energy Network, Inc., 4646 Highway 6 South, PMB #135, Sugar Land, TX 77478. Examinations will be assigned in \$60,000, \$75,000 or \$90,000 increments or packages but no contract examiner shall have examination packages totaling more than \$150,000 in fees during any one state fiscal year during the contract term or any extension thereof. The term of the contract is September 20, 2005 through August 31, 2006.

A contract is awarded to H & J Consulting, 2525 North Krenek Lane, Crosby, TX 77532. Examinations will be assigned in \$60,000, \$75,000 or \$90,000 increments or packages but no contract examiner shall have examination packages totaling more than \$150,000 in fees during any one state fiscal year during the contract term or any extension thereof. The term of the contract is September 20, 2005 through August 31, 2006.

A contract is awarded to Homer Max Wiesen, 1009 Panhandle Street, Denton, TX 76201-2841. Examinations will be assigned in \$60,000, \$75,000 or \$90,000 increments or packages but no contract examiner

shall have examination packages totaling more than \$150,000 in fees during any one state fiscal year during the contract term or any extension thereof. The term of the contract is September 20, 2005 through August 31, 2006.

A contract is awarded to J & E Tax Specialist, Inc. DBA Spring Accounting and Tax Service, 22223 Falconwood Lane, Spring, TX 77373-7161. Examinations will be assigned in \$60,000, \$75,000 or \$90,000 increments or packages but no contract examiner shall have examination packages totaling more than \$150,000 in fees during any one state fiscal year during the contract term or any extension thereof. The term of the contract is September 20, 2005 through August 31, 2006.

A contract is awarded to JSO Group, Inc., 11610 Acuba Lane, Houston, TX 77095. Examinations will be assigned in \$60,000, \$75,000 or \$90,000 increments or packages but no contract examiner shall have examination packages totaling more than \$150,000 in fees during any one state fiscal year during the contract term or any extension thereof. The term of the contract is September 20, 2005 through August 31, 2006.

A contract is awarded to Jumper & Chalk, P.O. Box 12175, Austin, TX 78711-2175. Examinations will be assigned in \$60,000, \$75,000 or \$90,000 increments or packages but no contract examiner shall have examination packages totaling more than \$150,000 in fees during any one state fiscal year during the contract term or any extension thereof. The term of the contract is September 20, 2005 through August 31, 2006.

A contract is awarded to Marina Roy Buenaventura, 4042 Cheena Drive, Houston, TX 77025-9124. Examinations will be assigned in \$60,000, \$75,000 or \$90,000 increments or packages but no contract examiner shall have examination packages totaling more than \$150,000 in fees during any one state fiscal year during the contract term or any extension thereof. The term of the contract is September 20, 2005 through August 31, 2006.

A contract is awarded to Philip E. Tan, 8815 Crazy Horse Trail, Houston, TX 77064. Examinations will be assigned in \$60,000, \$75,000 or \$90,000 increments or packages but no contract examiner shall have examination packages totaling more than \$150,000 in fees during any one state fiscal year during the contract term or any extension thereof. The term of the contract is September 20, 2005 through August 31, 2006.

A contract is awarded to Raymond Peterson & Associates, 5787 Hampton Rd., #305, Dallas, TX 75232-2255. Examinations will be assigned in \$60,000, \$75,000 or \$90,000 increments or packages but no contract examiner shall have examination packages totaling more than \$150,000 in fees during any one state fiscal year during the contract term or any extension thereof. The term of the contract is September 20, 2005 through August 31, 2006.

A contract is awarded to Robert J. Whorton, 23006 Red River Dr., Katy, TX 77450. Examinations will be assigned in \$60,000, \$75,000 or \$90,000 increments or packages but no contract examiner shall have examination packages totaling more than \$150,000 in fees during any one state fiscal year during the contract term or any extension thereof. The term of the contract is September 20, 2005 through August 31, 2006.

A contract is awarded to Stephanie Clark, 2700 Blanchette St., Beaumont, TX 77701. Examinations will be assigned in \$60,000, \$75,000 or \$90,000 increments or packages but no contract examiner shall have examination packages totaling more than \$150,000 in fees during any one state fiscal year during the contract term or any extension thereof. The term of the contract is September 20, 2005 through August 31, 2006.

A contract is awarded to Stephen T. Broad, 1218 Gordon Blvd., San Angelo, TX 76905. Examinations will be assigned in \$60,000, \$75,000 or \$90,000 increments or packages but no contract examiner shall have examination packages totaling more than \$150,000 in fees during any one state fiscal year during the contract term or any extension thereof. The term of the contract is September 20, 2005 through August 31, 2006.

A contract is awarded to Sales Tax Audit Services, LLC, 1012 Rushmore Dr., Allen, TX 75002. Examinations will be assigned in \$60,000, \$75,000 or \$90,000 increments or packages but no contract examiner shall have examination packages totaling more than \$150,000 in fees during any one state fiscal year during the contract term or any extension thereof. The term of the contract is September 20, 2005 through August 31, 2006.

A contract is awarded to Texas Tax Consulting Group, L.C., 6116 Ayers St., Ste. 2C, Corpus Christi, TX 78415. Examinations will be assigned in \$60,000, \$75,000 or \$90,000 increments or packages but no contract examiner shall have examination packages totaling more than \$150,000 in fees during any one state fiscal year during the contract term or any extension thereof. The term of the contract is September 20, 2005 through August 31, 2006.

A contract is awarded to Vernice Seriale, Jr., 11612 Cross Spring Dr., Pearland, TX 77584. Examinations will be assigned in \$60,000, \$75,000 or \$90,000 increments or packages but no contract examiner shall have examination packages totaling more than \$150,000 in fees during any one state fiscal year during the contract term or any extension thereof. The term of the contract is September 20, 2005 through August 31, 2006.

A contract is awarded to Wayne F. Bowman, 2225 C. Potomac, Houston, TX 77057. Examinations will be assigned in \$60,000, \$75,000 or \$90,000 increments or packages but no contract examiner shall have examination packages totaling more than \$150,000 in fees during any one state fiscal year during the contract term or any extension thereof. The term of the contract is September 20, 2005 through August 31, 2006.

A contract is awarded to Wiener Strickler LLP, 201 E. Main, Suite 500, El Paso, TX 79901. Examinations will be assigned in \$60,000, \$75,000 or \$90,000 increments or packages but no contract examiner shall have examination packages totaling more than \$150,000 in fees during any one state fiscal year during the contract term or any extension thereof. The term of the contract is September 20, 2005 through August 31, 2006.

TRD-200504256

Pamela Smith

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: September 23, 2005

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, Tex. Fin. Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/03/05 - 10/09/05 is 18% for Consumer¹/Agricultural/Commercial²/credit thru \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/03/05 - 10/09/05 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005³ for the period of 10/01/05 - 10/31/05 is 18% for Consumer/Agricultural/Commercial/credit thru \$250,000.

The monthly ceiling as prescribed by §303.005 for the period of 10/01/05 - 10/31/05 is 18% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment, or other similar purpose.

³For variable rate commercial transactions only.

TRD-200504288

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: September 27, 2005

Texas Education Agency

Request for Applications Concerning Texas High School Redesign and Restructuring Grant Program, Cycle 2

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-06-001 from eligible school districts or open-enrollment charter schools. An eligible school district or open-enrollment charter school shall include a school district or open-enrollment charter school with one or more eligible high schools. A school district must submit a separate application on behalf of each eligible high school. An eligible high school is defined as (1) a school serving students in two or more of the following grades: 9, 10, 11, or 12; (2) a school with at least 50 percent of its student population in Grade 9 or higher; (3) a school serving at least 100 students in Grades 9 through 12; (4) a school that, under the Texas accountability rating system, has been rated *Academically Unacceptable* in 2005; and (5) a school that is not a recipient of funds through the Texas High School Redesign and Restructuring Grant, Cycle 1, or any other grant from TEA for innovative redesign of a high school campus.

A school district or open-enrollment charter school applying for this grant must be financially viable as determined through fiscal review by the TEA Division of Financial Audits. Additionally, to maintain eligibility for this grant, both the school district or the charter school, and the campus under the school district or charter school, must be in compliance with all intervention requirements as established by the TEA Division of Program Monitoring and Interventions. In addition, an open-enrollment charter high school campus shall become ineligible for grant funding (or if a campus has applied for and received funding for this grant, will have its grant funding placed on hold) if the commissioner of education notifies the campus' charter holder of the commissioner's intent to revoke or non-renew such charter under Texas Education Code (TEC), Chapter 12, or to close the campus under TEC, Chapter 39, for any of the reasons set forth in either statutory provision. If the commissioner of education ultimately revokes or denies renewal of an open-enrollment charter of a charter holder or closes a campus that has been awarded funds under this grant program, grant funding shall be discontinued.

Description. The purpose of the Texas High School Redesign and Restructuring Grant, Cycle 2, is to provide high school campuses rated *Academically Unacceptable* under the Texas accountability rating system with the resources to build capacity for implementing innovative, schoolwide initiatives designed to improve student performance on the campus. Additionally, this grant seeks to create a demonstration project that will provide case studies and models for successful practices in turning around low-performing high schools. The primary goals of this

grant program are to (1) correct the specific area of unacceptable performance identified in the campus accountability rating; (2) increase overall student achievement; (3) raise academic standards and expectations for all students; (4) demonstrate innovative management and instructional practices; (5) ensure that every student is taught by highly qualified, effective teachers; (6) develop leadership capacity in principals and other school leaders; and (7) engage parents and the community in school activities.

Dates of Project. The Texas High School Redesign and Restructuring Grant, Cycle 2, will be implemented during the 2005-2006 and 2006-2007 school years. Applicants should plan for a starting date of no earlier than February 1, 2006, and an ending date of no later than August 31, 2007.

Project Amount. A total of approximately \$5 million is available for funding the Texas High School Redesign and Restructuring Grant, Cycle 2. Each high school campus will receive a maximum of \$300,000 or \$750 per student enrolled on the campus, whichever is the lesser amount, for the 2005-2006 through 2006-2007 project period. This project is funded 100 percent from Rider 59 general revenue funds appropriated by the state legislature.

Selection Criteria. Applications will be selected based on expert reviewers' assessment of each applicant's ability to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. The TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA, contain a comprehensive plan that will fundamentally change and improve the high school campus, and demonstrate an ability to sustain the changes after the grant period ends.

Technical Assistance. Through the Region 13 Education Service Center (ESC), the TEA will provide pre-grant support and guidance in the development of individualized campus redesign plans that address both campus needs and grant requirements. The RFA will specify the time and date for the pre-grant support and guidance sessions. Through the Region 13 ESC, the TEA will also provide direct on-site coaching and training and on-going regional training and networking activities to those high school campuses that receive the Texas High School Redesign and Restructuring Grant, Cycle 2.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA #701-06-001 may be obtained by writing the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing dcc@tea.state.tx.us. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and phone number including area code. The announcement letter and complete RFA will also be posted on the TEA website at <http://www.tea.state.tx.us/opge/disc/index.html> for viewing and downloading.

Further Information. For clarifying information about the RFA, contact Karen Harmon, Division of Discretionary Grants, TEA, (512) 463-9269. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any additional information that is different from or in addition to information provided in the RFA

will be provided only in response to written inquiries. Copies of all such inquiries and the written answers thereto will be posted on the TEA website in the format of Frequently Asked Questions (FAQs) at <http://www.tea.state.tx.us/opge/disc/index.html>.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the TEA by 5:00 p.m. (Central Time), Thursday, December 1, 2005, to be considered for funding.

