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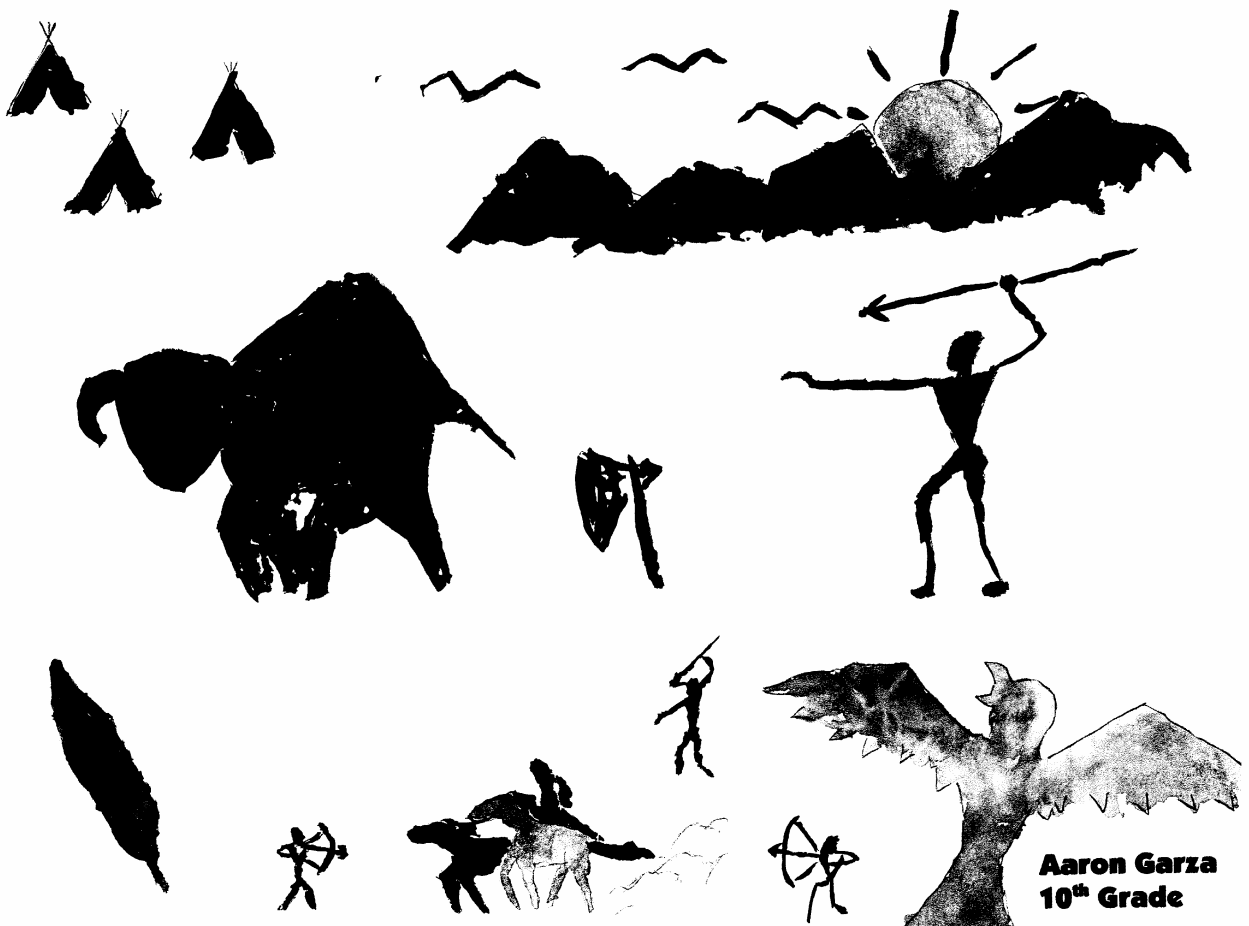
# TEXAS REGISTER

*Volume 31 Number 40*

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*Pages 8307 - 8444*

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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: [register@sos.state.tx.us](mailto:register@sos.state.tx.us)

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

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

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

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

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

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

...

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

# THE GOVERNOR

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

## Appointments

### Appointments for September 5, 2006

Appointed to the rank of Brigadier General in Headquarters, Texas State Guard, Austin, Texas, pursuant to Government Code 431.055, with all rights, privileges and emoluments appertaining to this office, Colonel Victor M. Ortiz, Jr.

Appointed to the rank of Brigadier General in Headquarters, Texas State Guard, Austin, Texas, pursuant to Government Code 431.055, with all rights, privileges and emoluments appertaining to this office, Colonel Robert J. Cheeseman.

### Appointments for September 18, 2006

Appointed to the Texas Commission of Licensing and Regulation for a term to expire February 1, 2007, Frank S. Denton of Conroe (replacing Gina Parker who resigned).

Designating Frank S. Denton as Presiding Officer of the Texas Commission of Licensing and Regulation for a term at the pleasure of the Governor. Mr. Denton will be replacing Gina Parker as presiding officer. Ms. Parker resigned from the commission.

Appointed to the Governor's Criminal Justice Advisory Council for a term at the pleasure of the Governor, Lyndel C. Williams of Lexington (replacing Patsy Day of Dallas who resigned).

### Appointments for September 20, 2006

Appointed to the Texas Public Safety Commission for a term to expire December 31, 2011, Louis E. Sturns of Fort Worth (replacing Colleen McHugh of Corpus Christi who resigned).

Appointed to the Texas Diabetes Council for a term to expire February 1, 2007, Terence E. Fluharty of Austin (replacing Jeffrey Ross of Belaire who resigned).

Appointed to the Texas Diabetes Council for a term to expire February 1, 2011, Maria Duarte-Gardea of El Paso (replacing Belinda Bazan-Lara of San Antonio whose term expired).

Appointed to the Early Childhood Intervention Advisory Committee for a term to expire February 1, 2007, Michelle J. Smith of Justin (replacing Wendy Benz of Austin who resigned).

Appointed to the Early Childhood Intervention Advisory Committee for a term to expire February 1, 2009, Katherine Lee of Gatesville (replacing Anasa Brooks of Austin who resigned).

Appointed to the Early Childhood Intervention Advisory Committee for a term to expire February 1, 2009, Henry E. Darrington of Austin (Pursuant to HHSC re-organization).

Appointed to the Early Childhood Intervention Advisory Committee for a term to expire February 1, 2009, Terry Beattie of Austin (Pursuant to Individuals with Disabilities Education Act).

Appointed to the Early Childhood Intervention Advisory Committee for a term to expire February 1, 2009, Barbara James of Austin (Pursuant to IDEA).

Appointed to the Early Childhood Intervention Advisory Committee for a term to expire February 1, 2011, Pamela M. Perez of El Paso (replacing Barbara Moss of Irving whose term expired).

Appointed to the Early Childhood Intervention Advisory Committee for a term to expire February 1, 2011, John David McCloy of Houston (replacing Audrey Garza of Uvalde whose term expired).

Appointed to the Early Childhood Intervention Advisory Committee for a term to expire February 1, 2011, Rachel Hernandez Reynolds of Weslaco (replacing Shawn Riley of Amarillo whose term expired).

Appointed to the Early Childhood Intervention Advisory Committee for a term to expire February 1, 2011, Richard C. Adams, M.D. of Plano (Dr. Adams is being reappointed).

Appointed to the Early Childhood Intervention Advisory Committee for a term to expire February 1, 2011, Monica Villegas-Thyssen of Cedar Park (replacing Jonas Schwartz of Austin who resigned).

Appointed to the Early Childhood Intervention Advisory Committee for a term to expire February 1, 2011, Dorothy Jean Calhoun of Missouri City (replacing Judy Wilgren of Austin who resigned).

Appointed to the Texas Department of Housing and Community Affairs for a term to expire January 31, 2011, Gloria L. Ray of San Antonio (replacing Vidal Gonzalez of San Antonio whose term expired).

Rick Perry, Governor

TRD-200605264



# THE ATTORNEY GENERAL

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

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

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

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

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Request for Opinions

**RQ-0529-GA**

**Requestor:**

The Honorable Susan D. Reed

Bexar County Criminal District Attorney

Bexar County Justice Center

300 Dolorosa, Fifth Floor

San Antonio, Texas 78205-3030

Re: Whether an amusement machine that records a player's winnings onto a stored-value debit card is a "gambling device" for purposes of §47.01(4)(B) of the Penal Code (Request No. 0529-GA)

**Briefs requested by October 23, 2006**

**RQ-0530-GA**

**Requestor:**

The Honorable Rodney Ellis

Chair, Committee on Government Organization

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Whether certain employees of an independent school district may be compensated for their service as a member of a city council (Request No. 0530-GA)

**Briefs requested by October 23, 2006**

**RQ-0531-GA**

**Requestor:**

Mr. Timothy A. Braaten, Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

6330 U.S. Highway 290 East, Suite 200

Austin, Texas 78723

Re: Whether an open-enrollment charter school is authorized to operate a police department (Request No. 0531-GA)

**Briefs requested by October 25, 2006**

**RQ-0532-GA**

**Requestor:**

The Honorable Bart E. Medley

Jeff Davis County Attorney

Post Office Box 201

Fort Davis, Texas 79734

Re: Whether an elected office holder may display or distribute campaign material at his public office (Request No. 0532-GA)

**Briefs requested by October 25, 2006**

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

TRD-200605328

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: September 27, 2006

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# PROPOSED RULES

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

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

## TITLE 10. COMMUNITY DEVELOPMENT

### PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

#### CHAPTER 303. REGISTRATION SUBCHAPTER A. REGISTRATION OF BUILDERS

##### 10 TAC §303.22

The Texas Residential Construction Commission proposes new §303.22 of 10 TAC Chapter 303, Subchapter A, regarding the evaluation of criminal backgrounds of builders and remodelers and their agents, including those who have had a criminal conviction, guilty plea or plea of no contest. The new rule includes the factors discussed in Occupations Code Chapter 53 and the types of crimes that relate to the occupation of a builder or remodeler.

Susan K. Durso, General Counsel, has determined that for each year of the first five-year period the new section is in effect there will be no fiscal implications for state and local governments as a result of enforcing or administering the proposed new section.

Ms. Durso has also determined that for each year of the first five-year period the new section is in effect the public will benefit from having better information about the factors considered when determining eligibility to become or remain a registered a builder or remodeler.

Ms. Durso has also determined that for each year of the first five-year period the new section is in effect there will be no significant effect on individuals or large, small and micro-businesses because of the adoption of the new section.

Ms. Durso has also determined that for each year of the first five-year period the new section is in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under Administrative Procedure Act §2001.022.

Interested persons may submit written comments (12 copies) on the proposed new section to Susan K. Durso, General Counsel, Texas Residential Construction Commission, P.O. Box 13144, Austin, Texas, 78711. The deadline for submission of comments is thirty (30) days from the date of publication of the proposed new section in the *Texas Register*. Comments received after that date will not be considered. Comments should be organized in a manner consistent with the organization of the proposed rule. Comments may be submitted electronically to [comments@trcc.state.tx.us](mailto:comments@trcc.state.tx.us). For comments submitted electronically, please include "New Rule 303.22" in the subject line. Comments submitted electronically to another

electronic address or that do not include "New Rule 303.22" in the subject line may not be considered.

The new section is proposed pursuant to Property Code §408.001, which provides rulemaking authority to the commission, Property Code Chapter 416, regarding registration under Title 16 and Occupations Code Chapter 53, regarding the consideration of criminal histories as it relates to licensed occupations.

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

§303.22. Criminal Convictions, Guilty Pleas and Pleas of No Contest.

(a) In determining whether to deny an application for registration, a renewal application or whether to revoke a registration under this subchapter because of a criminal conviction, guilty plea or plea of nolo contendere (no contest) of a registered person or agent, the commission will consider the factors identified in Occupations Code Chapter 53 in addition to the factors considered in §303.5 of this subchapter, and whether the crime indicates that the builder, remodeler or an agent of a builder or remodeler is not honest, trustworthy or has integrity or the crime relates to the duties and responsibilities of a registered builder or remodeler.

(b) A person acting as a builder, remodeler or as the registered agent for a builder or remodeler may be placed in a position of trust, may become privy to personal and financial information of homeowners, may be granted unsupervised access to a home where children may be present, and may acquire unique information concerning the security of a home. Therefore, the crimes considered by the commission to relate to the occupation of builder or remodeler include, but are not limited to:

- (1) any felony or misdemeanor of which fraud, dishonesty, or deceit is an element;
- (2) any crime involving moral turpitude;
- (3) misapplication of trust funds;
- (4) criminal homicide;
- (5) kidnapping;
- (6) assault;
- (7) sexual assault;
- (8) injury to a child, elderly individual, or disabled individual;
- (9) terroristic threat;
- (10) burglary;
- (11) arson;
- (12) robbery;

- (13) theft;
- (14) bribery;
- (15) tampering with witness;
- (16) insurance fraud;
- (17) money laundering;
- (18) perjury;
- (19) tampering with governmental record;
- (20) fraudulent filing of financing statement; and
- (21) possession or promotion of child pornography.

(c) The commission shall revoke a person's registration or a registered agent's registration under this subchapter upon the registered person's or registered agent's imprisonment for a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

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 25, 2006.

TRD-200605288  
 Susan K. Durso  
 General Counsel  
 Texas Residential Construction Commission  
 Earliest possible date of adoption: November 5, 2006  
 For further information, please call: (512) 475-0595



## SUBCHAPTER C. REGISTRATION OF THIRD-PARTY INSPECTORS

### 10 TAC §303.211

The Texas Residential Construction Commission proposes new §303.211 of 10 TAC Chapter 303, Subchapter C, regarding the evaluation of criminal backgrounds of third-party inspectors including those who have had a criminal conviction, guilty plea or plea of no contest. The new rule includes the factors discussed in Occupations Code Chapter 53 and the types of crimes that relate to the duties of an individual serving as a registered third-party inspector.

Susan K. Durso, General Counsel, has determined that for each year of the first five-year period the new section is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed new section.

Ms. Durso has also determined that for each year of the first five-year period the new section is in effect the public will benefit from having better information about the factors considered when determining eligibility to become or remain a registered a third-party inspector.

Ms. Durso has also determined that for each year of the first five-year period the new section is in effect there will be no significant effect on individuals or large, small and micro-businesses because of the adoption of the new section.

Ms. Durso has also determined that for each year of the first five-year period the new section is in effect there should be no

effect on a local economy; therefore, no local employment impact statement is required under Administrative Procedure Act §2001.022.

Interested persons may submit written comments (12 copies) on the proposed new sections to Susan K. Durso, General Counsel, Texas Residential Construction Commission, PO Box 13144, Austin, Texas, 78711. The deadline for submission of comments is thirty (30) days from the date of publication of the proposed new section in the *Texas Register*. Comments received after that date will not be considered. Comments should be organized in a manner consistent with the organization of the proposed rule. Comments may be submitted electronically to [comments@trcc.state.tx.us](mailto:comments@trcc.state.tx.us). For comments submitted electronically, please include "New Rule 303.211" in the subject line. Comments submitted electronically to another electronic address or that do not include "New Rule 303.211" in the subject line may not be considered.

The new section is proposed pursuant to Property Code §408.001, which provides rulemaking authority to the commission, Property Code Chapter 416, regarding registration under Title 16 and Occupations Code Chapter 53, regarding the consideration of criminal histories as it relates to licensed occupations.

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

§303.211. Criminal Convictions, Guilty Pleas and Pleas of No Contest.

(a) In determining whether to deny an application for registration, a renewal application or whether to revoke a registration under this subchapter because of a criminal conviction, guilty plea or plea of nolo contendere (no contest) of an applicant or a registered third-party inspector, the commission will consider the factors identified in Occupations Code Chapter 53 in addition to the factors considered in §303.203 of this subchapter and whether the crime relates to the duties and responsibilities of a registered third-party inspector.

(b) An individual acting as a third-party inspector may be placed in a position of trust, may become privy to personal and financial information of homeowners, may be granted unsupervised access to a home where children may be present, and may acquire unique information concerning the security of a home. Therefore, the crimes considered by the commission to relate to the occupation of third-party inspector include, but are not limited to:

- (1) any felony or misdemeanor of which fraud, dishonesty, or deceit is an element;
- (2) any crime involving moral turpitude;
- (3) criminal homicide;
- (4) kidnapping;
- (5) assault;
- (6) sexual assault;
- (7) injury to a child, elderly individual, or disabled individual;
- (8) terroristic threat;
- (9) burglary;
- (10) arson;
- (11) robbery;
- (12) theft;

- (13) bribery;
- (14) tampering with witness;
- (15) insurance fraud;
- (16) money laundering;
- (17) perjury;
- (18) tampering with governmental record;
- (19) fraudulent filing of financing statement; and
- (20) possession or promotion of child pornography.