TRD-200504328

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: September 28, 2005

Texas Commission on Environmental Quality

Notice of Availability and Request for Comments on a Draft Natural Resource Damages Restoration Plan

AGENCIES: Texas Commission on Environmental Quality (TCEQ), Texas Parks and Wildlife Department, and Texas General Land Office (collectively the Natural Resource Trustees).

ACTION: Notice of Availability of a draft damage assessment and restoration plan (Draft Plan) for injuries to natural resources resulting from the discharge of crude oil from the Crown Central Petroleum Corporation (Crown) tank farm site in Pasadena, Harris County, Texas, and a 30-day period for public comment on this document beginning October 7, 2005.

SUMMARY: Notice is hereby given that a Draft Plan for natural resource damages, resulting from the September 30, 1996, Crown oil discharge, is available for public review and comment. This document has been prepared by the Natural Resource Trustees to address injuries or potential injuries to natural resources and the services they provide as a result of a discharge of crude oil from the Crown tank farm property in Pasadena, Harris County, Texas. The Draft Plan describes injuries and potential injuries to natural resources related to the spill and identifies a preferred restoration alternative that would replace natural resources and ecological services lost during the incident.

The opportunity for public review and comment on the Draft Plan is required under the Oil Pollution Act of 1990.

To receive a copy of the Draft Plan, interested members of the public are invited to contact Charles Brigance, Texas Commission on Environmental Quality, Remediation Division, MC 225, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2238, or by e-mail at cbriganc@tceq.state.tx.us.

The Draft Plan may also be reviewed on the TCEQ Natural Resource Trustee Program Web site at www.tceq.state.tx.us/remediation/nrtp/index.html.

DATES: Comments must be submitted in writing on or before 5:00 p.m. on November 7, 2005, to Charles Brigance at the address listed previously. The Natural Resource Trustees will consider all written comments prior to finalizing the Draft Plan.

SUPPLEMENTARY INFORMATION: On or about September 30, 1996, approximately 1,000 barrels of Norwegian Heidrun heavy crude oil were discharged from the Crown tank farm facility in Pasadena, Harris County, Texas. The discharged oil entered a drainage system on the Crown property and traveled down a concrete drainage canal to the coastal waters of Little Vince Bayou and Vince Bayou. The oil impacted approximately 4,200 linear feet of the waters and associated

embankments of Little Vince Bayou and Vince Bayou and remained for approximately five days.

The Natural Resource Trustees investigated and documented natural resource injuries to waterfowl, fish, surface waters, and riparian vegetation associated with Little Vince Bayou and Vince Bayou as a result of the oil spill. A count of birds killed and/or exposed to the oil was conducted and an assessment of impacts to the vegetation in the riparian zones of Little Vince Bayou and Vince Bayou was performed. The investigation revealed an estimated fish kill of 30,000 to 40,000 individuals.

The Natural Resource Trustees prepared a habitat equivalency analysis (HEA) to quantify injury to natural resources caused by Crown's oil discharge. The results of the HEA calculations indicated that the creation of 0.3 acres of emergent wetland would be necessary to compensate for the natural resource services lost as a result of the discharge. Using this acreage and an established cost of construction for one acre of emergent wetland, the Natural Resource Trustees determined that a total of \$7,500 would fairly compensate the public for injuries to natural resources and the services they provide.

Following a public notice and comment period, a settlement agreement was entered between the Natural Resource Trustees and Crown on May 27, 1998. In this agreement, Crown agreed to pay the Natural Resource Trustees a total of \$7,500 to resolve its liability for natural resources damages related to the discharge. The settlement funds were deposited in an interest-bearing account within the Texas Treasury Safekeeping Trust Company.

With the approval of the Natural Resource Trustees, the TCEQ solicited applications on an open basis for the creation of emergent intertidal wetlands in Upper Galveston Bay. The Natural Resource Trustees reviewed the applications and selected the Urban Wetlands Restoration and Education Project as the preferred restoration alternative for implementation using the Crown settlement funds. The proposed project would involve the planting of a diverse mixture of vegetation on sediment accumulations within intertidal urban wetlands on public property along Simms, Brays, and Buffalo Bayous in Harris County.

The Draft Plan identifies the methods used to determine and quantify natural resource injuries and ecological services lost as a result of the Crown discharge, including the scale of restoration actions required to compensate the public. The Draft Plan also provides a review of potential restoration options and identifies the preferred restoration action that the Natural Resource Trustees propose to implement to restore, replace, or acquire resources or services equivalent to those injured by the Crown discharge.

TRD-200504314

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: September 27, 2005



Notice of District Petition

Notices mailed September 20, 2005 through September 23, 2005

TCEQ Internal Control No. 07182005-D05; Luella Water Supply Corporation (Petitioner) has filed a petition with the Texas Commission on Environmental Quality (TCEQ) to convert Luella Water Supply Corporation to Luella Special Utility District (District) and to transfer Certificate of Convenience and Necessity (CCN) No. 10179 from Luella Water Supply Corporation to Luella Special Utility District. Luella Special Utility District's business address will be: 36 LWSC Road; Sherman, Texas 75090. The petition was filed pursuant to Chapters 13

and 65 of the Texas Water Code; 30 Texas Administrative Code Chapters 291 and 293; and the procedural rules of the TCEQ. The nature and purpose of the petition are for the conversion of Luella Water Supply Corporation and the organization, creation and establishment of Luella Special Utility District under the provisions of Article XVI, Section 59, Texas Constitution, and Chapter 65 of the Texas Water Code, as amended. The District shall have the purposes and powers provided in Chapter 65 of the Texas Water Code, and CCN No. 10179 shall be transferred as provided in Chapter 13, of the Texas Water Code, as amended. The nature of the services presently performed by Luella Water Supply Corporation is to purchase, own, hold, lease and otherwise acquire sources of water supply; to build, operate and maintain facilities for the transportation of water; and to sell water to individual members, towns, cities, private businesses, and other political subdivisions of the State. The nature of the services proposed to be provided by Luella Special Utility District is to purchase, own, hold, lease, and otherwise acquire sources of water supply; to build, operate, and maintain facilities for the storage, treatment, and transportation of water; and to sell water to individuals, towns, cities, private business entities and other political subdivisions of the State. Additionally, it is proposed that the District will protect, preserve and restore the purity and sanitary condition of the water within the District. It is anticipated that conversion will have no adverse effects on the rates and services provided to the customers. The proposed District is located in Grayson County and will contain approximately 27.01 square miles. The territory to be included within the proposed District includes all of the singularly certified service area covered by CCN No. 10179. CCN No. 10179 will be transferred after a positive confirmation election.

TCEQ Internal Control No. 09122005-D04; 501 Maple Ridge, LTD. (Petitioner) filed a petition for creation of Harris County Municipal Utility District No. 416 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there is one lien holder, United Development Funding, L.P., on the property to be included in the proposed District, and the Petitioner has provided the TCEQ with a certificate evidencing its consent to the creation of the proposed District; (3) the proposed District will contain approximately 477.64 acres located within Harris County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 2005-408, effective May 3, 2005, the City of Houston, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; (3) control, abate and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, improve, maintain, and operate additional facilities, systems, and enterprises, and parks and recreation facilities consistent with the purposes for which the District is created, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately \$35,300,000.

TCEQ Internal Control No. 07252005-D02; North Hunt Water Supply Corporation (Petitioner) has filed a petition with the Texas Commission on Environmental Quality (TCEQ) to convert North Hunt Water Supply Corporation to North Hunt Special Utility District (District) and to transfer Certificate of Convenience and Necessity (CCN) No. 11206 from North Hunt Water Supply Corporation to North Hunt Special Utility District. North Hunt Special Utility District's business address will be: P.O. Box 1170; Commerce, Texas 75428. The petition was filed pursuant to Chapters 13 and 65 of the Texas Water Code; 30 Texas Administrative Code Chapters 291 and 293; and the procedural rules of the TCEQ. The nature and purpose of the petition are for the conversion of North Hunt Water Supply Corporation and the organization, creation and establishment of North Hunt Special Utility District under the provisions of Article XVI, Section 59, Texas Constitution, and Chapter 65 of the Texas Water Code, as amended. The District shall have the purposes and powers provided in Chapter 65 of the Texas Water Code, and CCN No. 11206 shall be transferred as provided in Chapter 13, of the Texas Water Code, as amended. The nature of the services presently performed by North Hunt Water Supply Corporation is to purchase, own, hold, lease and otherwise acquire sources of water supply; to build, operate and maintain facilities for the transportation of water; and to sell water to individual members, towns, cities, private businesses, and other political subdivisions of the State. The nature of the services proposed to be provided by North Hunt Special Utility District is to purchase, own, hold, lease, and otherwise acquire sources of water supply; to build, operate, and maintain facilities for the storage, treatment, and transportation of water; and to sell water to individuals, towns, cities, private business entities and other political subdivisions of the State. Additionally, it is proposed that the District will protect, preserve and restore the purity and sanitary condition of the water within the District. It is anticipated that conversion will have no adverse effects on the rates and services provided to the customers. The proposed District is located in Hunt, Fannin and Delta Counties and will contain approximately 108,761 acres. The territory to be included within the proposed District includes all of the singularly certified service area covered by CCN No. 11206. CCN No. 11206 will be transferred after a positive confirmation election.

TCEQ Internal Control No. 09122005-D05; Moody Simmons Baytown, LTD., and Moody Simmons Baytown II, LTD (Petitioner) filed a petition for creation of Harris County Municipal Utility District No. 459 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there is one lien holder, Comerica Bank, on the property to be included in the proposed District, and the Petitioner has provided the TCEQ with a certificate evidencing its consent to the creation of the proposed District; (3) the proposed District will contain approximately 138.439 acres located in Harris County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Baytown, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. 1705, effective March 24, 2005, the City of Baytown, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system for municipal, domestic, industrial and commercial purposes; (2) acquire, construct, operate and maintain a system to gather, conduct, divert, and control local storm water or other local harmful excesses of water within the District; (3) purchase, acquire, construct, own, lease, extend, improve, operate, maintain, and repair such additional improvements, facilities, plants,

equipment, and appliances consistent with the purposes for which the District is organized, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately \$8,780,000.

INFORMATION SECTION

The TCEQ may grant a contested case hearing on a petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve a petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team at 1-512-239-4691. Si desea información en Español, puede llamar al 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200504322

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 28, 2005



Notice of Opportunity to Participate in Permitting Matters

A person may request to be added to a mailing list for public notices processed through the Office of the Chief Clerk for air, water, and waste permitting activities at the TCEQ. You may request to be added to: (1) a permanent mailing list for a specific applicant name and permit number; and/or (2) a permanent mailing list for a specific county or counties.

Note that a request to be added to a mailing list for a specific county will result in notification of all permitting matters affecting that particular county.

To be added to a mailing list, send us your name and address, clearly specifying which mailing list(s) to which you wish to be added. Your written request should be sent to the TCEQ, Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, TX 78711-3087.

Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit

applications or permitting processes, should call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040.

TRD-200504325

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 28, 2005



Notice of Water Quality Applications

The following notices were issued during the period of September 14, 2005 through September 27, 2005

The following require the applicants to publish notice in the newspaper. The public comment period, 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 THIS NOTICE.

501 MAPLE RIDGE, LTD. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014610001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 640,000 gallons per day. The facility will be located approximately 1.75 miles southeast of the intersection of Farm-to-Market Road 2920 and Telge Road in Harris County, Texas.