(c) The commission shall revoke an individual's registration under this subchapter upon the registered individual's imprisonment for a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

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 25, 2006.

TRD-200605289

Susan K. Durso

General Counsel

Texas Residential Construction Commission

Earliest possible date of adoption: November 5, 2006

For further information, please call: (512) 475-0595



## SUBCHAPTER D. THIRD-PARTY WARRANTY COMPANIES

### 10 TAC §303.267

The Texas Residential Construction Commission proposes new §303.267 of 10 TAC Chapter 303, Subchapter D, regarding the evaluation of criminal backgrounds of third-party warranty companies or their agents those who have had a criminal conviction, guilty plea or plea of no contest. The new rule includes the factors discussed in Occupations Code Chapter 53 and the types of crimes that relate to the occupation of a third-party warranty company.

Susan K. Durso, General Counsel, has determined that for each year of the first five-year period the new section is in effect there will be no fiscal implications for state and local governments as a result of enforcing or administering the proposed new section.

Ms. Durso has also determined that for each year of the first five-year period the new section is in effect the public will benefit from having better information about the factors considered when determining eligibility to become or remain a registered third-party warranty company or agent thereof.

Ms. Durso has also determined that for each year of the first five-year period the new section is in effect there will be no significant effect on individuals or large, small and micro-businesses because of the adoption of the new section.

Ms. Durso has also determined that for each year of the first five-year period the new section is in effect there should be no effect on a local economy; therefore, no local employment im-

pact statement is required under Administrative Procedure Act §2001.022.

Interested persons may submit written comments (12 copies) on the proposed new section to Susan K. Durso, General Counsel, Texas Residential Construction Commission, PO Box 13144, Austin, Texas, 78711. The deadline for submission of comments is thirty (30) days from the date of publication of the proposed new section in the *Texas Register*. Comments received after that date will not be considered. Comments should be organized in a manner consistent with the organization of the proposed rule. Comments may be submitted electronically to [comments@trcc.state.tx.us](mailto:comments@trcc.state.tx.us). For comments submitted electronically, please include "New Rule 303.267" in the subject line. Comments submitted electronically to another electronic address or that do not include "New Rule 303.267" in the subject line may not be considered.

The new section is proposed pursuant to Property Code §408.001, which provides rulemaking authority to the commission, Property Code Chapter 416, regarding registration under Title 16 and Occupations Code Chapter 53, regarding the consideration of criminal histories as it relates to licensed occupations.

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

§303.267. Criminal Convictions, Guilty Pleas and Pleas of No Contest.

(a) In determining whether to deny an application for registration, a renewal application or whether to revoke a registration under this subchapter because of a criminal conviction, guilty plea or plea of nolo contendere (no contest) of a registered person or agent, the commission will consider the factors identified in Occupations Code Chapter 53 in addition to the factors considered in §303.255 of this subchapter and whether the crime relates to the duties and responsibilities of a registered third-party warranty company.

(b) A third-party warranty company or an individual acting as the registered agent of a third-party warranty company may be placed in a position of trust, may become privy to personal and financial information of homeowners, may be granted unsupervised access to a home where children may be present, and may acquire unique information concerning the security of a home. Therefore, the crimes considered by the commission to relate to the occupation of registered third-party warranty company include, but are not limited to:

- (1) any felony or misdemeanor of which fraud, dishonesty, or deceit is an element;
- (2) any crime involving moral turpitude;
- (3) criminal homicide;
- (4) kidnapping;
- (5) assault;
- (6) sexual assault;
- (7) injury to a child, elderly individual, or disabled individual;
- (8) terroristic threat;
- (9) burglary;
- (10) arson;
- (11) robbery;
- (12) theft;

- (13) bribery;
- (14) tampering with witness;
- (15) insurance fraud;
- (16) money laundering;
- (17) perjury;
- (18) tampering with governmental record;
- (19) fraudulent filing of financing statement; and
- (20) possession or promotion of child pornography.

(c) The commission shall revoke a person's registration under this subchapter upon the registered person's or a registered agent's imprisonment for a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

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 25, 2006.

TRD-200605290  
 Susan K. Durso  
 General Counsel  
 Texas Residential Construction Commission  
 Earliest possible date of adoption: November 5, 2006  
 For further information, please call: (512) 475-0595



## CHAPTER 313. STATE-SPONSORED INSPECTION AND DISPUTE RESOLUTION PROCESS (SIRP)

### 10 TAC §313.14

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

Texas Residential Construction Commission (commission) proposes the repeal of §313.14, The Third-Party Inspector's Report, because the language in that section has been subsumed into revisions to be adopted into §313.13 of this chapter.

Ms. Susan Durso, General Counsel for the commission, has determined that, for each year of the first five-year period that the proposed repeal is in effect, there will be no increase in expenditures or revenue for state government and no fiscal impact for state or local government as a result of enforcing or administering the section.

Ms. Durso has also determined that, for the first five years the rule is repealed, the public will benefit from more clear and precise rules that explain how to participate in the SIRP process. There will not be an effect on individuals, or large, small, or micro businesses. There is no anticipated economic cost to persons who are required to comply with the proposed repeals.

Ms. Durso has also determined that, for each year of the first five-year period the proposed repeal is in effect, there should

be no effect on a local economy; therefore, no local employment impact statement is required under the Administrative Procedure Act, §2001.022.

Comments on the proposed repeal may be submitted to Susan K. Durso, General Counsel, Texas Residential Construction Commission, 311 E. 14th Street, Austin, Texas 78701 or by fax to (512) 475-2453. Comments may also be submitted electronically to [comments@trcc.state.tx.us](mailto:comments@trcc.state.tx.us). For comments submitted electronically, please include "Repeal of 313.14" in the subject line. The deadline for submission of comments is 14 days from the date of publication of the proposed repeal in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the rule under consideration.

The repeal is proposed pursuant to Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16 and Subtitle D of Title 16 of the Property Code, which provides for the implementation of the SIRP.

The repeal is proposed to implement Property Code §408.001 and §426.004.

### §313.14. *Third-Party Inspector's Report.*

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, 2006.

TRD-200605286  
 Susan K. Durso  
 General Counsel  
 Texas Residential Construction Commission  
 Earliest possible date of adoption: November 5, 2006  
 For further information, please call: (512) 475-0595



## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 74. CURRICULUM REQUIREMENTS

The State Board of Education (SBOE) proposes amendments to §§74.1 - 74.3, 74.61, 74.63, and 74.64, concerning the curriculum requirements. The rules provide for curriculum requirements for school districts and outline graduation requirements. The proposed amendments would incorporate changes in 19 TAC Chapter 74, Subchapters A and F, to reflect technical corrections, legislation from the regular session of the 79th Texas Legislature, 2005, and requirements of House Bill (HB) 1 from the Third Called Session.

19 TAC Chapter 74 is organized as follows: Subchapter A, Required Curriculum; Subchapter B, Graduation Requirements; Subchapter C, Other Provisions; Subchapter D, Graduation Requirements, Beginning with School Year 2001 - 2002; Subchapter E, Graduation Requirements, Beginning with School Year 2004 - 2005; and Subchapter F, Graduation Requirements, Beginning with School Year 2007 - 2008.

In February 2006, the SBOE initiated its review of 19 TAC Chapter 74. At that time, the SBOE directed Texas Education Agency staff to provide rule options for consideration at its April 2006 meeting. The proposed amendments approved for first reading and filing authorization by the SBOE during its April 2006 meeting were published in the May 19, 2006, issue of the *Texas Register* (31 TexReg 4142). Also in April 2006, the SBOE adopted the review of 19 TAC Chapter 74, finding that the reasons for initially adopting the rules continue to exist (31 TexReg 4241).

At its July 2006 meeting, the SBOE approved amendments to 19 TAC Chapter 74, Subchapters C, D, and E for second reading and final adoption. These adopted amendments were published in the August 4, 2006, issue of the *Texas Register* (31 TexReg 6212). Those adopted amendments took effect on August 8, 2006, and apply to the 2006-2007 school year.

In addition, the SBOE withdrew the proposed amendments to 19 TAC Chapter 74, Subchapters A and F, to consider additional amendments in accordance with HB 1, 79th Texas Legislature, Third Called Session. The withdrawal of 19 TAC Chapter 74, Subchapters A and F, was published in the August 4, 2006, issue of the *Texas Register* (31 TexReg 6201 and 31 TexReg 6202, respectively).

Subsequently, at its September 2006 meeting, the SBOE approved for first reading and filing authorization the following proposed amendments to 19 TAC Chapter 74, Subchapters A and F.

#### Changes to 19 TAC Chapter 74, Subchapter A

HB 1 requires the SBOE to include language requiring that one or more courses in the required curriculum include a research writing component. The proposed amendments in Subchapter A include additional wording in 19 TAC §74.3(b)(5) to satisfy this requirement.

In addition, the proposed amendment to 19 TAC §74.1(a)(2)(B) would add language to the health curriculum requirement to include emphasis on the importance of proper nutrition and exercise, as required by Senate Bill (SB) 42. The proposed amendments to Subchapter A would also incorporate proposed technical corrections, including clarification to the languages other than English requirement in 19 TAC §74.3(b)(2)(J) to match corrections in Subchapters D - F.

At the direction of the SBOE, the word "reading" would be added to English language arts under the required elementary curriculum in 19 TAC §74.2.

#### Changes to 19 TAC Chapter 74, Subchapter F

HB 1 requires four years of mathematics and science in the recommended and distinguished high school programs, beginning with students entering Grade 9 in school year 2007-2008. Proposed amendments in Subchapter F would incorporate the mandated fourth year of mathematics and science as follows.

The proposed amendment in 19 TAC §74.61(i) would remove provisional language regarding the fourth year of science to correspond with proposed amendments in 19 TAC §74.63 and §74.64.

Section 74.63 establishes graduation requirements under the recommended high school program. For the recommended program, the proposal would require that the four mathematics credits consist of Algebra I, Algebra II, Geometry, and a fourth SBOE-approved mathematics course.

Also within the recommended program, the proposal would require that the four science credits consist of one credit in biology and two credits selected from Integrated Physics and Chemistry (IPC), a chemistry credit, or a physics credit plus one additional credit selected from the laboratory-based science courses listed in 19 TAC Chapter 112 of this title (relating to Texas Essential Knowledge and Skills for Science), with the addition of Engineering and Earth and Space Science. The proposal also would stipulate that IPC could not be taken as the fourth science credit and must be taken before the senior year of high school. Further, after the 2011-2012 school year, IPC will only be available to students on the minimum graduation plan.

The proposal specifies that beginning with the 2012-2013 school year, the four science credits under the recommended program must consist of a biology credit, a chemistry credit, a physics credit, and a credit selected from the laboratory-based science courses listed in 19 TAC Chapter 112, with the addition of Engineering and Earth and Space Science.

Section 74.64 establishes graduation requirements under the distinguished achievement program. For the distinguished achievement program, the proposal would require that the four mathematics credits consist of Algebra I, Algebra II, Geometry, and a fourth SBOE-approved mathematics course for which Algebra II is a prerequisite, including Pre-calculus, Advanced Placement (AP) Calculus, AP Statistics, International Baccalaureate (IB) mathematics classes, or dual enrollment classes that are on the college level.

Also within the distinguished achievement program, the proposal would require that the four science credits consist of a biology credit, a chemistry credit, a physics credit, and a credit selected from the following laboratory-based courses: Earth and Space Science, Environmental Systems, Aquatic Science, Astronomy, Anatomy and Physiology of Human Systems, AP Biology, IB Biology, AP Chemistry, IB Chemistry, AP Physics, IB Physics, AP Environmental Science, IB Environmental Systems, Scientific Research and Design, and Engineering.

The proposed amendments in 19 TAC §74.63 and §74.64 would increase the number of credits required to complete the recommended and distinguished achievement high school programs to 26. This increase in the total number of required credits specified in subsection (a) would not decrease the number of elective credits specified in subsection (c).

Additional proposed amendments to Subchapter F would match amendments to Subchapters D and E as appropriate. These include changes to: clarify the languages other than English requirement in subsection (b)(6) in §74.63 and §74.64; clarify requirements to satisfy the technology applications credit in subsection (b)(10)(D) in §74.63 and §74.64; and replace the term "tech prep articulated" with the correct term "advanced technical credit" in subsection (d)(3) in §74.64.

Susan Barnes, Associate Commissioner for Standards and Programs, has determined that for the first five-year period the amendments are in effect there will be fiscal implications for local government as a result of enforcing or administering the amendments. The addition of a state requirement for a fourth year of science and a fourth year of mathematics will lead to increased enrollment in these courses at districts where the courses are not already required and may result in additional costs associated with teacher training, facilities construction, supplies, textbooks, and other materials. It is not known whether the additional requirements will necessitate construction of addi-

tional lab and/or classroom space. Any facilities impact will vary across the state depending on current local school capacities. The TEA does not collect nor report information on existing facilities, so it is not possible to reasonably estimate additional costs. The need to complete an additional two credits in order to graduate may have local cost implications depending upon the availability of teaching staff and classroom space. There will be fiscal implications for the state government associated with the development of curriculum standards for proposed new science courses. The TEA estimates a cost of approximately \$10,000 to convene work groups and expert committees to assist staff with the development of new courses.

Dr. Barnes has determined that for each year of the first five years the amendments are in effect the public benefit anticipated is that students would have appropriate curricular choices as they complete their public school education. Students would also be better prepared to begin post-secondary education and/or to enter the workforce. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

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

## SUBCHAPTER A. REQUIRED CURRICULUM

### 19 TAC §§74.1 - 74.3

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

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

#### §74.1. Essential Knowledge and Skills.

(a) A school district that offers kindergarten through Grade 12 must offer the following as a required curriculum:

(1) (No change.)

(2) an enrichment curriculum that includes:

(A) (No change.)

(B) health, with emphasis on the importance of proper nutrition and exercise;

(C) - (G) (No change.)

(b) (No change.)

#### §74.2. Description of a Required Elementary Curriculum.

A school district that offers kindergarten through Grade 5 must provide instruction in the required curriculum as specified in §74.1 of this title (relating to Essential Knowledge and Skills). The district must ensure that sufficient time is provided for teachers to teach and for students to

learn English language arts and reading, mathematics, science, social studies, fine arts, health, physical education, technology applications, and to the extent possible, languages other than English. The school district may provide instruction in a variety of arrangements and settings, including mixed-age programs designed to permit flexible learning arrangements for developmentally appropriate instruction for all student populations to support student attainment of course and grade level standards.

#### §74.3. Description of a Required Secondary Curriculum.

(a) (No change.)

(b) Secondary Grades 9-12.

(1) (No change.)

(2) The school district must offer the courses listed in this paragraph and maintain evidence that students have the opportunity to take these courses:

(A) - (I) (No change.)

(J) languages other than English--Levels I, II, and III or higher of the same language;

(K) technology applications--at least four courses selected from Computer Science I, Computer Science II, Desktop Publishing, Digital Graphics/Animation, Multimedia, Video Technology, Web Mastering, or Independent Study in Technology Applications; and

(L) (No change.)

(3) - (4) (No change.)

(5) For students entering Grade 9 beginning with the 2007-2008 school year, districts must ensure that one or more courses offered in the required curriculum for the recommended and advanced high school programs include a research writing component.

(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 25, 2006.

TRD-200605296

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: November 5, 2006

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



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

### 19 TAC §§74.61, 74.63, 74.64

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

by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with §28.002.

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

§74.61. *High School Graduation Requirements.*

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

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

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

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

(4) (No change.)

(h) (No change.)

~~[(i) In addition to the requirements of this subchapter, a student entering Grade 9 in the 2007–2008 school year is required to demonstrate proficiency in science by earning four science credits to complete the recommended high school program or the distinguished achievement high school program, as specified in this subsection.]~~

~~[(1) One credit must be a biology credit (Biology, Advanced Placement (AP) Biology, or International Baccalaureate (IB) Biology). Students must choose two credits from subparagraph (A) and one credit from subparagraph (B) of this paragraph to complete the four-year science requirement.]~~

~~[(A) In addition to a biology course, a student must select two credits from the following areas. Not more than one credit may be chosen from each of the areas to satisfy this requirement.]~~

~~[(i) Integrated Physics and Chemistry (IPC);]~~

~~[(ii) Chemistry, AP Chemistry, or IB Chemistry; and]~~

~~[(iii) Physics, Principles of Technology I, AP Physics, or IB Physics.]~~

~~[(B) After successful completion of a biology course and two credits from IPC, a chemistry course, and/or a physics course, a student may select the fourth required credit from any of the following courses:]~~

~~[(i) Geology, Meteorology, and Oceanography (GMO);]~~

~~[(ii) Environmental Systems;]~~

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

~~[(iv) Astronomy;]~~

~~[(v) Anatomy and Physiology of Human Systems;]~~

~~[(vi) AP/IB Biology;]~~

~~[(vii) Chemistry;]~~

~~[(viii) AP/IB Chemistry;]~~

~~[(ix) Physics;]~~

~~[(x) AP/IB Physics;]~~

~~[(xi) AP Environmental Science;]~~

~~[(xii) IB Environmental Systems;]~~

~~[(xiii) Scientific Research and Design; and]~~

~~[(xiv) Principles of Technology I.]~~

~~[(2) Under this subsection, a student is required to demonstrate proficiency in elective courses by earning two and one-half credits to complete the recommended high school program or one and one-half credits to complete the distinguished achievement high school program.]~~

~~[(3) This subsection does not apply to any student who completes all course requirements for high school graduation on or before September 1, 2010.]~~

~~[(4) This subsection expires on September 1, 2007, unless the State Board of Education, on or prior to August 1, 2007, determines that sufficient funding has been appropriated by the legislature to implement this subsection.]~~

§74.63. *Recommended High School Program.*

(a) Credits. A student must earn at least 26 [24] credits to complete the Recommended High School Program.

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

(1) (No change.)

(2) Mathematics--four [three] credits. The credits must consist of Algebra I, Algebra II, and Geometry and an additional SBOE-approved mathematics course.

(3) Science--four credits.

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

(i) Integrated Physics and Chemistry (IPC);

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

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

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

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

(i) Biology, AP Biology, or IB Biology;

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

(iii) Physics, AP Physics, or IB Physics.

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

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

- [(A) Integrated Physics and Chemistry (IPC);]
- [(B) Chemistry, AP Chemistry, or IB Chemistry; and]
- [(C) Physics, Principles of Technology I, AP Physics,  
or IB Physics.]

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

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

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

(A) - (B) (No change.)

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

(i) - (ii) (No change.)

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

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

(A) - (C) (No change.)

(D) the completion of three credits (for students participating in a coherent sequence of career and technology courses or who are enrolled in a Tech Prep high school plan of study) consisting of two or more state-approved career and technology courses in Chapters 119 - 125 and 127 of this title. Districts shall ensure that career and technology courses, including innovative courses, in a coherent sequence used to meet the technology applications credit are appropriate to collectively teach the knowledge and skills found in any of the approved courses listed in subparagraphs (A), (B), and (C) of this paragraph. Students pursuing the technology applications option described in this subparagraph must demonstrate proficiency in technology applications prior to the beginning of Grade 11 [through credit by examination as described in §74.24 of this title (relating to Credit by Examination)].

(11) (No change.)

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

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

(a) Credits. A student must earn at least 26 [24] credits to complete the Distinguished Achievement High School Program.

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

(1) (No change.)

(2) Mathematics--four [three] credits. The credits must consist of Algebra I, Algebra II, and Geometry and an additional SBOE-approved mathematics course for which Algebra II is a prerequisite.

(3) Science--four credits. The credits must consist of a biology credit (Biology, Advanced Placement (AP) Biology, or International Baccalaureate (IB) Biology), a chemistry credit (Chemistry, AP Chemistry, or IB Chemistry), a physics credit (Physics, AP Physics, or IB Physics), and an additional approved laboratory-based science course. After successful completion of a biology course, a chemistry

course, and a physics course, a student may select the fourth required credit from any of the following laboratory-based courses:

- (A) Earth and Space Science;
- (B) Environmental Systems;
- (C) Aquatic Science;
- (D) Astronomy;
- (E) Anatomy and Physiology of Human Systems;
- (F) AP Biology;
- (G) IB Biology
- (H) AP Chemistry;
- (I) IB Chemistry;
- (J) AP Physics;
- (K) IB Physics;
- (L) AP Environmental Science;
- (M) IB Environmental Systems;
- (N) Scientific Research and Design; and
- (O) Engineering.

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

- [(A) Integrated Physics and Chemistry (IPC);]
- [(B) Chemistry, AP Chemistry, or IB Chemistry; and]
- [(C) Physics, Principles of Technology I, AP Physics,  
or IB Physics.]

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

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

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

(A) - (B) (No change.)

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

(i) - (ii) (No change.)

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

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

(A) - (C) (No change.)

(D) the completion of three credits (for students participating in a coherent sequence of career and technology courses or who



are enrolled in a Tech Prep high school plan of study) consisting of two or more state-approved career and technology courses in Chapters 119 - 125 and 127 of this title. Districts shall ensure that career and technology courses, including innovative courses, in a coherent sequence used to meet the technology applications credit are appropriate to collectively teach the knowledge and skills found in any of the approved courses listed in subparagraphs (A), (B), and (C) of this paragraph. Students pursuing the technology applications option described in this subparagraph must demonstrate proficiency in technology applications prior to the beginning of Grade 11 [~~through credit by examination as described in §74.24 of this title (relating to Credit by Examination)]~~.

(11) (No change.)

(c) (No change.)

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

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

(3) college academic courses, advanced technical credit courses, and dual credit courses [~~and tech-prep articulated college courses~~] with a grade of 3.0 or higher.

(e) (No change.)

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

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Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

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



## CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

### SUBCHAPTER B. ADULT BASIC AND SECONDARY EDUCATION

#### 19 TAC §§89.21, 89.29, 89.30, 89.32, 89.33

The State Board of Education (SBOE) proposes amendments to §§89.21, 89.29, 89.30, 89.32, and 89.33, concerning adult basic and secondary education. The rules establish provisions for the adult education program delivery system. The proposed amendments would provide necessary clarifications and updates to reflect existing statute and regulations and agency responsibilities identified during the recent statutorily-required review of rules in 19 TAC Chapter 89. Primarily, the proposed amendments incorporate provisions related to the adoption of the Workforce Investment Act of 1998, which updates and clarifies the use of federal funds in the provision of adult education programs.

In 19 TAC §89.21, Definitions, the proposed amendment would eliminate wording in paragraph (6) that is in conflict with current federal statute, the Workforce Investment Act of 1998, §231(a), Grants and Contracts. Requiring eligible grant recipients to have at least one year of experience in providing adult education and literacy services is not stated in federal law and, therefore, creates an additional condition for the use of federal funds and the required state match. This provision excludes potential eligible providers from applying for federal adult education funds.

In 19 TAC §89.29, Allocation of Funds, the proposed amendment would eliminate subsection (b) relating to supplemental allocations which is non-essential to the granting process. The wording is redundant; it restates an allowable procedure within both state and federal budgeting operations. Furthermore, the current wording implies that adult education funds could be distributed without the use of a competitive process, which is not the case. Federal enabling legislation, the Workforce Investment Act of 1998, §231(a), Grants and Contracts, stipulates that adult education funds must be awarded on a competitive basis.

In 19 TAC §89.30, Tuition and Fees, the proposed amendment would eliminate subsection (c) to resolve conflicts regarding the use of program income requirements. Currently, subsection (b) requires that tuition and fees be used to support the adult education instructional program while subsection (c) permits the expenditure of those funds for non-adult education instructional program activities. This change would eliminate the conflict within the rule.

In 19 TAC §89.32, Staff Development and Special Projects, the proposed amendment would update reference to the name and appropriate section of current federal legislation, the Workforce Investment Act of 1998.

In 19 TAC §89.33, Evaluation of Programs, the proposed amendment would eliminate obsolete language from the rule.

Philip Cochran, Senior Director for Education Services, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Mr. Cochran has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments would be the elimination of conflicts with federal statute and barriers to equitable access to federal and state adult education instructional program funds. Furthermore, the proposed amendments would remove obsolete language and eliminate conflict within the rule itself. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendments 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 amendments are proposed under the Texas Education Code (TEC), §7.102(c)(16) and §29.253, which authorize the SBOE to adopt rules for adult education programs.

The amendments implement the Texas Education Code, §7.102(c)(16) and §29.253.

§89.21. *Definitions.*

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

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

(6) Eligible grant recipient--Eligible grant recipients for adult education programs are those entities specified in statutes. ~~[Eligible grant recipients must have at least one year of experience in providing adult education and literacy services.]~~

§89.29. *Allocation of Funds.*

~~[(a)]~~ Annually, after federal adult education and literacy funds have been set aside for state administration, special projects and staff development, state and federal adult education fund allocations shall be developed for each county and each school district geographic area. Allocations shall be computed as follows.

(1) Twenty-five percent of the funds available shall be allocated based on the best available estimates of the number of eligible adults in each county and school district geographic area within each county.

(2) Seventy-five percent of the funds available shall be allocated based on student contact hours reported by each school district geographic area and for the most recent complete fiscal year reporting period.

(3) A school district geographic area's student contact hour annual allocation shall not be reduced by more than 10% below the preceding fiscal year's contact hour allocation provided that:

(A) sufficient funds are available; and

(B) the school district geographic area's contact hour performance used in calculating the allocation was not less than that of the preceding fiscal year.

(4) If public funds, other than state and federal adult education funds, are used in the adult education instructional program, the program may claim only the proportionate share of the student contact time based on the adult education program's expenditures for the instructional program.

~~[(b)] Supplemental allocations may be made at the discretion of the commissioner of education from funds becoming available for local allocations during the program year.]~~

§89.30. *Tuition and Fees.*

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

~~[(c)] Funds, not exceeding 50% of student tuition, may be used to pay tuition charged to students enrolled in correspondence courses or high school credit courses.]~~

§89.32. *Staff Development and Special Projects.*

Priorities for expenditures of federal funds as required by the Workforce Investment Act, §223, ~~[Adult Education Act, §353,]~~ shall be presented annually to the State Board of Education ~~[(SBOE)].~~

§89.33. *Evaluation of Programs.*

The Texas Education Agency ~~[(TEA)]~~ shall evaluate adult education programs based on the indicators of program quality for adult education ~~[through the TEA results-based monitoring system and compliance requirements].~~

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

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Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

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



## CHAPTER 97. PLANNING AND ACCOUNTABILITY

### SUBCHAPTER FF. COMMISSIONER'S RULES CONCERNING THE JOB CORPS DIPLOMA PROGRAM

#### 19 TAC §97.2001

The Texas Education Agency (TEA) proposes new §97.2001, concerning the Job Corps diploma program. The proposed new section would implement the requirements of the Texas Education Code (TEC), §18.006, added by Senate Bill 1395, 79th Texas Legislature, 2005, that requires the commissioner to develop and implement a system of accountability to rate the annual performance of the Job Corps diploma program.

The TEC, §18.006, requires the commissioner to develop and implement a system of accountability consistent with the TEC, Chapter 39, where appropriate, to be used in assigning an annual performance rating to Job Corps diploma programs consistent with the ratings assigned to school districts under the TEC, §39.072. The statute provides for a Job Corps training program to establish a high school diploma program to operate public secondary schools at Job Corps facilities throughout the state.

The goals of a Job Corps diploma program are to: (1) serve at-risk students who have not been successful in a traditional school setting; (2) increase student success rates in obtaining and maintaining employment; and (3) decrease future societal costs by offering a high school diploma program to students who would benefit from Job Corps academic and vocational programs.

Proposed new 19 TAC §97.2001 would implement the requirements of the TEC, §18.006, establishing accountability procedures for the Job Corps diploma program. The proposed new rule would delineate the intent and purpose of the program and would specify provisions relating to student eligibility and program requirements. The Job Corps diploma program would be required to offer, at a minimum, the necessary courses required for an eligible student to graduate by completing at least the requirements of the minimum high school program. Along with completing the requirements of the minimum high

school program, eligible students would be required to satisfy the secondary exit-level assessments required for graduation before receiving a high school diploma.

Additionally, proposed new 19 TAC §97.2001 would establish in rule the *Job Corps Diploma Program Accountability Procedures Manual*, dated September 2006, which would be included as a figure in subsection (d). The proposed new rule would prescribe the specific procedures, standards, and performance indicators by which Job Corps diploma program evaluation and ratings would be based when issued in 2007. Proposed new 19 TAC §97.2001 would also address the annual review of the program, program indicators, accountability ratings and criteria, and reporting of data.

In accordance with statute, the proposed new rule would establish that the annual evaluation of the Job Corps diploma program would be based upon, at a minimum: (1) student performance on assessment instruments required under the TEC, §39.023; (2) dropout rate for the grade levels served; and (3) diploma program completion rate.

Each Job Corps diploma program must submit all information as requested by the TEA through the approved format as determined by the commissioner of education, including certain data related to performance indicators selected from the Academic Excellence Indicator System (AEIS). The data will be used to determine the annual performance rating of each Job Corps diploma program and whether the Job Corps diploma program requires improvement, investigation, or sanction under the TEC, Chapter 39.

Judith de la Garza, Deputy Associate Commissioner for Governance and Charter schools, 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 new section.

Ms. de la Garza 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 new section will be increasing the potential for success of "at-risk" students in obtaining a high school diploma. The public will realize the benefit of the rule by having an increasingly prepared workforce and decreasing future societal costs associated with high dropout rates. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed new section.

The public comment period on the proposal begins October 6, 2006, and ends November 5, 2006. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028. All requests for a public hearing on the proposed 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 (TEC), §18.006, which requires the commissioner to develop and implement a system of accountability consistent with the TEC, Chapter 39, where appropriate, to be used in assigning an annual performance rating to Job Corps diploma programs consistent with the ratings assigned to school districts under the TEC, §39.072.

The new section implements the Texas Education Code, §18.006.

§97.2001. Job Corps Diploma Program Accountability Procedures.

(a) Intent and purpose. The Job Corps diploma program develops and implements educational programs specifically designed for persons eligible for enrollment in a Job Corps training program established by the U.S. Department of Labor. The Job Corps training program was established in order for eligible students to satisfy the requirements necessary to receive a high school diploma.

(b) Student eligibility. A person is eligible to participate in the Job Corps diploma program if the person is enrolled in an established Job Corps training program and has not satisfied the state requirements to receive a high school diploma. Any person enrolled in good standing in the Job Corps diploma program is eligible for programs or services under the Texas Education Code (TEC), Chapter 18. A person's eligibility for programs and services under the TEC, Chapter 18, does not make a person ineligible for an education program or service under any other chapter of the TEC.

(c) Program requirements. The TEC, §1.001, applies to a Job Corps diploma program operated by or under contract with the U.S. Department of Labor.

(1) The Job Corps diploma program shall provide a course of instruction that includes the required curriculum under the TEC, §28.002, §74.1 of this title (relating to Essential Knowledge and Skills), and §74.3 of this title (relating to Description of a Required Secondary Curriculum).

(2) The Job Corps diploma program shall offer, annually, at least all the courses required for an eligible student to graduate under the applicable minimum high school program described in Chapter 74 of this title (relating to Curriculum Requirements).

(3) A student enrolled in the Job Corps diploma program must satisfy the secondary exit-level assessments required for graduation under the TEC, §39.025, before receiving a high school diploma.

(d) Accountability procedures. Job corps diploma program evaluations and ratings issued in 2007 are based upon specific procedures, standards, and performance indicators, which are described in the *Job Corps Diploma Program Accountability Procedures Manual*, dated September 2006, provided in this subsection.  
Figure: 19 TAC §97.2001(d)

(e) Annual review. The Texas Education Agency (TEA) shall conduct an annual review to evaluate Job Corps diploma program performance based on indicators provided in the *Job Corps Diploma Program Accountability Procedures Manual* described in subsection (d) of this section. The diploma program shall comply with all applicable requirements of state laws and rules.

(f) Performance indicators. Annually, the commissioner of education shall review and determine the student performance indicators appropriate to the characteristics of the students served by the Job Corps diploma program. The performance of the Job Corps diploma program shall be evaluated on the basis of the specific indicators as determined by the commissioner of education.

(1) The annual evaluation shall be based on, at a minimum, the following performance indicators:

(A) student performance on assessment instruments required under the TEC, §39.023;

(B) dropout rate for the grade levels served; and

(C) diploma program completion rate.

(2) To the extent appropriate, the annual performance review shall incorporate other indicators from the Academic Excellence Indicator System (AEIS) under the TEC, Chapter 39.