AMERICAN CHROME & CHEMICALS L.P. which operates a chromium chemicals manufacturing plant, has applied for a renewal of TPDES Permit No. WQ0000349000, which authorizes the discharge of once-through sea water for cooling, utility wastewaters, storm water, and previously monitored effluents (treated sodium dichromate and sodium chromate process wastewater, utility water, recovered groundwater, and storm water runoff via internal Outfall 101; chromic oxide and chromium oxide dihydrate process wastewater, and storm water via internal Outfall 201; and treated sanitary wastewater via internal Outfall 301) at a daily average flow not to exceed 20,000,000 gallons per day via Outfall 001. This application was submitted to the TCEQ on December 7, 2004. The facility is located 0.7 miles north of Interstate Highway 37 on Buddy Lawrence Drive in the extraterritorial jurisdiction of the City of Corpus Christi, Nueces County, Texas.

AQUA WATER SUPPLY CORPORATION has applied for a major amendment to TPDES Permit No. WQ0014224001 to authorize an increase in the discharge of treated water treatment plant filter backwash water from a daily average flow not to exceed 4,200 gallons per day to a daily average flow not to exceed 12,000 gallons per day. The facility is located on County Road 106, 1.2 miles west of the County Road 106 and Farm-to-Market Road 696 intersection in Bastrop County, Texas.

AQUA WATER SUPPLY CORPORATION has applied for a major amendment to TPDES Permit No. WQ0014226001 to authorize an increase in the discharge of treated water treatment plant filter backwash water from a daily average flow not to exceed 5,000 gallons per day to a daily average flow not to exceed 12,000 gallons per day. The facility is located approximately 2.1 miles west-northwest of the intersection of Farm-to-Market Road 1624 and County Road 322, and approximately 2.4 miles southeast of the intersection of Farm-to-Market Road 696 and County Road 309 in Lee County, Texas.

BROWNSVILLE PUBLIC UTILITIES BOARD has applied for a renewal of TPDES Permit No. 10397-005, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 10,000,000 gallons per day. The applicant has also applied to the TCEQ for approval of a substantial modification to its pretreatment

program under the TPDES program. The facility is located adjacent to and east of Robindale Road approximately half mile north of the intersection of Robindale Road and Farm-to-Market Road 802 in Cameron County, Texas.

CITY OF AMARILLO has applied for a renewal of TPDES Permit No. 10392-006, which authorizes the discharge of filter backwash effluent from a water treatment plant at a daily average flow not to exceed 810,000 gallons per day. The facility is located approximately 1 mile east of Tradewind Airport, on the east side of Osage Street, between 34th Avenue and 46th Avenue in Randall County, Texas.

THE CITY OF BLOSSOM has applied for a renewal of TPDES Permit No. 10715-002, 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.

CITY OF CANYON has applied for a renewal of Permit No. 10073-001 which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 1,710,000 gallons per day via surface irrigation of 638 acres of non-public access land in the interim II phase and 2,160,000 gallons per day via surface irrigation of 807 acres of non-public access land in the final phase. The wastewater treatment facilities and disposal site are located adjacent to the north side of Hungate Road and the east side of Hix Road, approximately 3.5 miles south of the intersection of Interstate Highway 27 and Farm-to-Market Road 1541 in Randall County, Texas.

CITY OF DALHART has applied for a renewal of TPDES Permit No. 10099-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The facility is located approximately 0.5 mile west of U.S. Highway 87, approximately 2.5 miles southeast of the intersection of U.S. Highway 54 and U.S. Highway 87 in Hartley County, Texas.

CITY OF FORT STOCKTON has applied for a renewal of Permit No. 10708-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 1.41 million gallons per day from the wastewater treatment system and the disposal of 0.44 MGD of water treatment plant brine which is added to the wastewater treatment plant storage ponds. A total of 1.85 MGD is authorized for disposal via surface irrigation of 587 acres of the non-public access land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal site are located northeast of the City of Fort Stockton at a site approximately one mile east of Farm-to-Market Road 1053 and two miles north of U.S. Highway 290 in Pecos County, Texas.

CITY OF HOOKS has applied for a renewal of TPDES Permit No. WQ0010507001, 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 approximately 2,000 feet northeast of the intersection of Interstate Highway 30 and Farm-to-Market Road 1398 in Bowie County, Texas.

CITY OF HOUSTON has applied for an amendment to TPDES Permit No. WQ0010495065 to authorize an increase in the permitted 2-hour peak flow from 9,000,000 gallons per day to 15,450,000 gallons per day. The facility is located at 8545 Scranton Street, due east of William P. Hobby Airport, approximately 0.7 mile southwest of the intersection of Interstate Highway 45 (Gulf Freeway) and Airport Boulevard in Harris County, Texas.

CITY OF KRESS has applied for a renewal of Permit No. 10409-001, which authorizes the disposal of treated domestic wastewater at a daily

average flow not to exceed 108,000 gallons per day via surface irrigation of 40 acres of non-public access agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 1 mile southeast of the intersection of State Highway 87 and Farm-to-Market Road 145 in Swisher County, Texas.

CITY OF LINDEN has applied for a renewal of TPDES Permit No. 10429-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The facility is located approximately 1,600 feet southwest of the intersection of State Highway 155 and Hamilton Street in Cass County, Texas.

CITY OF MOUNT VERNON has applied for a renewal of TPDES Permit No. 11122-001, which authorizes the discharge of filter backwash effluent from a water treatment plant at a daily average flow not to exceed 20,000 gallons per day. The facility is located between State Highway 37 and 115, approximately 0.5 mile south of Interstate Highway 30 and below the Mount Vernon Municipal Reservoir Dam in Franklin County, Texas.

CITY OF NEW BOSTON has applied for a renewal of TPDES Permit No. WQ0010482001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,700,000 gallons per day. The facility is located 2,500 feet southeast of the intersection of State Highway 8 and Farm-to-Market Road 1840 and approximately 1.75 miles southeast of the City of New Boston in Bowie County, Texas.

CITY OF SAN PERLITA has applied for a renewal of Permit No. 14076-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 0.10 gallons per day via evaporation/percolation using a total of 8.87 acres of surface area and a total capacity of 21.2 acre-feet of storage. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal site are located west of the intersection of First Avenue and Seminole Avenue and 3,000 feet west-southwest of the intersection of Farm-to-Market Road 2209 and Farm-to-Market Road 3142, adjacent to the City of San Perlita in Willacy County, Texas.

CITY OF SAVOY has applied to renew Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14273-001 to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 128,000 gallons per day. The domestic wastewater treatment facility is located 900 feet west of Farm-to-Market Road 1752 and 2,000 feet north of Highway 56 in Fannin County, Texas.

CITY OF SILVERTON has applied for a renewal of Permit No. 10803-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 90,000 gallons per day via evaporation on approximately 36 acres of playa lake and via surface irrigation of 70 acres of non-public access native grassland. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located 0.75 mile west of State Highway 207 and 1 mile south of State Highway 86 in Briscoe County, Texas.

THE CITY OF SONORA has applied for a renewal of TPDES Permit No. 10545-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 876,000 gallons per day. The current permit also authorizes the disposal of treated domestic wastewater via irrigation of 68.3 acres. The facility is located south of Sonora and south of Dry Devils River, approximately 6,000 feet south and 2,000 feet west of the intersection of U.S. Highway 277 and 290 in Sutton County, Texas.

CITY OF TEXLINE has applied for a renewal of Permit No. 11029-001, which authorizes the disposal of treated domestic wastewater at

a daily average flow not to exceed 45,300 gallons per day via surface irrigation of 33 acres of non-public access pastureland. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located southeast of and adjacent to Farm-to-Market Road 296, just north of the city limits of Texline in Dallam County, Texas.

CITY OF TURKEY has applied for a renewal of Permit No. 10636-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day via evaporation and surface irrigation of 21 acres of non-public access pastureland. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately one mile southwest of the intersection of State Highway 70 and State Highway 86 in the City of Turkey in Hall County, Texas.

CLAY/PEEK 640, L.P. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014635001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility will be located 1,500 feet west and 650 feet north of the intersection of Clay Road and Peek Road in Harris County, Texas.

CLINT INDEPENDENT SCHOOL DISTRICT has applied for a renewal of Permit No. 14005-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 7,050 gallons per day via subsurface drip irrigation on 1.62 acres of non-public access land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located just north of Montana Avenue on O'Shea Road, approximately 3.3 miles east-northeast of the intersection of Zaragosa Road (State Highway 659) and Montana Avenue (U.S. Highway 62/180) in El Paso County, Texas.

CLYDE HAROLD BRUBAKER has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014613001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 160,000 gallons per day. This application was submitted to the TCEQ on April 12, 2005. The facility will be located approximately 2,400 feet west of the intersection of Farm-to-Market Road 1458 and Farm-to-Market Road 359 in Waller County, Texas.

DAEDELUS CORPORATION has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014634001, to authorize 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 one mile south-southeast of the intersection of County Road 1641 and County Road 148 in Kaufman County, Texas.

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 19 has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014579001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 255,000 gallons per day. The facility will be located approximately 2,000 feet north of the intersection of Riverwood Drive and Quebec Boulevard and approximately 100 feet south of the Right-of-Way of the Brazos River in Fort Bend County, Texas.

MARHABA PARTNERS has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014625002, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 450,000 gallons per day. The facility will be located approximately 1,590 feet west of Lockwood Road, 8,370 feet south of the intersection of Beltway 8 Tollway and Lockwood Road in Harris County, Texas.

RED LICK INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. 13392-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 13,000 gallons per day. The facility is located approximately 1,000 feet west of the intersection of Earnest Road and Farm-to-Market Road 2148, and approximately 1.5 miles east of the intersection of Interstate Highway 30 and Farm-to-Market Road 2253 in Bowie County, Texas.

SOUTH CENTRAL WATER COMPANY has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014606001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 240,000 gallons per day. The facility will be located 3,550 feet northeast of the intersection of Farm-to-Market Road 2920 and Stuebner Airline Road in Harris County, Texas.

TEXAS DEPARTMENT OF TRANSPORTATION has applied for a renewal of TPDES Permit No. 11987-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. The facility is located on the right-of-way of Interstate Highway 30 at a point one mile west of Farm-to-Market Road 990 in Bowie County, Texas.

TEXAS LEHIGH CEMENT COMPANY LP has applied for a major amendment to Permit No. WQ0011976001, to authorize an increase in the daily average flow from 2,700 gallons per day to 4,000 gallons per day. The current permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 2,700 gallons per day via surface irrigation of 240 acres of company-owned farmland. The draft permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 4,000 gallons per day via surface irrigation of three acres of company-owned non-public access landscape. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately one mile west of Interstate Highway 35, at a point approximately two miles south of Buda in Hays County, Texas.

U.S. DEPARTMENT OF HOMELAND SECURITY IMMIGRATION AND CUSTOMS ENFORCEMENT has applied for a renewal of TPDES Permit No. 12321-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 160,000 gallons per day. The facility is located approximately 1,500 feet south of the southeast end of Cameron County Airport Runway, approximately 1.5 miles north and 4 miles east of the intersection of Farm-to-Market Roads 510 and 2480 in Cameron County, Texas.

WOODRIDGE LIMITED PARTNERSHIP has applied for a renewal of TPDES Permit No. 13474-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 4,000 gallons per day. The facility is located approximately 1600 feet southeast of the intersection of Farm-to-Market Road 134 and State Highway 43 in Harrison County, Texas.