(g) Accountability ratings and criteria. The procedures for determining the Job Corps diploma program accountability ratings are established in the *Job Corps Diploma Program Accountability Procedures Manual* described in subsection (d) of this section.

(1) The Job Corps diploma program performance on selected AEIS indicators shall be used by the TEA in determining the annual performance rating of the Job Corps diploma program.

(2) A performance rating assigned to the Job Corps diploma program may be appealed to the commissioner of education in accordance with the procedures established in the *Job Corps Diploma Program Accountability Procedures Manual* described in subsection (d) of this section.

(3) The commissioner of education may lower the Job Corps diploma program accountability rating based on the findings of an on-site investigation conducted under the TEC, §39.074.

(4) If a Job Corps diploma program is below any standard under the TEC, §39.073(b), the program is considered a low-performing program. If the Job Corps diploma program is low performing for a period of two consecutive years or more, the commissioner of education may close the program.

(h) Reporting of data. The Job Corps diploma program shall report to the TEA accountability data on a submission schedule determined by the TEA. Performance data shall be disaggregated with respect to student attributes as determined by the commissioner of education.

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

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Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

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



## **TITLE 22. EXAMINING BOARDS**

### **PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY**

#### **CHAPTER 513. REGISTRATION**

##### **SUBCHAPTER B. REGISTRATION OF CPA FIRMS**

###### **22 TAC §513.15**

The Texas State Board of Public Accountancy (Board) proposes an amendment to §513.15 concerning Firm Offices.

The amendment to §513.15 will allow resident managers to manage more than one office.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be negligible because the amendment does not impose additional burdens upon the state.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be negligible because the amendment does not create a reduction in costs.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be negligible because the amendment does not increase fees, nor does it decrease revenues.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a clarification of the resident manager role.

The probable economic cost to persons required to comply with the amendment will be no greater than the firm license fee already required for certain firms.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on October 21, 2006. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because it does not impose additional burdens upon those businesses that must comply with the rule.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

###### *§513.15. Firm Offices*

(a) A Certified Public Accountancy Firm must hold a license for each office in which the firm offers services to the public in Texas.

(b) Each office of a firm must be under the direct supervision of a resident manager who is directly responsible for the supervision of the professional services of that office at all times. A resident manager may be an owner, member, partner, shareholder, or employee of the firm and must be licensed under the Act.

(c) A resident manager may supervise more than one office provided that the firm's application for issuance or renewal of the firm license or registration identifies each of the offices the resident manager will supervise. A resident manager who serves in that capacity for more than one office shall be responsible for violations of the Act or Rules that reflect inadequate supervision of any applicable office.

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-200605268

J. Randel (Jerry) Hill  
General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



## CHAPTER 515. LICENSES

### 22 TAC §515.1

The Texas State Board of Public Accountancy (Board) proposes an amendment to §515.1 concerning License.

The amendment to §515.1 will clarify the language in the rule.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be negligible because the amendment does not create additional costs.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be negligible because the amendment does not reduce costs.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be negligible because the amendment does not address revenue.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a clearer rule regarding firm licensing.

The probable economic cost to persons required to comply with the amendment will be negligible because the amendment does not impose costs.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Com-

ments must be received at the Board no later than noon on October 21, 2006. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not create an additional burden upon small businesses.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

#### §515.1. License.

(a) Individuals certified or registered by this board must obtain a license for each 12-month interval.

(b) Subject to §515.3 of this title (relating to License Renewal for Individuals and Firm Offices) firms registered with the [by this] board must obtain a [an annual] license for each office associated with the firm.

(c) A license shall not be issued or renewed unless all required fees, continuing professional education and a completed application have been received by 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.

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J. Randel (Jerry) Hill  
General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



### 22 TAC §515.2

The Texas State Board of Public Accountancy (Board) proposes an amendment to §515.2 concerning Initial License.

The amendment to §515.2 will make the rule applicable to initial personal licenses applicable to firm licenses as well.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be negligible because the amendment does not impose additional costs.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be negligible because the amendment does not impose reductions in costs.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be negligible because the amendment does not address revenue.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be consistent application of rules to initial personal and firm licenses.

The probable economic cost to persons required to comply with the amendment will be no greater than the fees already assessed by the other rule.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on October 21, 2006. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose additional fees or requirements.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

*§515.2. Initial License.*

(a) An initial license is the first license issued to an individual or firm ~~[who has been]~~ certified or registered under the Act. The board will prorate the initial license fee for an individual or firm ~~[who is licensed for less than a full year]~~ for those months during which the license is valid.

(b) ~~[The board will not prorate the initial license fee for a firm's office whose license is for less than one year.]~~ The firm's initial and subsequent office license shall not be issued until such time as the sole proprietor, all partners, officers, directors, members, or shareholders of the firm who reside in Texas and who are certified or registered under the Act have obtained a 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.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



**22 TAC §515.3**

The Texas State Board of Public Accountancy (Board) proposes an amendment to §515.3 concerning License Renewal for Individuals and Firm Offices.

The amendment to §515.3 will stagger expiration dates for firm licenses so that they occur throughout the year, rather than once a year.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be negligible because the amendment does not impose additional costs.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be negligible because the amendment does not reduce costs.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be negligible because the amendment does not increase or decrease revenues.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a more efficient system of processing firm licenses.

The probable economic cost to persons required to comply with the amendment will be the same as the fee paid to renew the license.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on October 21, 2006. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Ac-

countancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not increase the burden on affected small businesses.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

#### *§515.3. License Renewal for Individuals and Firm Offices.*

(a) Licenses for individuals will have staggered expiration dates based on the last day of the individuals' birth months. The license will be issued for a 12-month period.

(b) At least 30 days before the expiration of an individual's license, the board shall send written notice of the impending license expiration to the individual at the last known address according to board records.

(c) Licenses for offices of firms will have staggered expiration dates for payment of fees, which will be due the last day of a board assigned renewal month. All offices of a firm will have the same registration date. Staggered firm license expiration dates begin on January 1, 2007. All firms will be issued a license for a 12-month period following the initial licensing period.

~~[(e) Licenses for offices of firms will have staggered expiration dates that will be the last day of an assigned renewal month. All offices of a firm will have the same expiration date. Conversion to staggered license expiration dates will begin on January 1, 2007. After conversion to staggered license expiration dates is complete, all firm licenses will be issued for a 12-month period.]~~

(d) At least 30 days before the expiration of a firm's office license, the board shall send written notice of the impending license expiration to the main office of the firm at the last known address according to the records of the board.

(e) A firm's office license shall not be renewed unless the sole proprietor, each partner, officer, director, or shareholder of the firm who is listed as a member of the firm and who is certified or registered under the Act has a current individual license.

(f) If a firm is subject to peer review, then a firm's office license shall not be renewed unless the office has notified the board of the peer review date assigned by a board approved sponsoring organization.

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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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



## CHAPTER 521. FEE SCHEDULE

### 22 TAC §521.1

The Texas State Board of Public Accountancy (Board) proposes an amendment to §521.1 concerning Individual License Fees.

The amendment to §521.1 will lower the fee for a personal license from \$60.00 to \$45.00.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be negligible because the amendment does not increase administrative costs.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be negligible because the amendment does not reduce administrative costs.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be a reduction of \$15.00 of revenue per individual license.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a cost-effective license for persons certified by the Board.

The probable economic cost to persons required to comply with the amendment will be reduced to \$45.00 for each personal license.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on October 21, 2006. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment reduces costs to small businesses.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of

compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§521.1. *Individual License Fees.*

(a) The fee for a license issued to an individual not in retired or disabled status shall be \$45.00 [~~\$60.00~~] for the license fee and \$10.00 for the Scholarship Fund; however, the initial license fee shall be prorated for those months during which the license is valid.

(b) The legislature has directed the board to collect from each licensee who is neither retired nor disabled a professional fee of \$200.00 per 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 22, 2006.

TRD-200605273

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: November 5, 2006

For further information, please call: (512) 305-7848



## CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

### SUBCHAPTER D. STANDARDS FOR CONTINUING PROFESSIONAL EDUCATION PROGRAMS AND RULES FOR SPONSORS

#### 22 TAC §523.144

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.144 concerning Board Registered CPE Sponsors after January 1, 2005.

The amendment to §523.144 will outline the procedure a former CPE sponsor must follow in order to gain reinstatement into the Board's CPE sponsor program.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be negligible because the amendment does not impose additional costs to the state.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amend-

ment will be negligible because the amendment does not reduce the costs to the state.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be equal to the amount former CPE sponsors must submit with their reinstatement application.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be closely scrutinized CPE sponsors who supply professional education to license holders.

The probable economic cost to persons required to comply with the amendment will be equal to the amount former CPE sponsors must submit with their reinstatement application.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on October 21, 2006. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose additional burdens upon small businesses.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.144. *Board Registered CPE Sponsors after January 1, 2005.*

(a) The board may enter into an agreement with any sponsor of CPE programs to become a board registered CPE sponsor where the sponsor, in the opinion of the board, demonstrates that it will comply with its obligations to the board and that its programs will conform to the board's standards as outlined in:

(1) §523.115 of this title (relating to Credits for Instructors and Discussion Leaders);

(2) §523.130 of this title (relating to Board Rules and Ethics Course), (if applicable);

(3) §523.140 of this title (relating to Program Standards);



- (4) §523.141 of this title (relating to Evaluation); and
- (5) §523.142 of this title (relating to Program Time Credit Measurement).

(b) The board will also require that each organization applying to become a board registered CPE sponsor agree that in the conduct of its business it will:

- (1) Not commit fraud, deceit or engage in fiscal dishonesty of any kind;
- (2) Not misrepresent facts or make false or misleading statements;
- (3) Not make false statements to the board or to the board's agents; and
- (4) Comply with the laws of the United States and the State of Texas.

(c) Each organization applying to become a board registered CPE sponsor must submit an application on registration forms provided by the board. The application must be complete in all respects and must be accompanied with payment of a non-refundable registration fee unless the sponsor is exempt from paying the fee in accordance with this rule. Sponsors that offer regularly scheduled course titles that are at least one hour and up to four hours in length may accumulate these course titles into an eight-hour course block when determining fees. A maximum of 24 hours may be accumulated into three eight-hour course blocks. Refer to interpretative comment in subsection (j) of this section for explanation. The registration fee is based on the number of course titles offered and is identified in the following chart:  
Figure: 22 TAC §523.144(c) (No change.)

(d) To qualify for an exemption from the annual registration fee a sponsor must be:

- (1) a state, federal or other governmental agency that provides CPE for its employees and others at no charge;
- (2) a sponsor registered and in good standing with NASBA's National Registry of CPE Sponsors;
- (3) an institution of higher education whose courses are accepted for transfer credit by the reporting institution in the State of Texas. Other than courses acceptable for transfer credit, continuing education does not qualify for the exemption whether offered through an institute of higher education or through an educational foundation operating within such an institution; or
- (4) subject to the Board's sole discretion, a Sponsor's courses that are subject to review by another entity may apply for an exemption from fees.

(e) Sponsors that are exempt from paying the registration fee must annually register with the board.

(f) To implement the program initially, sponsors previously registered with the board will be assigned an initial registration term based on the month of their current registration. The board will not prorate the registration payment for an organization for less than one year. Upon renewal in the second and succeeding years, the registration amount may be increased to cover the costs of review of sponsors and individual courses.

(g) Board staff will review each application and notify the sponsor of its acceptance or rejection. Accepted sponsors will be assigned a sponsor number and can represent that they are a board registered CPE sponsor. An acceptance in any given year shall not bind the board to accept a sponsor in any future year.

(h) After the registration has been accepted, the board, in its sole and exclusive discretion, may determine that a registered sponsor is not in compliance with the registration requirements, CPE standards or applicable board rules. The board will provide the registered sponsor reasonable notice it may make such a determination and shall provide the registered sponsor a reasonable opportunity to respond to the board. If the board determines the sponsor is not in compliance, then the board may request that the sponsor make changes to come into compliance or the board may terminate the sponsor's registration. A sponsor that has had its registration terminated or has voluntarily surrendered its registration may apply for reinstatement after the first anniversary of the date of termination. The registration fee shall not be prorated or refunded if the registration is terminated.

(i) A sponsor that requests reinstatement may do so by submitting a completed application and paying the fee provided for in paragraph (c) of this section. The application for reinstatement must be accompanied with a list of the course(s) proposed to be offered. From that list the board will select one or more courses that must successfully pass the review pursuant to section 523.147 of this Chapter, before any course can be offered.

(j) ~~[(+)]~~ CPE sponsor registrations are renewable annually by submitting a renewal application and paying the registration fee unless exempt from the fee in paragraph (d) above of this section.

(k) ~~[(+)]~~ Interpretive Comment: In applying the fee structure to courses, it is deemed that small practice groups and sponsors that provide lectures and seminars on a regular basis would be allowed to accumulate course titles that are at least one hour and up to four hours in length into one eight-hour course block. The maximum number of groupings of courses would be limited to three eight-hour course blocks of 24 hours of qualified courses.

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, 2006.

TRD-200605274  
J. Randel (Jerry) Hill  
General Counsel  
Texas State Board of Public Accountancy  
Earliest possible date of adoption: November 5, 2006  
For further information, please call: (512) 305-7848



**22 TAC §523.146**

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.146 concerning Registry of NASBA CPE Sponsors.

The amendment to §523.146 will clarify that sponsors registered with NASBA may still be subject to review by the Board.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be negligible because the amendment does not impose additional costs to the state.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be negligible because the amendment does not reduce costs to the state.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be negligible because the amendment does not affect revenue.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be additional state review of sponsors registered with NASBA.

The probable economic cost to persons required to comply with the amendment will be negligible because the amendment does not impose costs upon the NASBA sponsors.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on October 21, 2006. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose additional burdens upon small businesses.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.146. *Registry of NASBA CPE Sponsors.*

(a) The board shall accept courses offered by sponsors shown as being in good standing on the NASBA's National Registry of CPE Sponsors; however, organizations that wish to offer CPE courses to Texas CPAs are not required to register with NASBA.

(b) Sponsors registered with NASBA's National Registry of CPE Sponsors ("NASBA CPE sponsors") must annually register with the board. NASBA CPE Sponsors are exempt from the board's registration fee but may be[and are not] subject to a review by the [state] board.

(c) NASBA CPE sponsors registered with the board shall:

(1) comply with all board standards for CPE sponsors; and

(2) cooperate with the board's sponsor review program.

(d) The board may revoke the registration of any NASBA CPE sponsor registered under this section for failure to comply with the registration requirements, CPE standards or applicable board 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 22, 2006.

TRD-200605275

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: November 5, 2006

For further information, please call: (512) 305-7848



## TITLE 25. HEALTH SERVICES

### PART 11. TEXAS CANCER COUNCIL

#### CHAPTER 703. PROJECT CONTRACTS AND GRANTS

##### 25 TAC §§703.3, 703.5, 703.6

The Texas Cancer Council proposes amendments to §§703.3, 703.5, and 703.6, concerning the scope, project proposal submission, and review process. These sections are being amended to make the substitution of "application" for "proposal" consistent throughout the rules to more accurately reflect the proposal process used for Council grants.

Ms. Sandra K. Balderrama, MPA, BSW, the Executive Director of the Texas Cancer Council, has determined that for the first five-year period the amendments are in effect there will be no foreseeable implications relating to costs or revenues for state or local government as a result of enforcing or administering the amendments.

Ms. Balderrama also has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be clarification of the policies and procedures the Council will follow to implement the *Texas Cancer Plan*. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed.

Ms. Balderrama has determined that the amendments shall not have an effect on small businesses or on micro businesses.

Comments on the proposed amendments may be submitted to Ms. Sandra Balderrama, Executive Director, Texas Cancer Council, P.O. Box 12097, Austin, Texas 78711.

The amendments are proposed under the Texas Health and Safety Code Annotated, §102.002 and §102.009, which provide the Texas Cancer Council with the authority to develop and implement the *Texas Cancer Plan*, §102.010 which authorizes the Council to establish a grant program and adopt rules regarding grants, and the Texas Government Code, Annotated, §2001.004.

There is no other statute, article or code that is affected by these proposed amendments.

§703.3. *Scope.*

- (a) (No change.)
- (b) Sources.
  - (1) Grants to State of Texas agencies.
    - (A) - (B) (No change.)

(C) State agencies may respond to the request-for-proposal [~~applications~~] that will be published from time to time in the *Texas Register*.

(2) Grants to non-state or private organizations. The council may solicit public and private entities to submit proposals in response to a request for proposals [~~applications~~] that may be published from time to time in the *Texas Register*. The Council may also accept unsolicited proposals from non-state and private sector applicants.

- (c) (No change.)

§703.5. *Project Proposal Submission.*

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

(e) Proposals that are late, are grossly incomplete, or substantially inconsistent with the project components and requirements outlined in the council's published request-for-proposals [~~applications~~] will not be accepted and will be returned to the applicant with an explanation of deficiencies.

§703.6. *Review Process.*

(a) Each proposal shall be reviewed by council staff for completeness, relevance to the published request-for-proposal [~~application~~] adherence to council policies, technical merit, and budget appropriateness. Staff analyses of each eligible proposal received will be prepared and submitted to the council before the council makes a funding decision.

- (b) - (e) (No change.)

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

Filed with the Office of the Secretary of State on September 19, 2006.

TRD-200605202  
Sandra Balderrama  
Executive Director  
Texas Cancer Council

Earliest possible date of adoption: November 5, 2006  
For further information, please call: (512) 438-3029



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

##### SUBCHAPTER G. WORKERS' COMPENSATION INSURANCE

## DIVISION 2. GROUP SELF-INSURANCE COVERAGE

### 28 TAC §5.6405

The Texas Department of Insurance proposes amendments to §5.6405(b), concerning excess insurance. The proposal addresses the excess insurance requirements for self-insurance groups providing workers' compensation coverage. These amendments are necessary to prescribe the requirements for obtaining excess insurance coverage from eligible surplus lines insurers. The Department of Insurance received a petition from Montlake Holdings LLC proposing to amend 28 TAC §5.6405(b). In the petition, the petitioner states that the proposed rule amendment would allow self-insurance groups in Texas to purchase excess coverage from an accredited and trustee reinsurer that posts letters of credit to secure the self-insurance groups for excess losses recoverable. The petitioner further states that the proposed rule amendment would significantly increase market availability of excess insurance for self-insurance groups in Texas.

The proposed amendments to §5.6405(b) modify the petitioner's proposal by clarifying and augmenting the requirements necessary for obtaining excess insurance from eligible surplus lines insurers. Labor Code §407A.054 requires self-insurance groups to obtain excess insurance coverage for workers' compensation coverage. The proposed amendments are necessary to provide greater availability of the excess insurance coverage required for these groups, provided the requirements specified in the proposal are met, so that more Texas employers would be able to participate in the workers' compensation system. The proposed amendment to §5.6405(b) provides an option for obtaining the required excess insurance from an eligible surplus lines insurer in compliance with Chapter 981 of the Texas Insurance Code and related provisions of the Texas Administrative Code, provided certain requirements are met. These requirements will provide security that the Department believes is reasonable to fulfill the requirements of Chapter 407A. Proposed §5.6405(b)(1) establishes the requirement that the surplus lines insurer must be certified as a trustee reinsurer by the Texas Department of Insurance. Proposed §5.6405(b)(2) prescribes the financial strength rating the surplus lines insurer must maintain. Proposed §5.6405(b)(3) sets forth the letter of credit requirements a surplus lines insurer must maintain to secure the payment of losses under the excess insurance coverage. Proposed §5.6405(b)(4) specifies that a self-insurance group must timely collect recoverables and receivables. Proposed §5.6405(b)(5) requires a self-insurance group to submit the surplus lines policy form for review prior to use. Proposed §5.6405(b)(6) provides that a self-insurance group must demonstrate to the satisfaction of the Department that it meets all the requirements for obtaining excess insurance from an eligible surplus lines insurer.

Ms. Betty Patterson, Senior Associate Commissioner, Financial Program, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the proposal. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Ms. Patterson 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 the proposal is greater

availability of the excess insurance coverage required for self-insurance groups that provide workers' compensation coverage, provided the requirements specified in the proposal are met. Labor Code §407A.054 requires self-insurance groups to obtain excess insurance coverage. The proposal provides an option for obtaining the required excess insurance from an eligible surplus lines insurer that is also a trustee reinsurer. There is no anticipated cost of compliance, and therefore, no anticipated difference in cost for compliance between the smallest and largest businesses. Even if the proposal may have an adverse effect on small and micro-businesses, the proposal is optional for small and micro-businesses. The Department has considered the purpose of the applicable statutes, which is to establish the minimum requirements for excess insurance for self-insurance groups, and has determined that it is neither legal nor feasible to waive the provisions of the proposed amendments for members of groups or groups that qualify as small or micro-businesses under Government Code §2006.001 and that opt to obtain the required excess insurance from an eligible surplus lines insurer that is also a trustee reinsurer. Additionally, it is the Department's position that to waive or modify the requirements of the proposed amendments for small and micro businesses would result in a disparate effect on policyholders and other persons affected by the proposed amendments.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on November 6, 2006 to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Betty Patterson, Senior Associate Commissioner, Financial Program, Mail Code 305-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The Commissioner will consider the adoption of the proposed amendments to §5.6405(b) in a public hearing under Docket No. 2659 scheduled for October 23, 2006, at 10:00 a.m. in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas. Written and oral comments presented at the hearing will be considered.

The amendments are proposed pursuant to the Labor Code §§407A.008, 407A.051(c)(3) (10), 407A.051(e), and 407A.054, and the Insurance Code §36.001. Labor Code §407A.051(c)(3) requires an application for a certificate of approval to include proof of compliance with the excess insurance requirements under Labor Code §407A.054. Labor Code §407A.051(c)(10) requires that an application include a pro forma financial statement, in a form acceptable to the Commissioner, that shows the financial ability of the group to pay the workers' compensation obligations of the employers who are members of the group. Labor Code §407A.051(e) provides that the Commissioner shall evaluate the financial information provided with the application as necessary to ensure that the funding is sufficient to cover expected losses and expense and the funds necessary to pay workers' compensation benefits will be available on a timely basis. Labor Code §407A.054(b) states that each group shall obtain specific excess insurance for losses that exceed the group's retention in a form prescribed by the Commissioner. Labor Code §407A.054(b) also states that the Commissioner may establish minimum requirements for the amount of specific excess insurance based on differences among groups in size, types of employment, and years in existence, and other relevant factors. Labor Code §407A.054(a) directs that each group must comply with the excess insurance requirements adopted under this section. Labor Code §407A.008 provides that the

Commissioner shall adopt rules as necessary to implement Labor Code Chapter 407A, Group Self-Insurance Coverage. Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following statutes are affected by this proposal: Labor Code Chapter 407A

§5.6405. *Excess Insurance.*

(a) (No change.)

(b) The group shall obtain excess insurance coverage from an insurer that has a certificate of authority from the Texas Department of Insurance or from an eligible surplus lines insurer in compliance with Chapter 981 of the Texas Insurance Code and related provisions of the Texas Administrative Code, provided that: [-]

(1) the surplus lines insurer is also certified as a trustee reinsurer by the Texas Department of Insurance, in accordance with Insurance Code, Article 5.75-1(b)(3) (effective April 1, 2007, Article 5.75-1(b)(3) is repealed and re-adopted as Insurance Code §§493.102, 493.152 - 493.155, and 495.157);

(2) the surplus lines insurer maintains a financial strength rating of "A-" or better, as determined by A.M. Best Company;

(3) the surplus lines insurer maintains a clean, irrevocable, and unconditional letter of credit to secure the payment of losses, including losses, loss adjustment expenses, incurred but not reported losses, and any other obligation of the surplus lines insurer under the excess insurance coverage, whether paid or unpaid by the group:

(A) in no less than the greater of:

(i) the amount of actuarially projected losses to ultimate; or

(ii) the amount of actual losses to ultimate;

(B) issued by a qualified United States financial institution as defined in Insurance Code, Article 5.75-1(e) (effective April 1, 2007, Article 5.75-1(e) is repealed and re-adopted as Insurance Code §§493.002, 493.102, and 493.104) and

(C) provided the letter of credit meets the requirements in 28 TAC §7.610, except for those requirements that apply solely to reinsurance agreements;

(4) the group timely collects recoverables and receivables, including, if needed, drawing down on the letter of credit;

(5) the group submits the policy form to the Texas Department of Insurance for review prior to use; and

(6) the group demonstrates to the satisfaction of the Texas Department of Insurance that the group meets the requirements of subsection (b) of this section before obtaining excess insurance coverage from an eligible surplus lines insurer.

(c) - (d) (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 25, 2006.

TRD-200605291

Gene C. Jarmon  
General Counsel and Chief Clerk  
Texas Department of Insurance  
Earliest possible date of adoption: November 5, 2006  
For further information, please call: (512) 463-6327

◆ ◆ ◆  
**TITLE 31. NATURAL RESOURCES AND CONSERVATION**

**PART 10. TEXAS WATER DEVELOPMENT BOARD**

**CHAPTER 356. GROUNDWATER MANAGEMENT**

**SUBCHAPTER B. DESIGNATION OF GROUNDWATER MANAGEMENT AREAS**

**31 TAC §356.23**

The Texas Water Development Board (the board) proposes amendments to 31 TAC §356.23 of Chapter 356, concerning Groundwater Management, Subchapter B, Designation of Groundwater Management Areas. This section designates and delineates groundwater management areas (GMAs) as required by statute.

The board proposes amendments to §356.23 to correct an error in the boundary lines for the previously designated and delineated groundwater management areas. Additionally, a software update has resulted in seven digital files instead of three that made up the original data set. The seven updated digital files collectively constituting a data set delineating the corrected groundwater management area boundary lines are adopted by reference. A CD-ROM containing the corrected data is located in the offices of the board and is on file with the Secretary of State, Texas Register. The corrected CD-ROM contains all of the geographic information system data used to create the boundaries as well as software and instructions on how to locate a specific area by coordinates or other means on a digital map. The same information can also be found on the board's website at <http://www.twdb.state.tx.us>.

Melanie Callahan, Director of Fiscal Services, has determined that for the first five-year period the amendments are in effect, there will not be fiscal implications on state and local government as a result of enforcement and administration of the amended section.

Ms. Callahan 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 improved coordination in the management of groundwater resources in Texas. Ms. Callahan 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 Marisol Saenz, Attorney, Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, or by e-mail to [marisol.saenz@twdb.state.tx.us](mailto:marisol.saenz@twdb.state.tx.us) or by fax at (512) 463-5580.

The amendments are proposed under the authority of the Texas Water Code, Chapter 6, §6.101 which provides the board with

the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, as well as under the authority of Texas Water Code, Chapter 35, §35.004 which provides that the Texas Water Development Board shall designate groundwater management areas covering all major and minor aquifers in the State.

The statutory provisions affected by the proposed amendments are Texas Water Code, Chapter 35.

*§356.23. Designation of Groundwater Management Areas.*

Seven [Three] digital files entitled "Groundwater Management Areas 07 21 06.dbf DBF File (database file)," "Groundwater Management Areas 07 21 06.prj PRJ File (projection file)," "Groundwater Management Areas 07 21 06.sbn SBN File," "Groundwater Management Areas 07 21 06.sbx SBX File," "Groundwater Management Areas 07 21 06.shp SHP File (shape, i.e. point, polygon or line)," "Groundwater Management Areas 07 21 06.shx SHX File," and "Groundwater Management Areas 07 21 06.shp XML Document (metadata file)" ["Groundwater Management Areas.shp," "Groundwater Management Areas.dbf," and "Groundwater Management Areas.shx"] collectively constituting the data set delineating groundwater management area boundary lines for the State of Texas are adopted by reference. The boundaries of the groundwater management areas were created using a geographic information system. The digital files and a graphic representation of the groundwater management area boundaries entitled "Groundwater Management Areas 07 21 06.jpg" ["Groundwater Management Areas.jpg"] are available on a CD-ROM located in the offices of the Texas Water Development Board, on the board's web site at <http://www.twdb.state.tx.us>, and are on file with the Secretary of State, Texas Register. The graphic representation includes groundwater management area boundaries superimposed on a map that includes Texas county lines. The digital files entitled "Groundwater Management Areas 07 21 06.dbf DBF File (database file)," "Groundwater Management Areas 07 21 06.prj PRJ File (projection file)," "Groundwater Management Areas 07 21 06.sbn SBN File," "Groundwater Management Areas 07 21 06.sbx SBX File," "Groundwater Management Areas 07 21 06.shp SHP File (shape, i.e. point, polygon or line)," "Groundwater Management Areas 07 21 06.shx SHX File," and "Groundwater Management Areas 07 21 06.shp XML Document (metadata file)" ["Groundwater Management Areas.shp," "Groundwater Management Areas.dbf," and "Groundwater Management Areas.shx"] are controlling in the event of a conflict with any graphic representation.

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, 2006.

TRD-200605241  
Wendall Corrigan Braniff  
General Counsel  
Texas Water Development Board  
Proposed date of adoption: November 14, 2006  
For further information, please call: (512) 475-2052

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**CHAPTER 365. INVESTMENT RULES  
SUBCHAPTER B. INVESTMENT  
PROCEDURES**

### 31 TAC §365.13

The Texas Water Development Board (board) proposes amendments to 31 TAC §365.13 concerning Investment Rules. Amendments to this section are proposed to clarify the authorized investment of funds in the board's portfolio. This rulemaking has been undertaken as a result of the board's annual review of its investment policy and strategies as required by Government Code §2256.005, and is filed with the *Texas Register* concurrently with the board's notice of intention to review its rules in 31 TAC Chapter 365, as required by Government Code §2001.039.

The proposed amendment of §365.13(a)(5) clarifies that the board is authorized to invest in the Texas Treasury Safekeeping Trust Company's (TTSTC's) pooled funds of state agencies. Section 365.13(a)(5) currently lists only the Texas State Treasury as the location of pooled funds in which the board is authorized to invest. However, the board has selected the TTSTC to manage the Colonia Plumbing Loan Program Fund, the State Water Pollution Control Revolving Fund, and the Safe Drinking Water Revolving Fund, all three of which are required to be held outside the Texas State Treasury under Texas Water Code §§15.732, 15.603 and 15.6041. The TTSTC is allowed to invest those funds in pooled funds of state agencies, pursuant to the authority found in Government Code §404.102.

The proposed amendment of §365.13(a) adds new paragraph (8) to include repurchase agreements and reverse repurchase agreements in the list of authorized investments, in order to make this rule clear that the board's investment policy and strategies allow it to invest in these securities. The board currently has the authority to invest in repurchase agreements and reverse repurchase agreements under Government Code §2256.011. Although §365.13 does not currently list repurchase agreements and reverse repurchase agreements specifically, these investments fall under the category of investments in obligations of the U.S. or U.S. government agencies, in §365.13(a)(1). The proposed amendment will clarify that repurchase agreements and reverse repurchase agreements are authorized investments under the board's investment policies.

The proposed amendment of §365.13(b) adds new paragraph (5) to clarify that the board's authorized investments, as set out in its investment policies, includes only those items listed in §365.13(a). Currently, §365.13(a) lists authorized investments and §365.13(b) lists unauthorized investments. However, there are investments authorized under the Public Funds Investment Act (Government Code, Chapter 2256) that are not addressed in either §365.13(a) or (b). By adding proposed new §365.13(b)(5), the board will clarify that any investment that is not listed in §365.13(a) is not an authorized investment under the board's investment policy.

Melanie Callahan, Director of Fiscal Services, has determined that for the first five-year period the amendments are in effect, there will not be fiscal implications on state and local government as a result of enforcement and administration of the amended section.

Ms. Callahan 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. Ms. Callahan 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 Jim Bateman, Attorney, Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, or by e-mail to jim.bateman@twdb.state.tx.us or by fax at (512) 463-5580.

The amendments are proposed under the authority of the Texas Water Code §6.101, which provides 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 §2256.005, which requires the Texas Water Development Board to adopt, by rule, a written investment policy regarding the investment of its funds.

The proposed amendments implement Texas Government Code Chapter 2256.

#### §365.13. *Authorized and Suitable Investments.*

(a) The board is authorized to invest the portfolio in the following securities:

- (1) obligations of the U.S. or U.S. government agencies;
- (2) direct obligations of the State of Texas or its agencies and instrumentalities;
- (3) other obligations, the principal and interest of which are unconditionally guaranteed or insured by or backed by the full faith and credit of Texas or the United States or their respective agencies and instrumentalities;

(4) obligations of states, agencies, counties, cities, and other political subdivisions of any state rated as to investment quality by a nationally recognized investment rating firm not less than A or its equivalent;

(5) through pooled funds of state agencies in the Texas State Treasury or the Texas Treasury Safekeeping Trust Company;

(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) 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; and

(8) repurchase agreements and reverse repurchase agreements as authorized by Texas Government Code §2256.011.