TRD-200504324

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 28, 2005



Notice of Water Rights Application

Notices mailed September 7, 2005 through September 26, 2005

PROPOSED TEMPORARY PERMIT NO. TP-5892; David H. Arrington Oil & Gas, Inc., 214 W. Texas Avenue, Suite 400, Midland, Texas

79701, Applicant, seeks a Temporary Water Use Permit pursuant to Texas Water Code 11.138 and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code (TAC) 295.1, et seq. Applicant seeks authorization to divert and use, within a two-year period, not to exceed 26 acre-feet of water at a maximum diversion rate of 9.358 cfs (4,200 gpm) from a reservoir on an unnamed tributary of North Fork Chambers Creek, tributary of Chambers Creek, tributary of Richland Creek, tributary of the Trinity River, Trinity River Basin, for mining (gas drilling) purposes in Johnson County, Texas. The diversion point will be located at Latitude 32.343 N and Longitude 97.163, 15 miles east of Cleburne and 5.1 north of Grandview, Johnson County. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application was received on March 24, 2005, and additional information and fees were received on April 22 and 27, 2005. The application was declared administratively complete and filed with the Office of the Chief Clerk on May 5, 2005. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, by September 28, 2005.

APPLICATION NO. 5904; Berend Bros, Inc., P.O. Box 170, Windthorst, Texas 76389, Applicant, seeks a Water Use Permit pursuant to Texas Water Code 11.121 & 11.143 and Texas Commission on Environmental Quality (TCEQ) Rules 30 Texas Administrative Code (TAC) 295.1, et seq. Applicant seeks authorization to maintain an existing dam and reservoir on unnamed tributary of Little Onion Creek, tributary of the Onion Creek, tributary of the Little Wichita River, tributary of the Red River, Red River Basin for agricultural purposes in Archer County. Applicant also seeks to divert and use not to exceed 150 acre-feet of water from the perimeter of the reservoir at a maximum diversion rate of 1.34 cfs (600 gpm) for agricultural purpose for a swine feeding operation, the treated effluent from which will be used to irrigate 84 acres within a 997.6 acre-tract of land in the M. Cartwright Survey, Abstract No. 59. Water diverted may be recycled according to the TPDES Permit TXG920398. The reservoir has a capacity of 151 acre-feet of water with a surface area of approximately 59 acres. The reservoir is located approximately 5.75 miles southeast from the City of Archer and 5.75 miles in southwest from City of Windthorst. The northern abutment of the dam is located at 33.564 N Latitude, 98.533 W Longitude, bearing S 6 W, 5,400 feet from the northeast corner of the Cartwright Survey. On April 25, 2005, applicant entered into a "Letter of Agreement for the Impact of Impoundment of Water in the Lake Arrowhead Watershed" with the City of Wichita Falls (City) for the amount of water that will impact the City's ability to divert water under its Lake Arrowhead water right. Ownership of the land inundated by the reservoir and the land to be irrigated is evidenced by Special Warranty Deed Volume 367, Pages 827-831 in the official records of Archer County. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application was received on June 16, 2005. Additional information and fees for the application were received on July 21, and August 15, 2005. The application was accepted for filing and declared administratively complete on August 29, 2005. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 5902; Boot Ranch Development, L.P., applicant, 36 Fares Ranch Road, Fredericksburg, TX 78624, seeks a temporary water use permit pursuant to Texas Water Code 11.138, and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code (TAC) 295.1, et seq. The applicant has applied for a temporary water use permit to divert and use 198 acre-feet of water per year for a

period of two years (total of 396 acre-feet of water) from the reservoir authorized by Certificate of Adjudication No. 14-1441 on Upper Palo Alto Creek, tributary of the Pedernales River, tributary of the Colorado River, Colorado River Basin, located at Latitude 30.3474 N, Longitude 98.8763 W, at a maximum diversion rate of 3.90 cfs (1,750 gpm) for agricultural purposes to irrigate 100 acres out of a 1921.5-acre tract in Gillespie County. This application is based on an Upstream Firm Water Contract between the applicant and the Lower Colorado River Authority. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application was received on May 25, 2005. Additional information and fees were received on August 5, 2005. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on August 30, 2005. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, by October 17, 2005.

INFORMATION SECTION

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200504323

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 28, 2005



Proposed Enforcement Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the

public comment period closes, which in this case is **November 7, 2005**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 7, 2005**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the commission in **writing**.

(1) COMPANY: A. H. Chaney, Inc.; DOCKET NUMBER: 2005-1275-PST-E; IDENTIFIER: Regulated Entity Number (RN) 101563344; LOCATION: Rhome, Wise County, Texas; TYPE OF FACILITY: truck refueling; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i) and (B)(ii), by failing to make available to a common carrier a valid, current delivery certificate and by failing to renew their delivery certificate; PENALTY: \$3,600; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Alamo Concrete Products, Ltd.; DOCKET NUMBER: 2005-1062-IWD-E; IDENTIFIER: RN100248681; LOCATION: New Braunfels, Comal County, Texas; TYPE OF FACILITY: ready-mixed concrete; RULE VIOLATED: 30 TAC §305.125(1) and (17), Texas Pollutant Discharge Elimination System (TPDES) Permit Number 110091, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for total suspended solids (TSS) and pH and by failing to collect and submit discharge monitoring reports; PENALTY: \$14,400; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: BP Amoco Chemical Company; DOCKET NUMBER: 2005-0829-AIR-E; IDENTIFIER: RN102528197; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §101.201(a)(1), by failing to submit initial notification within 24 hours from the discovery date for a reportable emissions event; and 30 TAC §116.110(a) and §116.715(a) and Permit Number 7278, by failing to operate the flare with a flame at all times and prevent unauthorized emissions during an emissions event; PENALTY: \$2,018; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: B. Rainey & Son Enterprises, Inc. dba Family Mart 3; DOCKET NUMBER: 2005-0860-PST-E; IDENTIFIER: RN101726768; LOCATION: Paris, Lamar County, Texas; TYPE OF FACILITY: underground storage tanks; RULE VIOLATED: 30 TAC §334.50(a)(1)(A) and (d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to provide release detection and by failing to conduct reconciliation of detailed inventory control records; and 30 TAC §334.8(c)(5)(A)(iii) and (C), by failing to post a valid, current delivery

certificate and by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied or affixed to either the top of the fill tube or to a nonremovable point; PENALTY: \$3,600; ENFORCEMENT COORDINATOR: Deana Holland, (512) 239-2504; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(5) COMPANY: Bexar County; DOCKET NUMBER: 2005-0481-PWS-E; IDENTIFIER: Public Water Supply Number 0150476, RN101273167; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: public recreation park; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and (F), (3)(A)(ii), and (f)(3), and THSC, §341.033(d), by failing to collect and submit routine monthly bacteriological samples, by failing to collect and submit five routine bacteriological samples, by failing to collect and submit the required number of repeat bacteriological samples, and by exceeding the maximum contaminant level (MCL) for total coliform bacteria; PENALTY: \$1,200; ENFORCEMENT COORDINATOR: Chris Friesenhahn, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(6) COMPANY: Celanese Ltd.; DOCKET NUMBER: 2005-0927-AIR-E; IDENTIFIER: RN100227016; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §116.115(b)(2)(F), Permit Number 38296, and THSC, §382.085(b), by failing to prevent unauthorized emissions from the methanol emergency flare; PENALTY: \$3,000; ENFORCEMENT COORDINATOR: Ronnie Kramer, (806) 353-9251; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: Crosby Municipal Utility District; DOCKET NUMBER: 2005-1159-PWS-E; IDENTIFIER: RN101439628; LOCATION: Crosby, Harris County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and (5) and THSC, §341.0315(c), by failing to comply with the MCL for total trihalomethanes (TTHM) and haloacetic acids (HAA5); PENALTY: \$1,290; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 290-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: Dayton Drive-Thru, Inc.; DOCKET NUMBER: 2004-0235-PST-E; IDENTIFIER: Petroleum Storage Tank Facility Identification Number 0075117, RN102243748; LOCATION: Dayton, Liberty County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all underground storage tank (UST) systems; and 30 TAC §334.50(b)(2)(A)(i)(III) and (d)(1)(B)(ii) and the Code, §26.3475(a), by failing to monitor the USTs for releases; PENALTY: \$4,320; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: Duke Energy Field Services, LP; DOCKET NUMBER: 2004-1334-AIR-E; IDENTIFIER: Air Account Number WC0111F, RN100219781; LOCATION: Midland, Midland County, Texas; TYPE OF FACILITY: natural gas and natural gas liquids processing; RULE VIOLATED: 30 TAC §122.145(2)(C) and THSC, §382.085(b), by failing to submit the permit compliance certification; PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Edward Moderow, (512) 239-2680; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(10) COMPANY: City of Early; DOCKET NUMBER: 2005-0903-PWS-E; IDENTIFIER: RN101186039; LOCATION: Early, Brown

County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(b)(1) and THSC, §341.0315(c), by exceeding the MCL for TTHM; PENALTY: \$655; ENFORCEMENT COORDINATOR: Jill McNew, (915) 655-9479; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(11) COMPANY: Flo Community Water Supply Corporation; DOCKET NUMBER: 2005-0972-PWS-E; IDENTIFIER: RN101440949; LOCATION: Buffalo, Leon County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(e)(4), (m)(4), and (q)(1), by failing to employ at least two operators holding a Class C or higher groundwater license, by failing to maintain the piping distribution system in a watertight condition, and by failing to issue a boil water notice; PENALTY: \$1,280; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(12) COMPANY: City of Follett; DOCKET NUMBER: 2005-0738-MWD-E; IDENTIFIER: RN101916559; LOCATION: near Follett, Lipscomb County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10508001, and the Code, §26.121(a), by failing to comply with permitted effluent limits for five-day biochemical oxygen demand (BOD5) and TSS and by failing to notify the TCEQ within five working days of an effluent permit excursion of 40% or greater; PENALTY: \$11,760; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(13) COMPANY: City of Haskell; DOCKET NUMBER: 2004-0544-WQ-E; IDENTIFIER: RN102076866; LOCATION: Haskell, Haskell County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 0026891, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for total ammonia nitrogen; PENALTY: \$3,040; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(14) COMPANY: Lake LBJ Municipal Utility District; DOCKET NUMBER: 2005-1201-PWS-E; IDENTIFIER: RN101459824; LOCATION: near Marble Falls, Llano County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and (5) and THSC, §341.0315(c), by exceeding the MCL for TTHM and HAA5; PENALTY: \$1,290; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(15) COMPANY: Lyondell-Citgo Refining LP; DOCKET NUMBER: 2005-1172-AIR-E; IDENTIFIER: RN100218130; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: oil refinery; RULE VIOLATED: 30 TAC §101.20(3) and §116.715(a), New Source Review Flexible Air Permit Number 2167/PSD-TX-985, and THSC, §382.085(b), by failing to comply with permitted emissions limits; PENALTY: \$5,660; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: Paris Car Care, L.L.C. dba Quick & E-Z Lube; DOCKET NUMBER: 2005-1315-PST-E; IDENTIFIER: RN100530070; LOCATION: Paris, Lamar County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$840; ENFORCEMENT

COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(17) COMPANY: Rancho Del Lago, Inc. dba Stallion Springs; DOCKET NUMBER: 2005-1055-PWS-E; IDENTIFIER: RN101178382; LOCATION: near Fischer, Comal County, Texas; TYPE OF FACILITY: public water system; RULE VIOLATED: 30 TAC §290.46(d)(2)(A), (e), (i), and (j), and §290.110(b)(4), by failing to maintain the residual disinfectant concentration in the distribution system, by failing to operate the community water system under the direct supervision of a certified licensed operator, by failing to adopt an adequate plumbing ordinance or service agreement, and by failing to complete the service inspection certificate prior to providing continuous water service; 30 TAC §290.42(1) and §290.46(f), by failing to provide a plant operations manual and maintain records of operations; 30 TAC §290.45(b)(1)(C)(i), (ii), and (iv), and THSC, §341.0315(c), by failing to provide a well capacity of 0.6 gallons per connection, by failing to provide a storage capacity of 200 gallons per connection, and by failing to provide the system with a pressure tank capacity of 20 gallons per connection; PENALTY: \$2,286; ENFORCEMENT COORDINATOR: Chris Friesenhahn, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(18) COMPANY: William B. Colwell dba Star Mart 3; DOCKET NUMBER: 2005-1207-PST-E; IDENTIFIER: RN102255353; LOCATION: Waxahachie, Ellis County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor the UST system releases; PENALTY: \$1,500; ENFORCEMENT COORDINATOR: Deana Holland, (512) 239-2504; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: Steven Dale Killian dba Steves Texaco Plus; DOCKET NUMBER: 2005-0890-PST-E; IDENTIFIER: RN102014818; LOCATION: Groves, Jefferson County, Texas; TYPE OF FACILITY: full service station with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.72(3), by failing to report a suspected release; and 30 TAC §334.50(b)(2)(A)(i)(III) and (d)(1)(B)(iii)(IV) and the Code, §26.3475(a) and (c)(1), by failing to provide proper release detection; PENALTY: \$2,520; ENFORCEMENT COORDINATOR: Sunday Udoetok, (512) 239-0739; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(20) COMPANY: Ashfaq Ahmed dba Texaco-A K Food Mart; DOCKET NUMBER: 2005-0942-PST-E; IDENTIFIER: RN102466802; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to have valid terminal Stage II tests performed within the last 36 months; PENALTY: \$936; ENFORCEMENT COORDINATOR: Howard Willoughby, (361) 825-3100; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: The Goodyear Tire & Rubber Company; DOCKET NUMBER: 2005-0676-AIR-E; IDENTIFIER: RN102561925; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: rubber production; RULE VIOLATED: 30 TAC §116.110(a)(1) and §116.115(b)(2)(F), Air Permit Numbers 38755 and 9481, and THSC, §382.085(b), by failing to maintain emission rates below the allowable limit and failing to prevent unauthorized emissions; 30 TAC §101.201(a)(2)(D) and (b)(4), (5), and (8), and THSC, §382.085(b), by failing to include all required information on the initial report of an emission event and by failing to include all required information on the final reports for emission events; 30 TAC §101.211(c) and THSC,

§382.085(b), by failing to properly report a maintenance activity; and 30 TAC §106.476 and THSC, §382.085(b), by failing to meet the conditions of a permit by rule and prevent unauthorized emissions; PENALTY: \$14,832; ENFORCEMENT COORDINATOR: Edward Moderow, (512) 239-2680; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(22) COMPANY: City of Throckmorton; DOCKET NUMBER: 2005-0370-MWD-E; IDENTIFIER: TPDES Permit Number 24856, RN103138111; LOCATION: Throckmorton, Throckmorton County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 24856, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for TSS, BOD5, and flow; PENALTY: \$3,600; ENFORCEMENT COORDINATOR: Edward Moderow, (512) 239-2680; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(23) COMPANY: Trinity Bay Conservation District; DOCKET NUMBER: 2005-0944-MWD-E; IDENTIFIER: RN102077393; LOCATION: Winnie, Chambers County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10851-001, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for ammonia; PENALTY: \$3,960; ENFORCEMENT COORDINATOR: Michael Limos, (512) 239-5839; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: U.S. Silica Company; DOCKET NUMBER: 2005-1282-AIR-E; IDENTIFIER: RN100215672; LOCATION: Kosse, Limestone County, Texas; TYPE OF FACILITY: industrial sand mining, processing, bagging, and shipping operation; RULE VIOLATED: 30 TAC §116.770 and THSC, §382.085(b) and §382.0518(a), by failing to apply for a permit to operate the facility or submit a notice of shutdown; PENALTY: \$6,120; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(25) COMPANY: Wolf Hollow I, L.P.; DOCKET NUMBER: 2005-0881-AIR-E; IDENTIFIER: RN100219195; LOCATION: Granbury, Hood County, Texas; TYPE OF FACILITY: natural gas-fired combined-cycle power generation; RULE VIOLATED: 30 TAC §101.201(a)(1) and THSC, §382.085(b), by failing to notify the commission of ammonia and nitrogen oxides emissions events; and 30 TAC §116.115(b) and (c), Permit Number 41166/PSD-TX-939, and THSC, §382.085(b), by failing to comply with the ammonia emission limit of 10 parts per million by volume on a dry basis, by failing to comply with the ammonia emission limit of 37.8 pounds per hour (lbs/hr), and by failing to comply with the nitrogen oxides emission limit of 91.9 lbs/hr; PENALTY: \$42,152; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200504289

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: September 27, 2005



Request for Nominations

The Texas Commission on Environmental Quality (TCEQ) is requesting nominations for two individuals to serve on the Municipal Solid Waste Management and Resource Recovery Advisory Council (Council) for the following positions: a general public representative (term

expires August 31, 2011); and an elected official from a municipality with a population between 25,000 and 100,000 (term expires August 31, 2007).

The Council was created by the 69th Legislature in 1983. Members represent various interests; i.e., city and county solid waste agencies, public solid waste district or authority, commercial solid waste landfill operators, planning regions, an environmentalist, city and county officials, financial advisor, registered waste tire processor, professional engineer, solid waste professional, composting/recycling manager, and two general public representatives.

Upon request from the TCEQ commissioners, the Council reviews and evaluates the effect of state policies and programs on municipal solid waste management; makes recommendations on matters relating to municipal solid waste management; recommends legislation to encourage the efficient management of municipal solid waste; recommends policies for the use, allocation, or distribution of the planning fund; and recommends special studies and projects to further the effectiveness of municipal solid waste management and recovery for the State of Texas. The Council members are required by law to hold at least one meeting every three months. The meetings last one to two full days and are held in Austin, Texas. Travel expenses will be provided from appropriated funds by the TCEQ.

To nominate an individual: ensure the individual is qualified for the position which he/she is being considered; submit a biographical summary which includes work experience; and provide the nominee a copy of this request. The nominee needs to submit a letter indicating his/her agreement to serve, if appointed. A person can nominate him/herself for the "general public" position.

Written nominations and letters from nominees must be received by the TCEQ by 5:00 p.m. on October 21, 2005. The appointments will be considered at the TCEQ commissioner's meeting in Austin on November 30, 2005, at 12100 Park 35 Circle, Building E, Room 201S. Please mail all correspondence to Gary W. Trim, Waste Permits Division, TCEQ, P.O. Box 13087, MC 126, Austin, Texas 78711-3087 or fax to (512) 239-2007. Questions regarding the Council can be directed to Mr. Trim at (512) 239-6708, or gtrim@tceq.state.tx.us. Additional information regarding the Council is available on the following Web site: http://www.tceq.state.tx.us/permitting/waste_permits/advgroups/msw_advCouncil.html.

TRD-200504316

Stephanie Bergeron Perdue

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: September 28, 2005



Request for Nominations for Appointment to the Pollution Prevention Advisory Committee

The Texas Commission on Environmental Quality (commission) is soliciting nominations to fill several vacant positions on the Pollution Prevention Advisory Committee (PPAC). The legislatively created advisory committee, established under Texas Health and Safety Code (THSC), §361.0215, advises the commission on the state's policy and goals for pollution prevention and waste minimization.

The PPAC is composed of nine voting members who offer a balanced representation of environmental and public interest groups and the regulated community. The nine official members include: four members from an environmental or public interest organization; four members from the regulated community; and one member representing academia.

The commission may appoint *ex officio* members to provide additional participation from other members of the regulated community and the public who work on pollution prevention and performance-based regulatory initiatives. The commission currently has designated eight *ex officio* positions including one representative from each of the following sectors: small business, local government, agriculture, Department of Defense, labor, and the Clean Texas, Cleaner World Program. The commission also extends *ex officio* positions to the chairs of the House Environmental Regulation Committee and the Senate Natural Resources Committee.

Individuals interested in being considered by the commission should submit a one-page letter of interest and brief resume or biography. **All materials must be received by the commission no later than 5:00 p.m. on October 28, 2005.**

The PPAC advises the commission on: the appropriate organization of state agencies and the financial and technical resources required to aid the state in its efforts to promote waste reduction and minimization; the development of public awareness programs to educate citizens about hazardous waste and the appropriate disposal of hazardous waste and hazardous materials that are used and collected by households; the provision of technical assistance to local governments for the development of waste management strategies designed to assist small quantity generators of hazardous waste; other possible programs to more effectively implement the state's hierarchy of preferred waste management technologies as set forth in THSC, §361.023(a); and the implementation of the Recycling Market Development Implementation Program.

The PPAC also advises the commission on the creation and implementation of the strategically directed regulatory structure developed under Texas Water Code, §5.755, and reports quarterly to the commission on its activities, including suggestions or proposals for future activities and other matters that the committee considers important. The PPAC must report in writing to the commission a minimum of once per year, unless otherwise directed.

The PPAC operates under the requirements of 30 TAC Chapter 5, Advisory Committees and Groups. The PPAC meets a minimum of four times per year and as needed. Members may not miss three consecutive regularly scheduled meetings or more than half of all the regularly scheduled meetings in a one-year period. Quarterly meetings typically last one full day and are typically held at the commission headquarters in Austin, Texas. The 79th Legislature, 2005, authorized reimbursement for committee members' travel expenses.

The commissioners invite nominations for the following positions. Each nomination should include a brief cover letter and biographical summary that includes the individual's experience and qualifications, and an agreement to serve on the committee if appointed. Except as otherwise provided by law, advisory committee members may serve two- or four-year terms. Please submit nomination(s) for consideration by the commission for the following terms: one representative from an environmental or public interest group (vacant four-year term to expire on August 31, 2009); and *ex officio* appointments (with staggered terms) to fill vacant positions, including potential appointments from small business, local governments, and other interested parties.

Written nominations must be received in the Small Business and Environmental Assistance Division Office **by 5:00 p.m. on October 28, 2005**, via mail, hand delivery, email, or fax. Nominations should be directed to: Brian Christian, Small Business and Environmental Assistance Division (MC 112), Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087. They can also be sent via e-mail to bchristi@tceq.state.tx.us, or they can be faxed to (512) 239-3165. Documents can be submitted via hand delivery to the Small

Business and Environmental Assistance Division, 12100 Park 35 Circle, Building F, Suite 1301, Austin, Texas 78753.

Questions regarding the PPAC and the current nominations process can be directed to James Voelker at (512) 239-3182.

TRD-200504315

Stephanie Bergeron Perdue

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: September 28, 2005



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 Miller at (512) 463-5800 or (800) 325-8506.