(b) The board is not authorized to invest the portfolio in the following securities:

(1) obligations whose payment represents the coupon payments on the outstanding principal balance of the underlying mortgage-backed security collateral and pays no principal;

(2) obligations whose payment represents the principal stream of cash flow from the underlying mortgage-backed security collateral and bears no interest;

(3) collateralized mortgage obligations that have a stated final maturity date of greater than seven years; ~~and~~

(4) collateralized mortgage obligations the interest rate of which is determined by an index that adjusts opposite to the changes in a market index; and

(5) securities not listed in subsection (a) of this section.

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 20, 2006.

TRD-200605237  
Wendall Corrigan Braniff  
General Counsel  
Texas Water Development Board  
Proposed date of adoption: November 14, 2006  
For further information, please call: (512) 475-2052



## TITLE 34. PUBLIC FINANCE

### PART 12. STATE EMPLOYEE CHARITABLE CAMPAIGN

#### CHAPTER 329. ELIGIBILITY CRITERIA FOR STATEWIDE FEDERATIONS/FUNDS AND AFFILIATED ORGANIZATIONS

##### 34 TAC §329.1

The State Employee Charitable Campaign Policy Committee (SPC) proposes an amendment to §329.1, concerning audit and review requirements. The proposed amendment to §329.1 requires certain charitable organizations to include a copy of an IRS Form 990 with their applications. The SPC requires the IRS Form 990 to assist in determining the percentage of a charitable organization's budget that was used for administrative expenses during the time period being reported in the application.

The proposed amendment to §329.1 provides a similar requirement for organizations participating in the statewide SECC campaign that §330.1 provides for the local SECC campaigns and requires an IRS Form 990 from all organizations applying to participate in the statewide SECC campaign. The SPC seeks to adopt rules that allow for consistent campaign practices at the local level and the statewide level to the extent that is feasible. The SPC is charged with ensuring a fair and equitable campaign. The IRS Form 990 is a broadly recognized and accepted form used for determining administrative costs of most non-profit charitable organizations, including those with small budgets and those with larger budgets. The SPC may adopt a requirement that all organizations submit an IRS Form 990 to ensure all organizations are reviewed fairly and consistently and to ensure that organizations that are approved to participate in the SECC spend donations within the statutory limits.

Mr. Kevin Van Oort, designated Certifying Officer for the State Employee Charitable Campaign Policy Committee, has determined that for the first five-year period the rules will be in effect, there will be no significant fiscal impact on the state or units of local government.

Mr. Van Oort also has determined that for each year of the first five years these rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to help ensure that the donations of state employees to participating charitable organizations are going to the programs for which they are intended and not to unreasonably high administrative costs. There will be

no effect on small or micro businesses. There are no significant anticipated economic costs to persons who are required to comply with the proposed rules.

Comments on the proposal may be submitted to Kevin Van Oort, c/o SECC State Campaign Manager, United Ways of Texas, 1122 Colorado, Ste. 102, Austin, Texas 78701.

These amendments are proposed under Government Code, §659.139, which provides that the State Employee Charitable Campaign (SECC) must be managed fairly and equitably in accordance with the SECC law and the policies and procedures established by the state policy committee. The SPC interprets this statute to authorize the adoption of rules to the extent that the policies and procedures adopted are of general applicability and affect the rights of third parties, namely charitable organizations, local campaign managers, local employee committees, the state advisory committee, the state campaign manager, and state employees.

The other statute, article, or section affected by the proposed rules is Government Code, §659.146, regarding eligibility criteria for charitable organizations to participate in the state employee charitable campaign and the authority of the SPC to use outside expertise and resources to determine an organization's eligibility to participate in the SECC.

##### §329.1. *Audit and Review Requirements.*

(a) To be eligible to participate in the state employee charitable campaign, if the charitable organization's budget:

(1) is not more than \$100,000, the organization shall provide a completed Internal Revenue Service (IRS) Form 990 and an accountant's review that offers full and open disclosure of the organization's internal operations; or

(2) is greater than \$100,000, the organization shall be audited annually in accordance with generally accepted auditing standards of the American Institute of Certified Public Accountants. A copy of the report of such audit shall be provided with the application along with a completed Internal Revenue Service (IRS) Form 990.

(b) When a charitable organization submits an audit or accountant's review, a copy of the organization's most recent annual audit or accountant's review must be included with the application. The audit or accountant's review must cover the fiscal year ending not more than 18 months prior to the January of the campaign year in which the organization is applying for participation. The IRS Form 990 and audit or accountant's review must cover the same fiscal period. If the revenue and expenses on these two documents differ, the reconciliation must be included in the IRS Form 990 itself or be included in a letter of reconciliation submitted by the certified public accountant who completed the audit or accountant's review.

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

Filed with the Office of the Secretary of State on September 20, 2006.

TRD-200605235  
Kevin Van Oort  
Certifying Officer, State Policy Committee  
State Employee Charitable Campaign  
Earliest possible date of adoption: November 5, 2006  
For further information, please call: (512) 475-0387

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## CHAPTER 330. ELIGIBILITY CRITERIA FOR LOCAL FEDERATIONS/FUNDS, AFFILIATED ORGANIZATIONS, AND LOCAL CHARITABLE ORGANIZATIONS

### 34 TAC §330.1

The State Employee Charitable Campaign Policy Committee (SPC) proposes an amendment to §330.1, concerning audit and review requirements. The proposed amendment to §330.1 requires certain charitable organizations to include a copy of an IRS Form 990 with their applications. The SPC requires the IRS Form 990 to assist in determining the percentage of a charitable organization's budget that was used for administrative expenses during the time period being reported in the application.

The proposed amendment to §330.1 provides a similar requirement for organizations participating in the local SECC campaigns that §329.1 provides for the statewide campaign and requires an IRS Form 990 from all organizations applying to participate in an SECC campaign. The SPC seeks to adopt rules that allow for consistent campaign practices at the local level and the statewide level to the extent that is feasible. The SPC is charged with ensuring a fair and equitable campaign. The IRS Form 990 is a broadly recognized and accepted form used for determining administrative costs of most non-profit charitable organizations, including those with small budgets and those with larger budgets. The SPC may adopt a requirement that all organizations submit an IRS Form 990 to ensure all organizations are reviewed fairly and consistently and to ensure that organizations that are approved to participate in the SECC spend donations within the statutory limits.

Kevin Van Oort, designated Certifying Officer for the State Employee Charitable Campaign Policy Committee, has determined that for the first five-year period the rules will be in effect, there will be no significant fiscal impact on the state or units of local government.

Mr. Van Oort also has determined that for each year of the first five years these rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to help ensure that the donations of state employees to participating charitable organizations are going to the programs for which they are intended and not to unreasonably high administrative costs. There will be no effect on small or micro businesses. There are no significant anticipated economic costs to persons who are required to comply with the proposed rules.

Comments on the proposal may be submitted to Kevin Van Oort, c/o SECC State Campaign Manager, United Ways of Texas, 1122 Colorado, Ste. 102, Austin, Texas 78701.

These amendments and new rules are proposed under Government Code, §659.139, which provides that the State Employee Charitable Campaign (SECC) must be managed fairly and eq-

uitably in accordance with the SECC law and the policies and procedures established by the state policy committee. The SPC interprets this statute to authorize the adoption of rules to the extent that the policies and procedures adopted are of general applicability and affect the rights of third parties, namely charitable organizations, local campaign managers, local employee committees, the state advisory committee, the state campaign manager, and state employees.

The other statute, article, or section affected by the proposed rules is Government Code, §659.146, regarding eligibility criteria for charitable organizations to participate in the state employee charitable campaign and the authority of the SPC to use outside expertise and resources to determine an organization's eligibility to participate in the SECC.

#### §330.1. Audit and Review Requirements.

(a) To be eligible to participate in the state employee charitable campaign, if the charitable organization's budget:

(1) is not more than \$100,000, the organization shall provide a completed Internal Revenue Service (IRS) Form 990 and an accountant's review that offers full and open disclosure of the organization's internal operations; or

(2) is greater than \$100,000, the organization shall be audited annually in accordance with generally accepted auditing standards of the American Institute of Certified Public Accountants. A copy of the report of such audit shall be provided with the application along with a completed Internal Revenue Service (IRS) Form 990.

(b) When a charitable organization submits an audit or accountant's review, a copy of the organization's most recent annual audit or accountant's review must be included with the application. The audit or accountant's review must cover the fiscal year ending not more than 18 months prior to the January of the campaign year in which the organization is applying for participation. The IRS Form 990 and audit or accountant's review must cover the same fiscal period. If the revenue and expenses on these two documents differ, the reconciliation must be included in the IRS Form 990 itself or be included in a letter of reconciliation submitted by the certified public accountant who completed the audit or accountant's review.

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

Filed with the Office of the Secretary of State on September 20, 2006.

TRD-200605234

Kevin Van Oort

Certifying Officer, State Policy Committee

State Employee Charitable Campaign

Earliest possible date of adoption: November 5, 2006

For further information, please call: (512) 475-0387

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# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text 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 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 19. QUARANTINES AND NOXIOUS PLANTS

##### SUBCHAPTER R. FORMOSAN TERMITE QUARANTINE

###### 4 TAC §19.181

The Texas Department of Agriculture (the department) adopts an amendment to §19.181, concerning a quarantine for the Formosan subterranean termite, *Coptotermes formosanus* Shiraki, without changes to the proposal published in the August 11, 2006, issue of the *Texas Register* (31 TexReg 6297).

The amendment is made to add Anderson and Johnson counties to the list of subterranean termite-infested counties in Texas. The amendment is adopted to slow the spread of this pest in the state of Texas. Subterranean termite infestations were recently detected in Anderson and Johnson counties. The department believes that restriction on the movement of quarantined articles from these two counties will delay the spread of this termite into free areas of Texas. The amendment to §19.181 adds Anderson and Johnson counties to the list of the Formosan subterranean termite-infested counties in Texas.

No comments were received on the proposal.

The amendment is adopted under the Texas Agriculture Code (the Code) §71.002, which provides the department with the authority to quarantine an area if it determines that a dangerous insect pest or plant disease not widely distributed in this state exists within an area of the state; the Code, §71.003, which provides the department with the authority to declare an area pest-free and quarantine surrounding areas if it determines that an insect pest or plant disease of general distribution in this state does not exist in an area; and the Code, §71.007, which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for a specific treatment of quarantined articles.

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, 2006.

TRD-200605195

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Effective date: October 9, 2006

Proposal publication date: August 11, 2006

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



## TITLE 10. COMMUNITY DEVELOPMENT

### PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

#### CHAPTER 303. REGISTRATION SUBCHAPTER A. REGISTRATION OF BUILDERS

###### 10 TAC §303.7

The Texas Residential Construction Commission (the "commission") adopts amendments to §303.7, the registration of designated agents for registered builders in the State of Texas as provided for in Title 16, Property Code without changes to the proposed text as published in the June 30, 2006, issue of the *Texas Register* (31 TexReg 5239).

The amendments are adopted to correct errors in the rule language published for adoption in the June 9, 2006, issue of the *Texas Register* (31 TexReg 4729) effective June 12, 2006.

The commission received no comments on the proposed amendments.

The amendments are adopted pursuant to Chapter 416, Property Code, which provides for the designation of registered agents for registration of builders and, generally, pursuant to Property Code §408.001, which provides authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code.

The statutory provisions affected by these amendments are those set forth in Property Code, Chapters 408 and 416.

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

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 22, 2006.

TRD-200605277



## SUBCHAPTER E. TEXAS STAR BUILDER PROGRAM

### 10 TAC §303.300

The Texas Residential Construction Commission adopts amendments to §303.300, which sets forth the requirements for qualification for the Texas Star Builder Program, with non-substantive changes to the proposed text as published in the August 11, 2006, issue of the *Texas Register* (31 TexReg 6298).

The amendments add a new §303.300(f)(8) to add a category of acceptable construction practices to the list of practices an applicant must comply with in order to obtain Star Builder status, thereby encouraging accessibility in buildings while keeping the program open to all builders.

The commission believes this amendment will enable builders to participate within a range of options and preserve the right of the individual to negotiate a contract for their home for the specific accessibility needs of the homeowner, and not a boilerplate of features than may not be necessary or desired.

The commission received no comments on the proposed amendments.

The amendments are adopted pursuant to Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code and Property Code §416.011.

Cross-reference to statutes: Property Code §408.001 and §416.011.

§303.300. *Texas Star Builder Program.*

(a) Purpose. The Texas Star Builder Program is a voluntary program for builders and remodelers that are registered and are in good standing under Subchapter A of this chapter for a period of twelve months immediately preceding their application to the program. Participation in this program is not required to be a builder or remodeler in the State of Texas.

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

(1) Applicant--The person identified on the Certificate of Registration issued by the commission pursuant to Subchapter A of this chapter that applies for membership in the Texas Star Builder Program under this section.

(2) Continuing education--Commission-approved professional education courses or professional development activities such as workshops, seminars, institutes, conferences or short-term courses that a member must complete annually for continued membership in the Texas Star Builder Program.

(3) Continuous membership--A period of membership in good standing without voluntary or involuntary interruption or lapse.

(4) Foundation Practices--

(A) Foundations are designed by a structural engineer based on a site specific geotechnical report as may be required by the engineer of record;

(B) The site specific geotechnical report is one that is appropriate for the circumstances with the frequency and spacing of the borings determined by the geotechnical engineer;

(C) Foundations are built as designed;

(D) The construction of the foundation system is inspected prior to the placement of the concrete by the engineer or an employee of the engineer who issues an inspection report;

(E) If the foundation system is designed for post-tension cables, then the builder shall maintain a record of the stressing certification;

(F) The builder makes a record of the elevations of the foundation prior to substantial completion of the home or an improvement to the home;

(G) The builder provides to the homeowner a final survey showing that the site drainage is in accordance with the International Residential Code; and

(H) The builder who constructs the major structural components of a single-family dwelling or duplex or a material improvement, for a period of ten years following the date of substantial completion, shall maintain:

(i) the plans, specifications and recommendations provided by the engineer and the geotechnical report if required;

(ii) the inspection report;

(iii) the stressing certification; and

(iv) the record of the original elevations.

(5) Member--A person registered by the commission as a builder or remodeler or designated agent of a builder or remodeler by the commission who has been approved by the commission for admission into the Texas Star Builder program.

(6) Program Year--Beginning July 1, 2006, the twelve months from July 1 to June 30 each year will constitute a Program Year for the Texas Star Builder Program.

(7) Responsible Party--An individual who is authorized to act on behalf of a business entity that is a registered builder or remodeler in transactions involving amounts in excess of \$100,000, excluding execution of contracts or instruments of conveyance for the sale of a single lot or dwelling unit, or the acquisition of materials for construction thereof.

(8) SIRP--The State-sponsored Inspection and Dispute Resolution Process.

(9) Universal Design Options--Features in residential construction that provide barrier-free access and easy mobility and independence for people with a broad variety of physical needs including all of the following: barrier-free construction of exterior doors; interior doorways and hallways; reinforced bathroom walls, tubs and showers; and maximum height restrictions for switches, boxes and thermostats.

(c) Eligibility.

(1) An applicant who is a sole proprietor must satisfy one of the following:

(A) twelve years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the State of Texas; or

(B) seven years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the State of Texas, is an active builder member of and with continuous membership in a trade association related to the construction industry for at least five years preceding the date of the application; or

(C) five years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the State of Texas and the applicant or a responsible party of the applicant holds a four-year degree in construction science or its equivalent from an accredited college or university; or

(D) three years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the State of Texas and the applicant or a responsible party of the applicant has credible documentation of completion of educational requirements administered by an association or institution that designates a level of expertise in the residential construction industry, such as the National Association of Home Builders Graduate Builder and Remodeler Programs.

(2) An applicant that is a business entity, which registered 40 homes or less in the preceding twelve months, must have at least one responsible party of the applicant who satisfies one of the following:

(A) twelve years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the State of Texas; or

(B) seven years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the State of Texas, is an active builder member of and with continuous membership in a trade association related to the construction industry for at least five years preceding the date of the application; or

(C) five years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the State of Texas and holds a four-year degree in construction science or its equivalent from an accredited college or university; or

(D) three years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the State of Texas and has credible documentation of completion of educational requirements administered by an association or institution that designates a level of expertise in the residential construction industry, such as the National Association of Home Builders Graduate Builder and Remodeler Programs.