Deadline: Semiannual GPAC/SPAC Report Due January 15, 2005

Rogelio Martinez, Hidalgo County Republican Party, 1305 Fullerton Avenue, McAllen, Texas 78504

Deadline: Semiannual GPAC/SPAC Report Due July 15, 2005

Leslie J. Baldwin, El Paso Pachyderms Pack Fund, 9455 Viscount Blvd., Apt. 116, El Paso, Texas 79925

Leslie J. Baldwin, Ya Basta Political Action Committee, 9455 Viscount Blvd., Apt. 116, El Paso, Texas 79925

Thomas Bonds, San Jacinto County Political Action Committee, 301 Hickory Hill Rd., Cleveland, Texas 77328

Stanley J. Briers, Plumbing Air Conditioning Mechanical Contractors Assoc. PAMCA Health & Safety Fund, 219 Whispering Oaks, Taylor Lake Village, Texas 77586

Mark Coomes, Texans for Equal Rights, P.O. Box 343, Denton, Texas 76202

Susan Daniels, Capital Area Progressive Democrats, P.O. Box 801, Austin, Texas 78767

Jim R. Davison, Moving Bedford Forward, P.O. Box 12, Bedford, Texas 76095

Nathan A. East, San Patricio County Republican Party (CEC), P.O. Box 1333, Portland, Texas 78374

Karen J. Estes, Dallas Gay & Lesbian Alliance PAC, P.O. Box 190712, Dallas, Texas 75219

Robert J. Franklin Jr., Lancaster Firefighters' Association Committee for Responsible Government, P.O. Box 856, Lancaster, Texas 75146

Paul J. Gebolys, Woodlands Voter Information Project, 594 Sawdust Rd., Ste. 214, The Woodlands, Texas 77380

Laura L. Harden, Concerned Citizens of Venus, 501 W. County Road 109, Venus, Texas 76084

Bryan E. Hartmann, Democratic Texas Political Action Committee, 3330 Matlock Rd., Ste. 108, Arlington, Texas 76015

Brenda A. Kindt, Dallas BOMA Political Action Committee, 16633 Dallas Pkwy., Ste. 200, Addison, Texas 75001-6898

Gwen J. King, Women for Change in 122 PAC, 8385 Rolling Acres Trl., Fair Oaks Ranch, Texas 78015

Sanora R. Kuprion-Thomas, ATTACH PAC, The Anti-Crime PAC, 3831 Turtle Creek #3F, Dallas, Texas 75219

Darwin Lau, Texas Commercial Energy Political Action Committee, 500 W. Bethany Dr., Ste. 300, Allen, Texas 75013

Byron LeFlore Jr., Committee For Judicial Reform, 10101 Reunion Pl., Ste. 500, San Antonio, Texas 78216

Vince Leibowitz, Van Zandt County Democratic Executive Committee (CEC), P.O. Box 217, Canton, Texas 75103

Edwin D. McCrory III, Commercial Real Estate Industry of Texas Political Action Committee, 1900 W. Loop South, Ste. 770, Houston, Texas 77027

Charlotte M. Miller, Walker County Republican Women, P.O. Box 6754, Huntsville, Texas 77342

Olu McGuinnis Otubusin, African Coalition Political Action Committee, 6430 Richmond Ave., Ste. 420, Houston, Texas 77057

Eugene M. Rackley IV, Coca-Cola Enterprises, Inc. Employee Non-partisan Committee for Good Gov't, 2500 Windy Ridge Pkwy, Atlanta, Georgia 30339

Chris J. Sawyer, Regions Financial Corporation, 417 20th St. North, Birmingham, Alabama 35203

Claudie Lee Short, Highland Lakes Democratic Women, 845 Aspen Lane, Marble Falls, Texas 78657

Susan Jo Tipton, Robertson County Republican Women, RR 2 Box 630, Hearne, Texas 77859

Lynda P. Vine, Foundation Appraisers Coalition of Texas PAC, 6106 Vance Jackson Rd. #2, San Antonio, Texas 78230-3373

Brian J. Welkes, Republican Liberty PAC, 7715 Robin Rd., Dallas, Texas 75209

Delridge D. Williams, Dallas Black Firefighters Association Political Action Committee, 1417 Logan Dr., Lancaster, Texas 75146

William R. Woody, Green Party of Texas, P.O. Box 1706, Kilgore, Texas 75663-1706

Deadline: Semiannual JC/OH Report Due July 15, 2005

Boyd W. Bauer, P.O. Box 1436, Beeville, Texas 78104

Susan Delgado, 2284 Jean St., Houston, Texas 78217-0271

Michael Esparza, 813 Parr Dr., Alice, Texas 78332

Michelle A. Fling, P.O. Box 353, Bastrop, Texas 78602

Michael A. Flores, 3800 Lynwood St., El Paso, Texas 79936

Michael L. Gregory, 2450 Burney Rd., Arlington, Texas 76006

James Rice Harris, 11014 Chevy Chase, Houston, Texas 77042

Douglas R. Hensley, 990 Cypress Station Dr. #2211, Houston, Texas 77090

Paul Herrmann, 320 S. Polk #902, Amarillo, Texas 79101

Andrew Butler Hill, 3933 Bunting Ave., Fort Worth, Texas 76107

Charlie Urbina Jones, 115 N. Cibolo St., San Antonio, Texas 78207

Donald J. Large, 11731 Fall Meadow Ln., Houston, Texas 77039

Robin L. Moore, 3821 Maid Marion Ln., Nacogdoches, Texas 75965

Julie Iris Oldham, 4523 Allegheny Dr., San Antonio, Texas 78229

Richard J. Roach, 133 Walnut Rd., Pampa, Texas 79065

Deadline: Monthly MPAC Report Due June 6, 2005

Shari Degan, Dallas Police Officer's PAC, 1412 Griffin Street East, Dallas, Texas 75215

Deadline: Monthly MPAC Report Due July 5, 2005

Shari Degan, Dallas Police Officer's PAC, 1412 Griffin Street East, Dallas, Texas 75215

Michael G. French, Texas Manufactured Housing Assn. Committee for Responsible Government, 816 Congress Ave., Suite 940, Austin, Texas 78701

Deadline: Monthly MPAC Report Due August 5, 2005

Michael G. French, Texas Manufactured Housing Assn. Committee for Responsible Government, 816 Congress Ave., Suite 940, Austin, Texas 78701

Deadline: Lobby Activities Report due January 10, 2005

Donna Warndorf, 405 W. 14th St., Austin, Texas 78701

Deadline: Lobby Activities Report due May 10, 2005

Melinda Wheatley, 208 Westhaven Dr., Austin, Texas 78746-4443

Carlos A. Truan, Jr., 10900 Research Blvd., Ste. 160-C, Austin, Texas 78759

Deadline: Lobby Activities Report due June 10, 2005

Melinda Wheatley, 208 Westhaven Dr., Austin, Texas 78746-4443

L. Alan Gray, 1108 Lavaca, Ste. 100, Austin, Texas 78701

Deadline: Lobby Activities Report due July 11, 2005

Melinda Wheatley, 208 Westhaven Dr., Austin, Texas 78746-4443

Michael J. Warner, P.O. Box 92167, Austin, Texas 78709-2167

Deadline: Lobby Registrations for 2005

Melodie Stegall, 3600 Parmer Lane, Ste. 120, Austin, Texas 78727

Lynda P. Vine, 6106 Vance Jackson #2, San Antonio, Texas 78230-3373

Deadline: Personal Financial Statement due February 11, 2004

Michael Gregory, 2450 Burney Rd., Arlington, Texas 76006

Deadline: Personal Financial Statement due May 2, 2005

Linda Motheral, 257th District Court, 1115 Congress St., Houston, Texas 77002-1927

Heriberto Silva, 401 N. Britton, Ste. 417, Rio Grande City, Texas 78582

Alonzo Lopez, Jr., 725 S. 18th St., Kingsville, Texas 78363-6481

William P. Mahomes, Jr., Simmons & Mahomes, Attorneys at Law, 900 Jackson St., Ste. 540, Dallas, Texas 75202-2405

Mary S. Welch, Texas School for Blind & Visually Impaired, 1222 Commerce St., Ste. 24, Dallas, Texas 75202-4306

Anton E. Hackebell, District Attorney District 38, P.O. Box 220, Hondo, Texas 78861-0220

Tony G. Hedges, D.O., 104 E. 21st St., Littlefield, Texas 79339-5510

Richard J. Roach, 133 Walnut Rd., Pampa, Texas 79065-1005

Comer J. Cottrell, Jr., Texas Racing Commission, 5317 Tate Ave., Plano, Texas 75093-3433

C. Wayne Smith, Dynamic Food, 1001 E. 33rd St., Lubbock, Texas 79404-1816

Bonnie Rangel, District Judge, 500 E. San Antonio Ave., Rm. 601, El Paso, Texas 79901-2429

Leslie Kinsel, P.O. Box 677, Cotulla, Texas 78014-0677

Bryon E. Miller, 1149 E. Commerce St., Ste. 205, San Antonio, Texas 78205-3315

Lance Phillips, 310 S. Ross Ave., Mexia, Texas 76667-3335

Jorge D. Perez, 208 Jonquil, McAllen, Texas 78501

Terdema L. Ussery, II, 5100 Pinehurst Dr., Frisco, Texas 75034-6816

Jose Menendez, 1518 Townsend House Dr., San Antonio, Texas 78251-4114

Gerald E. Wilson, 15915 Katy Frwy., Ste. 500, Houston, Texas 77094-1711

Carl Ray Polk, Jr., 692 Hoshall Dr., Lufkin, Texas 75904-0848

Patrick L. Brockett, University of Texas, Dept. MSIS, CBA 5.202, Austin, Texas 78712-1175

John C. Morris, 12807 Widge Dr., Austin, Texas 78727-4528

Kenneth A. James, Stephen F. Austin University Board of Regents, 1914 Riverglenn Forest Dr., Kingwood, Texas 77345-1779

Troy Simmons, DDS, 503 North 6th St., Longview, Texas 75601-6604

Thomas J. Ruiz, 404 Amalia Dr., Horizon City, Texas 79928-7200

James K. Burnett, 2611 Sir Percival Lane, Lewisville, Texas 75056-5710

Kosse Kyle Maykus, 722 Edward Ct., Southlake, Texas 76092-6065

William Michael Wachel, P.O. Box 600088, Dallas, Texas 75360-0088

Lawrence Allen, Jr., 4302 Grapevine St., Houston, Texas 77045-6253

Deadline: Personal Financial Statement due July 1, 2005

Linda R. Yanez, 1401 Shay Lane, Edinburg, Texas 78539-6000

Linda Diane Steinbrueck, 1401 Darden Hill Rd., Driftwood, Texas 78619-9778

Cliff Grumbles, 13407 Gable Village, San Antonio, Texas 78231

TRD-200504301

David Reisman

Executive Director

Texas Ethics Commission

Filed: September 27, 2005

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Texas Department of Housing and Community Affairs

Notice of Request for Proposals for Houston Area Market Study

The Texas Department of Housing and Community Affairs (TDHCA) announces the issuance of a Request for Proposals to provide market analysis relating to affordable housing in the Houston-Baytown-Sugar Land Metropolitan Statistical Area (MSA). The successful respondent will define and analyze submarkets within the MSA. The final report will include demographic information, housing supply analysis, analysis of anticipated demand, and summary and conclusions.

Proposals must be received at TDHCA by 5:00 pm on October 31, 2005 at the following address: Texas Department of Housing and Community Affairs, Attn: Brenda Hull, Real Estate Analysis, 507 Sabine Street, Suite 400, PO Box 13941, Austin, TX 78711-3941. For more information, see the Real Estate Analysis section of the TDHCA website <http://www.tdhca.state.tx.us/rea/>. Additional information regarding this RFP including the requirements for submitting a proposal may be obtained from Brenda Hull at TDHCA. All requests must be in writing to (512) 475-4420 (fax) or brenda.hull@tdhca.state.tx.us (email).

TRD-200504319
Edwina Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: September 28, 2005

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Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by PERMANENT GENERAL ASSURANCE CORPORATION OF OHIO, a foreign fire and/or casualty company. The home office is in Valley View, Ohio.

Application for admission to the State of Texas by FIRST AMERICAN PROPERTY & CASUALTY INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Santa Ana, California.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200504331
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: September 28, 2005

◆ ◆ ◆
Notice of Public Hearing

The Commissioner of Insurance will hold a public hearing under Docket No. 2625, on October 18, 2005, at 10:00 a.m. in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, to consider eight reappointments to the Windstorm Building Code Advisory Committee on Specifications and Maintenance (Committee).

The Commissioner is considering the reappointment of Ron Rohrbacher of League City, Texas, Jeffery Koellman of Corpus Christi, Texas, and Chester "Sonny" Sherman of Beaumont, Texas as building industry members; James Killian with Farmers Insurance Group, Corise Morrison with United Services Automobile Association, and Lisa Daigle Sturgeon with Allstate Insurance Company as insurance industry members; and Dr. Joseph Minor, P.E. of Rockport, Texas and Asa Yeaman of Rockport, Texas as public members.

The Commissioner will consider the appointment of a third public member at a later time.

The Committee members will serve a three year term beginning on September 1, 2005 and expiring on September 1, 2008.

Article 21.49 §6C of the Insurance Code provides for the appointment of an advisory committee to advise and make recommendations to the Commissioner on building requirements and maintenance in the plan of operation of the Texas Windstorm Insurance Association (TWIA). Article 21.49 §6C also provides for the membership of the Committee,

including three public members who reside in a designated catastrophe area, three building industry members who reside in a designated catastrophe area, and three members representing the insurance industry who write insurance in the designated catastrophe areas.

The hearing is held pursuant to the Insurance Code, Article 21.49 §5A, which provides that the Commissioner, after notice and hearing, may issue any orders considered necessary to carry out the purposes of Article 21.49 (Texas Windstorm Insurance Association Act). Any person may appear and testify for or against the proposed appointments.

TRD-200504330
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: September 28, 2005

◆ ◆ ◆
Third Party Administrator Applications

The following third party administrator application has been filed with the Texas Department of Insurance and is under consideration.

Application for admission to Texas of SE2, INC. (using the assumed name of Service End to End, Inc.), a foreign third party administrator. The home office is TOPEKA, KANSAS.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200504326
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: September 28, 2005

◆ ◆ ◆
Texas Lottery Commission

Instant Game Number 622 "Junior Break the Bank"

1.0 Name and Style of Game.

A. The name of Instant Game No. 622 is "JUNIOR BREAK THE BANK". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 622 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 622.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, STACK OF BILLS SYMBOL, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00, \$100, \$200 and \$2,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink

in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 622 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
STACK OF BILLS SYMBOL	WIN\$
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$40.00	FORTY
\$100	ONE HUND
\$200	TWO HUND
\$2,000	TWO THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 622 - 1.2E

CODE	PRIZE
ONE	\$1.00
TWO	\$2.00
FOR	\$4.00
FIV	\$5.00
TEN	\$10.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game.

The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, or \$20.00.

H. Mid-Tier Prize - A prize of \$40.00, or \$200.

I. High-Tier Prize - A prize of \$2,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (622), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 622-0000001-001.

L. Pack - A pack of "JUNIOR BREAK THE BANK" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fan-folded in pages of two (2). Tickets 001 and 002 will be on the top page, tickets 003 and 004 on the next page, etc.; and tickets 249 and 250 will be on the last page. Please note the books will be in an A - B configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "JUNIOR BREAK THE BANK" Instant Game No. 622 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "JUNIOR BREAK THE BANK" Instant Game

is determined once the latex on the ticket is scratched off to expose 9 (nine) play symbols. If the player matches any of YOUR NUMBERS play symbols to the LUCKY NUMBER play symbol, the player will win the prize indicated. If the player reveals a STACK OF BILLS play symbol, the player will win the prize indicated automatically. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 9 (nine) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 9 (nine) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;

16. Each of the 9 (nine) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 9 (nine) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning Your Numbers play symbols on a ticket.

C. No duplicate non-winning prize symbols on a ticket.

D. Non-winning prize symbols will never be the same as the winning prize symbol(s).

E. No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and \$5).

F. The auto win symbol will never appear more than once on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "JUNIOR BREAK THE BANK" Instant Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00, or \$200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not in some cases, required to pay a \$40.00 or \$200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "JUNIOR BREAK THE BANK" Instant Game prize of \$2,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "JUNIOR BREAK THE BANK" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or the Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "JUNIOR BREAK THE BANK" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "JUNIOR BREAK THE BANK" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on the number of tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed

on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 15,120,000 tickets in the Instant Game No. 622. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 622 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	1,693,440	8.93
\$2	967,680	15.63
\$4	181,440	83.33
\$5	181,440	83.33
\$10	120,960	125.00
\$20	60,480	250.00
\$40	11,025	1,371.43
\$200	2,835	5,333.33
\$2,000	189	80,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.70. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 622 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 622, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200504237
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: September 22, 2005

◆ ◆ ◆
Public Utility Commission of Texas

Notice of Application for a Certificate of Convenience and Necessity for Service Area Boundaries within Starr County

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application filed on September 16, 2005, for service area exception within Starr County, Texas.

Docket Style and Number: Joint Application of Medina Electric Cooperative, Incorporated (MEC) and AEP Texas Central Company (AEP) for a Certificate of Convenience and Necessity for Service Area Boundaries. Docket Number 31661.

The Application: MEC and AEP requested a boundary change to allow MEC to provide electric service to a single customer, Wilson Partnership Properties. AEP has agreed to the proposed boundary amendment to relocate the service area boundary between the two companies such

that the Wilson Partnership Properties will become a portion of the service area singly certificated to MEC because MEC has facilities closest to the site.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than October 14, 2005 by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 31661.

TRD-200504282
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 26, 2005



Notice of Application for Amendment to Certificated Service Area Boundary

Notice is given to the public of an application filed on September 16, 2005, with the Public Utility Commission of Texas (commission), for an amendment to a certificated service area boundary.

Docket Style and Number: Application of Southwestern Bell Telephone, L.P., doing business as SBC Texas, to Amend Certificate of Convenience and Necessity to Modify the Service Area Boundary of the Lake Houston Zone (SBC Texas) and the Humble Exchange (Sprint). Docket Number 31662.

The Application: This minor boundary amendment is being requested to revise the boundary between the Lake Houston Zone of the Houston Metropolitan Exchange of SBC Texas and the Humble Exchange of Central Telephone Company of Texas, doing business as Sprint (Sprint). The proposed boundary amendment will realign the boundary between SBC Texas and Sprint in order to avoid dividing lots within a new subdivision that is currently under construction. Sprint has provided a letter of concurrence for the proposed change. There are no current customers within the area affected by this application.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by October 14, 2005, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 31662.

TRD-200504283
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 26, 2005



Notice of Application for Designation as an Eligible Telecommunications Carrier

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on September 22, 2005, for designation as an eligible telecommunications carrier (ETC) pursuant to P.U.C. Substantive Rule §26.418.

Docket Title and Number: Application of Caprock Cellular Limited Partnership for Designation as an Eligible Telecommunications Carrier (ETC). Docket Number 31724.

The Application: The company is requesting ETC designation in the study area of a rural incumbent local exchange carrier, Cap Rock Telephone Cooperative, Incorporated, and the exchanges of Aspermont, Crosbyton, Lorenzo, Post, and Ralls, in which Valor Telecommunications of Texas, L.P. is the incumbent provider.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than October 27, 2005. 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 31724.

TRD-200504284
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 26, 2005



Notice of Draft Amendments (Strawman) to P.U.C. Substantive Rule, §25.236

The Public Utility Commission of Texas (commission) has issued for public comment a strawman draft of amendments to P.U.C. Substantive Rule, §25.236, relating to Recovery of Fuel Costs. The draft has been filed in Project 29630 and can be accessed on the PUC website at <http://www.puc.state.tx.us/rules/rulemake/29630/29630.cfm>.

Comments on the draft amendments to §25.236 (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, before 3:00 p.m. on Monday, November 7, 2005, and reply comments may be submitted before 3:00 p.m. on Monday, November 21, 2005.

Comments should be organized in a manner consistent with the organization of the draft amended rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the draft sections as well as comments on the following questions:

Question 1: Should the commission permit recovery of demand or capacity costs as eligible fuel costs?

Question 2: What expenses recorded in a utility's base rates should be used to determine the expenses by which the incremental capacity costs should be offset?

Question 3: How should those expenses be determined if they are not expressly identified in the commission order setting the utility's current revenue requirement and rates?

Question 4: How should the commission calculate an adjustment to a utility's expenses for load growth?

Question 5: How should the annual load growth adjustment be used in the monthly fuel and purchased power balance calculation?

Question 6: How should the revenue and revenue growth for embedded generation costs be considered in this adjustment?

Question 7: How should the commission address the retirement of generation facilities?

Question 8: How should the commission address construction of new generation?

Question 9: How should the commission treat the adjustment once a utility files a rate proceeding or has implemented a capacity rider?

All comments should refer to Project Number 29630.

The commission staff will hold a workshop regarding the strawman draft on Wednesday, December 14, 2005, at 9:30 a.m. on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. By Wednesday, December 7, 2005, the commission shall make available in Central Records under Project Number 29630 an agenda for the format of the workshop.

Questions regarding this notice should be referred to Brian Almon, Infrastructure Reliability Division, (512) 936-7355. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200504312
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 27, 2005



Notice of Emergency Motion filed by Entergy Gulf States, Inc. for Special Cost Recovery Treatment

On Monday August 29, 2005, Hurricane Katrina struck the Gulf Coast of the United States causing significant damage in Louisiana, Mississippi and Alabama. On September 1, 2005, Governor Perry issued a disaster Proclamation certifying that Hurricane Katrina has created emergency conditions for the people of Texas beginning on September 1, 2005. Governor Perry's Proclamation further provides that "all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the incident."

On September 9, 2005, the commission issued an order suspending certain rules of the commission pursuant to the Governor's September 1 disaster Proclamation.

On September 9, 2005, Entergy Gulf States, Inc. (EGSI) filed an emergency motion for special cost recovery treatment in response to Hurricane Katrina. EGSI's motion requested that the commission also suspend P.U.C. Substantive Rule 25.236(a)(4) in order to allow EGSI to purchase certain resources from its sister operating company, Entergy New Orleans, Inc. (ENOI). In the alternative, EGSI requested a special circumstances finding in advance to allow the pass through of capacity costs associated with the purchase of ENOI's surplus resources as eligible fuel expense. According to EGSI, Hurricane Katrina caused ENOI to lose a significant portion of the load it serves. ENOI, therefore, has more resources than necessary to serve its load and, temporarily, does not have load and revenues sufficient to support certain purchased power agreements.

EGSI stated that it can acquire one-half of the purchased power resources listed below from ENOI on a temporary basis provided that EGSI may recover the associated capacity and energy costs as eligible fuel expense. Per EGSI, the purchase of ENOI's surplus resources would: (1) mitigate the financial burden placed on ENOI as a result of the damage caused by Hurricane Katrina, (2) allow more time to be dedicated to service restoration efforts, and (3) offer fuel cost savings to EGSI's Texas customers.

The commission finds that EGSI's motion, as supported by Staff, Cities and East Texas Cooperatives, Inc., has merit. Rather than suspend its rules, the commission finds that it is appropriate to address EGSI's alternative request for a special circumstances finding pursuant to P.U.C. Substantive Rule 25.236(a)(6). Furthermore, the commission finds that

good cause exists for an exception to P.U.C. Procedural Rule 22.125(b) and to grant EGSI's motion on an interim basis.