(3) An applicant that is a business entity, which registered more than 40 homes in the preceding twelve months, must have at least one responsible party of the applicant and one employee of the applicant who is involved in on-site construction activities for each 40 homes registered in the preceding twelve months, who each satisfies one of the following:

(A) twelve years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the State of Texas; or

(B) seven years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the State of Texas, is an active builder member of and with continuous membership in a trade association related to the construction industry for at least five years preceding the date of the application; or

(C) five years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the State of Texas and holds a four-year degree in construction science or its equivalent from an accredited college or university; or

(D) three years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the State of Texas and has credible documentation of completion of educational requirements administered by an association or institution that designates a level of expertise in the residential construction industry, such as the National Association of Home Builders Graduate Builder and Remodeler Programs.

(d) Financial Responsibility. An applicant must:

(1) provide documentation from a financial institution that includes a statement of the following information that at the time of the application:

(A) Applicant has an excellent relationship with the financial institution (or highest standard of relationship, as defined by the financial institution);

(B) Applicant is eligible for an extension of credit for the purpose of residential construction;

(C) Applicant is not in default of any credit obligations to the financial institution; and

(D) The officer or official of the financial institution that executes the document does not have actual knowledge that the applicant, any affiliate of the applicant, or any corporate officer, general partner or constituent partner as identified by the applicant to the financial institution, has filed for federal bankruptcy in this state or any state in the seven years immediately preceding the date of the application.

(E) The officer or official of the financial institution that executes the document does not have actual knowledge that the applicant has overdrafts or past due notices that have not been brought current in a timely manner within the standards of the lending industry; and

(F) The officer or official of the financial institution that executes the document does not have actual knowledge of any current delinquency in property taxes, unsatisfied judgments or enforceable mechanic's or materialmen's liens on any property for which applicant entered into a transaction governed by the Act as a result of failure to pay a subcontractor or supplier unless the builder has either:

(i) secured a properly filed bond to indemnify the lien pursuant to the provisions of Property Code Chapter 53, Subchapter H;

(ii) secured the issuance of title insurance to protect the homeowner against the lien claim; or

(iii) initiated legal action to contest the lien and demonstrated proof of financial responsibility to pay the costs of defense of title to the property and pay the lien claim if the lien is proven to be proper.

(2) provide a sworn or attested statement of the applicant that:

(A) the applicant, any affiliate or corporate officer, general partner or constituent partner of the applicant has not filed for federal bankruptcy in this state or any other state in the seven years immediately preceding the date of the application;

(B) the applicant is current on all state property taxes unless a protest or legal challenge has been properly filed;

(C) the applicant has no unpaid judgments;

(D) the applicant has no enforceable mechanic's or materialmen's liens on any property for which the applicant entered into a transaction governed by the Act as a result of failure to pay a subcontractor or supplier unless the builder has either:

(i) secured a properly filed bond to indemnify the lien pursuant to the provisions of Property Code Chapter 53, Subchapter H;

(ii) secured the issuance of title insurance to protect the homeowner against the lien claim; or

(iii) initiated legal action to contest the lien and demonstrated proof of financial responsibility to pay the costs of defense of title to the property and pay the lien claim if the lien is proven to be proper.

(3) The requirements of a statement prepared by a financial institution in accordance with paragraph (1) of this subsection do not require the financial institution to conduct any independent investigation beyond the institution's own records and the actual knowledge of the officer or official who executes the document.

(4) If an applicant is unable to obtain the required statement in accordance with paragraph (1) of this subsection, an applicant can submit instead a statement signed by an officer of its financial institution on a commission-prescribed form that the institution does not choose to provide the requested information or submit an affidavit by the applicant attesting to the fact that the financial institution was asked to provide the information and refused.

(e) Insurance requirements.

(1) A remodeler-applicant must maintain a general liability policy of:

(A) \$300,000 per occurrence, if the applicant registered between 25 - 75 homes in the preceding twelve months; or

(B) \$500,000 per occurrence, if the applicant registered between 76 - 125 homes in the preceding twelve months; or

(C) \$1,000,000 per occurrence, if the applicant registered 126 or more homes in the preceding twelve months.

(2) A remodeler-applicant who has registered fewer than 25 homes in the preceding twelve months does not need to comply with the general liability insurance requirements of this section.

(3) A builder-applicant must maintain a general liability policy of:

(A) \$300,000 per occurrence, if the applicant registered between 50 and 150 homes in the preceding twelve months;

(B) \$500,000 per occurrence, if the applicant registered between 151 and 350 homes in the preceding twelve months;

(C) \$1,000,000 per occurrence, if the applicant registered between 351 and 1000 homes in the preceding twelve months; or

(D) \$2,000,000 per occurrence, if the applicant registered over 1,000 homes in the preceding twelve months.

(4) A builder-applicant who registered fewer than 50 homes in the preceding twelve months does not need to comply with the general liability insurance requirements of this section.

(f) Construction Practices. The applicant must provide a sworn or attested statement that the applicant shall comply during the term of membership with the requirements of at least three of the following:

(1) a green building program such as the Model Green Home Building Guidelines sponsored by the National Association of Home Builders, any local governmental authority or similar publicly or privately sponsored programs as approved by the Executive Director;

(2) the Energy Star Program or similar programs as approved by the Executive Director;

(3) Certified Aging-in-Place Specialist Program or EasyLiving Home Certification Program;

(4) a private inspection program for at least three (3) phases of construction for all homes built in a geographic area that are not inspected by municipal inspectors; or

(5) another nationally-recognized program that requires a greater standard of residential construction practice than required by the commission pursuant to the commission-adopted limited warranty and building and performance standards or usual and customary residential construction practices as approved by the Executive Director; or

(6) Foundation Practices as defined in this section; or

(7) provide homeowners with whom it enters into a transaction governed by the Act with a third-party warranty program offered by a commission-approved third-party warranty company or provide those homeowners with a two-year warranty for all one-year workmanship and materials items pursuant to the building and performance standards set forth in Chapter 304, Subchapter B of this title; or

(8) affirm that 8% of homes constructed annually were built in accordance with Universal Design Options as defined in this section.

(g) Participation. Applicants must agree to actively participate in any eligible SIRP request submitted by a homeowner involving a residential construction project for which the applicant was the builder or remodeler and must agree to respond to the homeowner in good faith based on the final non-appealable SIRP report and recommendation.

(h) Construction Defects. Effective January 1, 2007, the number of homeowner-submitted eligible SIRP requests for alleged construction defects against an applicant that resulted in a finding of a construction defect in the final non-appealable inspection report may not exceed:

(1) two homes for applicants that registered fewer than 40 homes in the preceding twelve months; or

(2) five percent of the number of homes registered for applicants that registered 40 or more homes in the preceding twelve months.

(i) Application. Applicants must submit a completed commission-prescribed application form and credible documentation supporting the information supplied in the application for each applicant seeking membership or renewal in the Texas Star Builder Program.

(1) An applicant may submit an application for membership in the Texas Star Builder Program only once during a Program Year.

(2) For each applicant seeking membership under this section, the commission shall publish a notice of application in the *Texas Register*.

(A) The commission shall accept written public comment on each application submitted to the commission for a period of twenty-one days following the date of publication of the notice.

(B) The commission will consider comments received in response to published notices of application in the approval process.

(3) Applicants shall respond to inquiries from the commission for further information regarding an application for membership or renewal of membership. Failure to respond within 15 days to a request for information shall result in the administrative withdrawal of the application.

(4) The commission shall issue a Texas Star Builder certificate of membership to each applicant approved for membership in the Texas Star Builder Program not later than twenty-one days following the expiration of the comment period under this section.

(5) A Texas Star Builder certificate of membership shall be effective for a two-year term of membership to expire at the end of the second Program Year of membership from the date of issuance unless revoked, without prorating any portion of a Program Year in which the membership is not yet approved.

(j) Continuing education. Beginning July 1, 2006, all members shall complete at least 16 hours of continuing education per Program Year. A continuing education course with the same course content as previously submitted for credit cannot be repeated for credit.

(1) For purposes of this requirement:

(A) any individual member must maintain the continuing education requirement;

(B) any member that is a business entity that registered fewer than 40 homes in the preceding twelve months, shall require at least one officer of the member to maintain the continuing education requirement; or

(C) any member that is a business entity, that registered more than 40 homes in the preceding twelve months, shall require that:

(i) one officer of the member maintains the continuing education requirement; and

(ii) for every 40 homes registered, one employee of the member who is involved in on-site construction activities shall also maintain the continuing education requirement.

(D) Beginning July 1, 2006, and each Program Year thereafter, members must submit evidence no later than June 30 of each Program Year that they have completed the continuing education requirements of this section during the preceding 12 months. Proof of continuing education must be submitted to the commission with a completed Texas Star Builder continuing education form and processing fee.

(E) Approved Continuing Education Courses or Programs.

(i) The Executive Director shall review all courses or programs submitted and shall approve those that satisfy the continuing education requirement. The Executive Director shall consider in the approval process of a proposed training program, the objective and purpose of the program, the content and subject matter of each course and the qualifications of the presenters.

(ii) Any member that registers more than 30 homes per year that wished to conduct an in-house training program for its employees or any person who wishes to sponsor a course or training program for continuing education purposes under this section must submit a written request for consideration, a detailed course agenda, a written course description and resume or biographical information of each speaker or presenter to the Executive Director for approval, not later than sixty (60) days prior to the proposed event.

(2) Substitutions for Continuing Education Coursework.

(A) A member may substitute not more than three credit hours of continuing education per Program Year for participation in an active leadership role (such as an officer or committee chairperson) in a trade association for the Program Year in which the continuing education hours would have been taken. To receive this leadership credit, the member shall submit to the commission written verification from the president, executive officer, or other equivalent of the association, certifying the member's leadership status.

(B) A member may not substitute more than two credit hours of continuing education for self-study in a Program Year. To receive self-study credit, the member must submit to the commission a statement that verifies the completion of self-study and the materials studied.

(C) A member may substitute instructor credit for up to five credit hours of continuing education in a Program Year. Each hour of instruction given is equivalent to an hour of continuing education credit. To receive instructor credit, the member must submit to the commission a copy of the published course agenda.

(k) Renewal. In order to renew membership in the Texas Star Builder Program, a person must submit a completed application for renewal with the required documentation set forth in this section to the commission not later than thirty days prior to the expiration of the effective date shown on the current Texas Star Builder certificate of membership.

(l) Denial.

(1) The commission shall deny an application for membership or the renewal of membership in the Texas Star Builder Program if the commission determines that the applicant is ineligible for admission or for continued membership in the program.

(2) If the commission denies an application for membership or the renewal of membership, the commission shall provide written notice to the applicant not later than the fifteenth business day following the expiration of the public comment period set forth in this section.

(3) The commission shall state the reason(s) for denial of membership or renewed membership in the Texas Star Builder Program in its written notice to the applicant and provide an opportunity for appeal.

(m) Appeal of Denial.

(1) An applicant who receives a notice of denial under subsection (l) of this section may appeal the decision to the Executive Director by submitting a written request for reconsideration not later than thirty days from receipt of the notice of denial.

(2) The decision of the Executive Director regarding the appeal is a final agency decision not subject to further administrative appeal.

(n) Revocation of Membership.

(1) The commission shall revoke a certificate of membership in the Texas Star Builder Program if the commission determines that:

(A) the member has been subject to a final disciplinary action from the commission pursuant to Chapter 418 of the Act;

(B) the member used fraud or deceit in obtaining the certificate of membership;

(C) the member is no longer eligible for a Certificate of Registration as a builder or remodeler or is no longer eligible to serve as a designated agent for a builder or remodeler;

(D) the member's Certificate of Registration has been suspended, is placed in inactive status or the member has been placed under a commission probation order; or

(E) the member has failed to maintain the program's continuing education requirements.

(2) If a membership is revoked, the commission shall provide written notice to the member not later than the fifth day after the revocation becomes effective.

(3) The commission shall state the reason(s) for the revocation in its written notice to the member.

(4) A member whose certificate of membership is subject to revocation for a finding under paragraph (1)(B) of this subsection shall be provided an opportunity for appeal.

(o) Appeal from Revocation.

(1) A member whose membership has been revoked under subsection (n)(1)(B) of this section may appeal the decision by submitting a written request for reconsideration to the Executive Director within ten days of receipt of notice of revocation.

(2) The decision of the Executive Director on the appeal is a final agency decision not subject to further administrative appeal.

(3) Upon expiration or notice of final revocation of membership in the Texas Star Builder Program, the former member shall immediately return the Texas Star Builder certificate of membership and discontinue the use and dissemination of the "Texas Star Builder" designation on all advertisements, promotions or written material.

(p) Recognition of Membership. A member may display the Texas Star Builder logo so long as that member remains in good standing in the Texas Star Builder Program. Members who have had continuous membership in the Texas Star Builder Program may display the number of years of continuous membership.

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 22, 2006.

TRD-200605281

Susan K. Durso  
General Counsel

Texas Residential Construction Commission

Effective date: October 12, 2006

Proposal publication date: August 11, 2006

For further information, please call: (512) 475-0595



## CHAPTER 305. PRACTICE AND PROCEDURES FOR HEARINGS AND DISCIPLINARY ACTIONS

### SUBCHAPTER B. DISCIPLINARY PROCEEDINGS

#### 10 TAC §305.24, §305.25

The Texas Residential Construction Commission (the "commission") repeals §305.24 and §305.25 without changes to the proposal as published in the August 4, 2006, issue of the *Texas Register* (31 TexReg 6160).

The repeals are adopted as a result of amendments to §305.23, previously adopted, which provide for an informal notice of violation. Further, the language contained in §305.24 and §305.25 is duplicate of language that has been subsumed into other sections in this chapter by amendments adopted effective June 12, 2006.

The repeal removes duplications in the language of the rules.

The repeal of §305.24 and §305.25 is adopted, generally, pursuant to Property Code §408.001, which provides authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code; Property Code Chapter 418, regarding the commission's authority to undertake disciplinary actions; and Chapter 419, regarding the commission's authority to impose administrative penalties.

The statutory provisions affected by the repeal of these rules are those set forth in Property Code, Chapters 408, 418 and 419.

No other statutes, articles, or codes are affected by the repeal of these rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## CHAPTER 313. STATE-SPONSORED INSPECTION AND DISPUTE RESOLUTION PROCESS (SIRP)

### 10 TAC §313.8

The Texas Residential Construction Commission adopts amendments to 10 Texas Administrative Code §313.8 relating to the fees for filing a request for the state-sponsored inspection and dispute resolution process without substantive changes to the proposed text, which was published in the August 4, 2006 issue of the *Texas Register* (31 TexReg 6161). The non-substantive changes correct typographical errors and improve readability of the section.

The amendments clarify the procedures for requesting and granting a waiver of the fees for participation in the state-sponsored inspection and dispute resolution process and add an income level to the criteria for granting waiver applications generally. The income level criterion makes clear that waivers are available specifically for those with financial need.

The commission received no comments on the proposed amendments.

The amendments are adopted pursuant to Property Code, §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code, and Property Code, §426.006(b), which provides for the waiver or reduction of fees for the state-sponsored inspection and dispute resolution process. No other statutes or rules are affected by this adoption.

§313.8. *Fees for Filing Requests.*

(a) The commission will establish fees that are commensurate with the scope of the requested inspection and the type of construction defect(s) alleged.

(b) The commission shall publish the established fees on its website and make them available to the public in writing.

(c) The request to initiate the SIRP must include the appropriate inspection fee.

(d) A requestor who is able to show financial need may submit a request for a reduction or waiver of the required fee.

(1) The request for a reduction or waiver of the required fee must include a sworn affidavit of inability to pay fees on a commission-prescribed form at the time the request to initiate a SIRP is filed.

(2) The Executive Director shall review any request for a fee reduction or waiver and the supporting affidavit to determine whether to approve or deny the request.

(3) The Executive Director's decision on a request for fee reduction or waiver is a final agency decision and is not subject to further administrative appeal.

(e) The Executive Director shall approve a request to reduce or waive the inspection fee if the requestor:

(1) has a household income of less than five times the poverty guidelines issued each year in the *Federal Register* by the Department of Health and Human Services for the number of people in the requestor's household; and

(2) has monthly financial obligations that amount to more than 40% of the requestor's gross monthly income; and

(3) does not have more than two months of net income in liquid assets.

(f) If the Executive Director approves a request to reduce or waive the inspection fee, the inspection fee shall be reduced or waived based on the following schedule:

(1) 35% of the fee shall be waived if the requestor has monthly financial obligations between 40% and 45% of the requestor's gross monthly income;

(2) 70% of the fee shall be waived if the requestor has monthly financial obligations between 45.01% and 49.99% of the requestor's gross monthly income; or

(3) 100% of the fee shall be waived if the requestor has monthly financial obligations of 50% or more of the requestor's gross monthly income.