Affected parties shall have 10 days from the date of publication of notice in the *Texas Register* to request a hearing on EGSI's emergency motion. If no person requests a hearing within 10 days of publication of notice in the *Texas Register*, the interim order shall become final without any further action by any party or the commission. If any person timely requests a hearing, this Order shall not become final. The final order issued after such hearing, however, shall only have prospective effect from the date of that final order to the extent such final order grants relief that differs from the interim relief granted by this Order.

Requests for hearing or written comments regarding EGSI's motion may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, Austin, Texas 78711 on or before Monday, October 17, 2005. Pursuant to P.U.C. Procedural Rule 22.71, 16 copies must be filed, and all comments should refer to Project Number 31710.

TRD-200504313
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 27, 2005



Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing on September 20, 2005, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on September 29, 2005.

Docket Title and Number: CenturyTel of Lake Dallas, Incorporated's Application for Approval of LRIC Study For a Promotion of Business and Residence Service Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 31699.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 31699. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 31699.

TRD-200504242
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 22, 2005



Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing on September 20, 2005, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C.

Substantive Rule §26.214. The Applicant will file the LRIC study on September 29, 2005.

Docket Title and Number: CenturyTel of Port Aransas' Application for Approval of LRIC Study For a Promotion of Business and Residence Service Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 31700.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 31700. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 31700.

TRD-200504243

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: September 22, 2005



Public Notice of Request for Comments Regarding the Rulemaking Relating to the Discount for Low-Income Customers

The Public Utility Commission of Texas (commission) has initiated Project Number 31417 to amend its rules relating to the discount for low-income customers.

The commission is reviewing the possibility of continuing the following low-income benefits. Eligibility for these benefits was previously determined by the Low-Income Discount Administrator, who administered the rate reduction program but who will not be operating the program for the FY 2006-FY 2007 biennium.

- PUC Substantive Rule 25.478(e)(3), *Credit Requirements and Deposits*, which provides that a customer or applicant who qualifies for the rate reduction program under PUC Substantive Rule 25.454 shall be eligible to pay any deposit that exceeds \$50 in two equal installments.

- PUC Substantive Rule 25.480(c)(1), *Bill Payments and Adjustments*, which provides that customers receiving a low-income discount pursuant to PURA §39.903 shall not be charged a late fee on a bill for delinquent service.

The commission is also reviewing the possibility of expanding the following program:

- PUC Substantive Rule 25.480(g)(2), *Bill Payments and Adjustments*, which requires Retail Electric Providers (REPs) to implement a bill payment assistance program for residential electric customers.

To aid in the review of these provisions, the commission seeks comments from interested parties in response to the following questions.

Topic 1: Retail Electric Provider Options

1. Should eligible low-income customers receive the benefits afforded by PUC Substantive Rules 25.478(e)(3) and 25.480(c)(1), when the rate reduction program is not in effect? Please explain.

2. If the benefits afforded by PUC Substantive Rules 25.480(c)(1) and 25.478(e)(3) are continued, should REPs be required to enroll customers by customer request, or be required to pay a third-party administrator to provide a list of customers who are eligible for these benefits?

a) If REPs are required to enroll customers by customer request:

i) Should REPs have the discretion to request proof of eligibility, or should the commission develop specific rules regarding the establishment of eligibility?

ii) Would this option increase the potential for the redlining of low-income customers?

b) If REPs are required to pay a third-party administrator to provide an eligibility list, please propose how such a requirement would be implemented.

3. Should the commission limit or eliminate the ability of REPs to charge late fees to all customers? Please explain.

4. If your company is required to enroll customers by request, or to pay a third-party administrator to determine customer eligibility, do you anticipate paying for the resulting costs by flowing the costs through to a broad range of customers or reducing the funds you voluntarily contribute to bill payment assistance programs? Are there other options by which your company could recover these costs?

5. For the period of September 2004 through August 2005, please provide the following information by month in a Microsoft Excel file. If unable to provide exact numbers, please estimate and note the estimation.

a) The number of customers who have received the benefit afforded by PUC Substantive Rule 25.480(c)(1).

b) The number of customers who have received the benefit afforded by PUC Substantive Rule 25.478(e)(3).

c) The amount of revenue generated by late fees from all customers.

d) The revenue loss directly attributable to the benefit afforded by PUC Substantive Rule 25.480(c)(1).

6. In the last year, has your company utilized the LITE-UP eligibility list for the purpose of PUC Substantive Rule 25.478(e)(3)? If not, what did your company require from the customer to prove eligibility?

7. If REPs are required to continue providing the benefits afforded by PUC Substantive Rules 25.480(c)(1) and 25.478(e)(3) by customer request and to determine eligibility as a part of the enrollment process, briefly explain the anticipated need for modifications to:

a) enrollment processes;

b) business processes; and

c) computer systems.

Please state whether the costs and resources involved are expected to be significant, and provide a cost estimate.

Topic 2: Bill Payment Assistance

8. Should the commission expand the bill payment assistance program requirement of PUC Substantive Rule 25.480(g)(2)? If so, please explain.

9. How can the commission encourage increased donations to the bill payment assistance program required by PUC Substantive Rule 25.480(g)(2)?

Topic 3: Transmission and Distribution Utility Options

10. Should the commission institute a separate Low-Income Discount Program to be funded through a fee charged by Transmission and Distribution Utilities (TDUs)? Please explain.

11. Should the commission institute a fee to be charged by TDUs to fund a third-party administrator to provide an eligibility list to REPs for the benefits afforded by PUC Substantive Rules 25.478(e)(3) and 25.480(c)(1)? Please explain.

Topic 4: Other Options

12. Are there other low-income benefit options that the commission should consider? Please explain.

Responses on the above questions may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326. All comments should refer to Project Number 31417. Comments must be received by 3:00 p.m. on Monday, November 7, 2005. Reply comments must be received by Monday, November 14, 2005.

Questions concerning this notice should be referred to Lauren Damen, Electric Division, at 512-936-7401 or by email at lauren.damen@puc.state.tx.us. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200504329
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 28, 2005

Texas Department of Transportation

Aviation Division - Request for Proposal for Professional Services

The Aviation Division of the Texas Department of Transportation (TxDOT) intends to engage an aviation professional services firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional services as described below.

Conduct a full update to the 2002 Economic Impact Study related to General Aviation in Texas. This study will evaluate the economic impact of all publicly owned or operated basic utility, general utility, transport and reliever airports within the Texas Airport System Plan.

TXDOT CSJ #: 06ECOIMPT. The DBE goal is set at 0%. TxDOT Project Manager is Bruce Ehly.

Interested firms shall utilize the Form AVN-551, titled "Aviation Planning Services Proposal". The form may be requested from TxDOT Aviation Division, 125 E. 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, URL address:

<http://www.dot.state.tx.us/avn/avn551.doc>.

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. 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-551, firms are encouraged to download Form AVN-551 from the TxDOT website as addressed above. Utilization of Form AVN-551 from a previous download may not be the exact same format. Form AVN-551 is an MS Word Template.

Five unfolded copies of Form AVN-551 must be postmarked by U. S. Mail by midnight October 27, 2005. Mailing address: TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 pm October 28, 2005. Overnight address: TxDOT Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Please mark on the envelope of the forms to the attention of Deborah Blechert. Hand delivery must be received by 4:00 p.m. October 28, 2005. Hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Please mark the envelope of the forms to the attention of Deborah Blechert. Electronic facsimiles or forms sent by email will not be accepted.

The consultant selection committee will be composed of TxDOT Aviation Division staff members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating planning proposals can be found at: www.dot.state.tx.us/business/avnconsultinfo.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.

If there are any procedural questions, please contact Anna Saldana, Grant Manager, or Bruce Ehly, Project Manager, for technical questions at 1-800-68-PILOT (74568).

TRD-200504320
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: September 28, 2005

Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site: <http://www.dot.state.tx.us>. Click on Aviation, then click on Aviation Public Hearing; or, contact Joyce Moulton, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or (800)-68- PILOT.

TRD-200504300
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: September 27, 2005

Request for Proposals from Law Firms - Bond Counsel

The Texas Department of Transportation (department) requests proposals from law firms interested in providing legal representation required by the department and the Texas Transportation Commission (commission) with respect to tax exempt bond matters. The legal representation required by the commission and the department includes the usual and

necessary services of a bond counsel in connection with the issuance, sale, and delivery of bonds and other obligations on which the interest is excludable from gross income under existing federal tax law. The department's general counsel will make the selection of bond counsel.

Description: The commission is granted powers to issue revenue bonds for transportation projects on behalf of the department, a state agency. The commission may issue bonds and other public securities under:

- (1) Chapter 227, Transportation Code, for the development of facilities on the Trans-Texas Corridor;
- (2) Chapter 91, Transportation Code, for the development of department rail facilities;
- (3) Section 222.003, Transportation Code, which authorizes the issuance of bonds and other public securities secured by a pledge of and payable from revenue deposited to the credit of the state highway fund, the proceeds of which can be used to fund state highway improvement projects;
- (4) Chapter 228, Transportation Code, for the development of toll projects on the state highway system;
- (5) Subchapter M, Chapter 201, Transportation Code, which authorizes the issuance of bonds, notes, and other public securities secured by money in the Texas Mobility Fund, the proceeds of which can be used to fund state highway improvement projects, publicly owned toll roads, and other public transportation projects;
- (6) Section 201.115, Transportation Code, which authorizes the commission and the department to issue notes or borrow money from any source to carry out the functions of the department, and which notes or loans may not have a term of more than two years or exceed an amount (combined with any amounts outstanding on other loans) which is two times the average monthly revenue deposited to the State Highway Fund for the twelve months preceding the month of the loan;
- (7) Subchapter D, Chapter 222, Transportation Code, which authorizes the commission to issue bonds to provide money for the capitalization of the State Infrastructure Bank;
- (8) Section 222.035, Transportation Code, which requires the department to establish and administer a program for private activity bonds issued for highway facilities or surface freight transfer facilities in this state; and

(9) Subchapter O, Chapter 201, Transportation Code, which authorizes (subject to voter approval) the issuance of obligations secured by money in the Texas Rail Relocation and Improvement Fund, the proceeds of which can be used to pay the costs of relocating, constructing, reconstructing, acquiring, improving, rehabilitating, or expanding publicly or privately owned rail facilities.

The commission and the department will need the services of bond counsel with respect to the issuance of bonds and other public securities under one or more of the foregoing programs. The department invites responses to this request for proposals from qualified firms that can demonstrate competence and expertise in providing bond counsel services and advice to governmental agencies that issue revenue bonds and general obligation bonds. Extensive prior experience in providing legal services related to tax exempt bond matters is required.

Responses to the request for proposals will be evaluated using the following general criteria: the firm's qualifications, expertise, and experience in providing bond counsel services to governmental agencies that issue revenue bonds and general obligation bonds, particularly for transportation projects, the expertise of the attorneys who will be assigned to work on such matters, and information relative to the capabilities and resources of the firm's offices. The specific criteria under the foregoing categories will be identified in the request for proposals.

Copies of the request for proposals are available at the offices of the department's Finance Division and Office of General Counsel, 125 East 11th Street, Austin, Texas 78701, or will be provided by facsimile or email to each firm providing a written notice that it desires to respond. For questions, please telephone Jack Ingram, Associate General Counsel at (512) 463-8630.

Deadline for Submission of Response: All proposals must be received by the Office of General Counsel of the Texas Department of Transportation at the previously stated address no later than 5:00 p.m., Friday, October 21, 2005.

TRD-200504321
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: September 28, 2005



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 30 (2005) is cited as follows: 30 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 "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 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 (800) 226-7199.

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 (using Arabic numerals) and Parts (using Roman 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 (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; TAC stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).