(g) The Executive Director may grant exceptions to subsections (e) and (f) of this section upon a written showing of unique need. Any exemption granted by the Executive Director to subsections (e) and (f) of this section must be in writing.

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 22, 2006.

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For further information, please call: (512) 475-0595

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**TITLE 19. EDUCATION**

**PART 2. TEXAS EDUCATION AGENCY**

**CHAPTER 33. STATEMENT OF INVESTMENT OBJECTIVES, POLICIES, AND GUIDELINES OF THE TEXAS PERMANENT SCHOOL FUND**

**19 TAC §§33.5, 33.15, 33.25, 33.35**

The State Board of Education (SBOE) adopts amendments to §§33.5, 33.15, 33.25, and 33.35, concerning the Texas Permanent School Fund (PSF). The amendment to §33.5 is adopted with changes to the proposed text as published in the July 28, 2006, issue of the *Texas Register* (31 TexReg 5886). The amendments to §§33.15, 33.25, and 33.35 are adopted without changes to the proposed text as published in the July 28, 2006, issue and will not be republished. The rules establish investment objectives, policies, and guidelines for the PSF. The adopted amendments primarily update the rules to incorporate recent changes to the Long-Term Strategic Asset Allocation Plan of the Permanent School Fund.

The Texas Education Code (TEC), §7.102(c)(31), states that the SBOE may invest the PSF within the limits of the authority granted by the Texas Constitution, Article VII, §5, and TEC, Chapter 43.

The Long-Term Strategic Asset Allocation Plan of the PSF was originally adopted by the SBOE on October 8, 1994. The SBOE has amended, discussed, and reviewed the plan as needed since its original adoption. During its April 28, 2006, meeting, the SBOE directed the development of five plans for consideration at the July 2006 meeting using a proposed asset allocation as a general guideline for the SBOE to adopt changes to the current plan. At its April 2006 meeting, the SBOE agreed to schedule a work session prior to the July 2006 meeting to review and discuss various background issues related to the asset allocation plan of the PSF. The work session was held on June 14, 2006. Direction given by the SBOE during the June 14 work session was incorporated into the proposed amendments considered during the July 2006 SBOE meeting. Changes to the asset allocation plan were approved by the SBOE on July 7, 2006. Also on July 7, 2006, the SBOE approved for first reading and filing authorization amendments proposed to update 19 TAC Chapter 33 to incorporate changes made to the asset allocation plan. The amendments included recommended adjustments to the code of ethics and the securities lending

guidelines. The SBOE approved the amendments for second reading and final adoption on September 15, 2006.

In accordance with the TEC, §7.102(f), the SBOE approved this rule action for final adoption by a vote of more than two-thirds of its members to specify an effective date earlier than September 1, 2007, in order to incorporate provisions to address revisions to the asset allocation plan in a timely manner. The effective date of the adopted amendment is 20 days after filing as adopted.

Section 33.5, Code of Ethics, was amended to include reference to an additional statute relating to ethics and disclosure requirements and to standardize reporting dates to match those of the state. Specifically, reference to Texas Government Code, Chapter 2263, was added to subsection (e)(1); reporting periods and due dates for expenditure and disclosure reports were modified in subsection (l)(2)(J), (K), and (M); and clarification about transactions between PSF service providers and/or consultants was added to subsection (n). The expenditure report form, adopted in rule in subsection (l)(2)(J), was amended to reflect the changes in reporting periods. No additional changes were made to rule text in §33.5 since published as proposed; however, in response to a comment from the State Auditor's Office, additional changes were made to the expenditure report form in §33.5(l)(2)(J). The additional changes add a signature line for the individual making the report and require the individual to indicate clearly that there are no expenditures over \$50 to report.

Section 33.15, Objectives, was amended to include the new asset class objectives. An update to reflect the name change for the performance presentation standards was made in subsection (c)(2). Subsection (c) was also modified to add new paragraphs (8) - (11) for new asset class objectives relating to real estate, private equity, absolute return, and real return funds, respectively. Numbering and cross references was modified accordingly. Subsection (d)(3) was also revised to include these new objectives. No additional changes were made to §33.15 since published as proposed.

Section 33.25, Permissible and Restricted Investments and General Guidelines for Investment Managers, was amended to accommodate the new asset classes and to clarify language on existing guidelines. Subsection (a) was modified to add the new asset class objectives relating to real estate, private equity, absolute return, and real return funds as permissible investments, with appropriate renumbering and technical edits as necessary. Language related to government sponsored agencies was clarified in subsection (b)(10). Language to reflect current Index guidelines, including rating by Fitch, was updated in subsection (b)(13). Language in subsection (c)(2)(D) will permit a varying degree of discretionary authority for specialist advisors. No additional changes were made to §33.25 since published as proposed.

Section 33.35, Guidelines for the Custodian and the Securities Lending Agent, was amended to include the extension of the maturity of floating rate notes to three years and to add language to strengthen the program in general. Modifications throughout paragraph (2)(H) were made to update, correct, and strengthen specific guidelines applicable to the PSF securities lending program. No additional changes were made to §33.35 since published as proposed.

In accordance with the TEC, §43.0031(c), a copy of the proposed amendment to 19 TAC §33.5 was submitted to the Texas Ethics Commission and the State Auditor's Office (SAO) for re-

view and comment. The following comments were received regarding adoption of the amendments.

**Comment.** The Ethics Commission stated that they reviewed the proposal to amend 19 TAC §33.5 and had no comments regarding the proposal as presented. However, the Ethics Commission included additional comments on the Code of Ethics for future consideration.

**Response.** The Ethics Commission's additional comments have been reviewed by staff and shared with the Texas Education Agency (TEA) Ethics Officer. The additional comments will be taken under consideration for future changes.

**Comment.** The SAO recommended changing the dates under 19 TAC §33.40(c)(6) to agree with changes in dates recommended under 19 TAC §33.5(l)(2)(J).

**Response.** The SBOE agreed with the SAO's recommendation; however, no changes were proposed in 19 TAC §33.40, Trading and Brokerage Policy, for first reading and filing authorization at the July 2006 SBOE meeting. A proposed amendment to 19 TAC §33.40 to incorporate this change will be considered by the SBOE at a future meeting.

**Comment.** The SAO suggested that it will be more appropriate to place the brokerage ethics policy that is currently addressed in 19 TAC §33.40(c)(6) with the Code of Ethics policy in 19 TAC §33.5.

**Response.** The SBOE disagreed and took action to adopt the amendment as proposed. This issue has been discussed previously and staff will have future discussions with the SAO and the TEA Ethics Officer for possible proposed changes in the future.

**Comment.** The SAO recommended that Figure: 19 TAC §33.5(l)(2)(J)(iii), "Report of Expenditures of Persons Providing Services to the State Board of Education Relating to the Management and Investment of the Permanent School Fund," clearly be required even when no expenditures over \$50 need to be reported. In addition, the SAO recommends that the document be signed.

**Response.** The SBOE agreed and changed the expenditure report form to incorporate this comment. The additional changes add a signature line for the individual making the report and require the individual to indicate clearly that there are no expenditures over \$50 to report.

The amendments are adopted under the Texas Education Code, §7.102(c)(31) and (33), which authorize the State Board of Education to invest the PSF within the limits of the authority granted by the Texas Constitution, Article VII, §5, and to adopt rules as necessary for the administration of the program; and §43.0031, which authorize the State Board of Education to adopt and enforce an ethics policy that provides standards of conduct relating to the management and investment of the Permanent School Fund; and the Texas Constitution, Article VII, §5(f).

The amendments implement the Texas Education Code, §7.102(c)(31) and (33), and §43.0031, and the Texas Constitution, Article VII, §5(f).

*§33.5. Code of Ethics.*

(a) Fiduciary responsibility. The members of the State Board of Education (SBOE) serve as fiduciaries of the Texas Permanent School Fund (PSF) and are responsible for prudently investing its assets. The SBOE members or anyone acting on their behalf shall comply with the provisions of this section, the Texas Constitution,



Texas statutes, and all other applicable provisions governing the responsibilities of a fiduciary.

(b) Compliance with constitution and code of ethics. The SBOE members are public officials governed by the provisions of the Texas Government Ethics Act, as stated in the Texas Government Code, Chapter 572.

(c) Definitions. For purposes of this section, the following terms shall have the following meanings.

(1) SBOE Member--A member of the SBOE; a spouse of an SBOE member; a child or children of an SBOE member.

(2) Persons Providing PSF Investment and Management Services to the SBOE (PSF Service Providers) are the following individuals:

(A) any person responsible by contract for managing the PSF, investing the PSF, executing brokerage transactions, or acting as a custodian of the PSF;

(B) a member of the Investment Advisory Committee;

(C) any person who provides consultant services for compensation regarding the management and investment of the PSF;

(D) any person who provides investment and management advice to an SBOE Member, with or without compensation, if an SBOE Member:

(i) gives the person access to records or information that are identified as confidential; or

(ii) asks the person to interview, meet with, or otherwise confer with current or potential consultants, advisors, money managers, investment custodians, Texas Education Agency (TEA) staff, or others who currently provide, or are likely to provide, services to the SBOE relating to the management or investment of the PSF; or

(E) any member of the TEA PSF staff or legal staff who is responsible for managing the PSF, investing the PSF, executing brokerage transactions, acts as a custodian of the PSF, or provides investment or management advice or legal advice regarding the investment or management of the PSF to an SBOE Member or PSF staff.

(d) Assets affected by this section. The provisions of this section apply to all PSF assets, both publicly and nonpublicly traded investments.

(e) General ethical standards.

(1) SBOE Members and PSF Service Providers must comply with all applicable laws, specifically, the following statutes: Texas Government Code, Chapter 2263 (Ethics and Disclosure Requirements for Outside Financial Advisors and Service Providers), §825.211 (Certain Interests in Loans, Investments, or Contracts Prohibited), §572.051 (Standards of Conduct for Public Servants), §552.352 (Distribution of Confidential Information), §572.058 (Private Interest in Measure or Decision; Disclosure; Removal from Office for Violation), §572.054 (Representation by Former Officer or Employee of Regulatory Agency Restricted), §572.002 (General Definitions), §572.004 (Definition: Regulation), and Chapter 305 (Registration of Lobbyists); and Texas Penal Code, Chapter 36 (Bribery, Corrupt Influence, and Gifts to Public Servants) and Chapter 39 (Abuse of Office, Official Misconduct). The omission of any applicable statute listed in this paragraph does not excuse violation of its provisions.

(2) SBOE Members and PSF Service Providers must be honest in the exercise of their duties and must not take actions that will discredit the PSF.

(3) SBOE Members and PSF Service Providers shall be loyal to the interests of the PSF to the extent that such loyalty is not in conflict with other duties, which legally have priority. SBOE Members and PSF Service Providers shall avoid personal, employment, or business relationships that create conflicts of interest. Should SBOE Members or PSF Service Providers become aware of any conflict of interest, they have an affirmative duty to disclose and to cure the conflict in a manner provided for under this section.

(4) SBOE Members and PSF Service Providers shall not use nonpublic information gained through their relationship with the PSF to seek or obtain personal gain beyond agreed compensation and/or any properly authorized expense reimbursement. This should not be interpreted to forbid the use of PSF as a reference or the communication to others of the fact that a relationship with PSF exists, provided that no misrepresentation is involved.

(5) An SBOE Member shall report in writing the name and address of any PSF Service Provider, as defined by subsection (c)(2)(D) of this section, who provides investment and management advice to that SBOE Member. The SBOE Member shall submit the report to the commissioner of education for distribution to the SBOE within 30 days of the PSF Service Provider first providing investment and management advice to that SBOE Member.

(6) SBOE Members and PSF Service Providers shall report in writing any action described by the Texas Education Code, §7.108, to the commissioner of education for distribution to the SBOE within seven days of discovering the violation.

(7) A PSF Service Provider shall not make any gift or donation to a school or other charitable interest on behalf of, at the request of, or in coordination with an SBOE Member. Any PSF Service Provider or SBOE Member shall disclose in writing to the commissioner of education any information regarding such a donation.

(8) A PSF Service Provider shall disclose in writing to the commissioner of education for dissemination to all SBOE Members any business or financial transaction greater than \$50 in value with an SBOE Member within 30 days of the transaction. Excluded from this subsection are checking accounts, savings accounts, credit cards, brokerage accounts, mutual funds, or other financial accounts that are provided to the SBOE Member under the same terms and conditions as they are provided to members of the general public.

(f) Disclosure.

(1) If an SBOE Member has a personal, private, direct, or indirect financial interest in a matter before the SBOE or if an SBOE Member solicited a specific investment action by the PSF staff or a PSF Service Provider, the SBOE Member shall publicly disclose the fact to the SBOE in a public meeting and shall not participate in a discussion or vote on a matter in which the SBOE Member has such interest. The disclosure shall be entered into the minutes of the meeting. For purposes of this section, a matter is a prospective directive to the PSF staff or a PSF Service Provider to undertake a specific investment or divestiture of securities for the PSF. This term does not include ratification of prior securities transactions performed by the PSF staff or a PSF Service Provider and does not include an action to allocate classes of assets within the PSF.

(2) In addition, an SBOE Member shall fully disclose any substantial interest in any publicly or nonpublicly traded PSF investment (business entity) on the SBOE Member's annual financial report filed with the Texas Ethics Commission pursuant to Texas Government Code, §572.021. An SBOE Member has a substantial interest if the SBOE Member:

(A) has a controlling interest in the business entity;

(B) owns more than 10% of the voting interest in the business entity;

(C) owns more than \$25,000 of the fair market value of the business entity;

(D) has a direct or indirect participating interest by shares, stock, or otherwise, regardless of whether voting rights are included, in more than 10% of the profits, proceeds, or capital gains of the business entity;

(E) is a member of the board of directors or other governing board of the business entity;

(F) serves as an elected officer of the business entity; or

(G) is an employee of the business entity.

(g) Conflicts of interest.

(1) A conflict of interest exists whenever SBOE Members or PSF Service Providers have personal or private commercial or business relationships that could reasonably be expected to diminish their independence of judgment in the performance of their duties. For example, a person's independence of judgment is diminished when the person is in a position to take action or not take action with respect to PSF and such act or failure to act is, may be, or reasonably appears to be influenced by considerations of personal gain or benefit rather than motivated by the interests of PSF. Conflicts include, but are not limited to, beneficial interests in securities, corporate directorships, trustee positions, or other special relationships that could reasonably be considered a conflict of interest with the duties to the PSF.

(2) An SBOE Member shall fully disclose in any meeting that considers an issue about which the member has a conflict of interest and shall not participate in a discussion or vote on a matter in which the SBOE Member has direct or indirect financial interest.

(3) Any SBOE Member or PSF Service Provider who has a conflict of interest shall disclose the conflict to the commissioner of education and the chair and vice chair of the SBOE on the disclosure form. The disclosure form is provided in this subsection entitled "Potential Conflict of Interest Disclosure Form."  
Figure: 19 TAC §33.5(g)(3) (No change.)

(4) A person who files a statement under paragraph (3) of this subsection disclosing a possible conflict of interest may not give advice or make decisions about a matter affected by the possible conflict of interest unless the SBOE, after consultation with the general counsel of the TEA, expressly waives this prohibition. The SBOE may delegate the authority to waive this prohibition.

(h) Prohibited transactions and interests. For purposes of this section, the term "direct placement" (with respect to investments that are not publicly traded) is defined as a direct sale of securities, generally to institutional investors, with or without the use of brokers or underwriters.

(1) No SBOE Member or PSF Service Provider shall:

(A) have a financial interest in a direct placement investment of the PSF;

(B) serve as an officer, director, or employee of an entity in which a direct placement investment is made by the PSF; or

(C) serve as a consultant to, or receive any fee, commission or payment from, an entity in which a direct placement investment is made by the PSF.

(2) No SBOE Member or PSF Service Provider shall:

(A) act as a representative or agent of a third party in dealing with a PSF manager or consultant; or

(B) be employed for two years after the end of his or her term on the SBOE with an organization in which the PSF invested, unless the organization's stock or other evidence of ownership is traded on the public stock or bond exchanges.

(i) Solicitation of support. No SBOE Member shall solicit support on behalf of any political candidate from a PSF Service Provider or any PSF manager, consultant, or staff member. The manager, PSF Service Provider, consultant, or staff member shall report any such incident in writing to the commissioner of education for distribution to the SBOE.

(j) Hiring external professionals. The SBOE may contract with private professional investment managers to help make PSF investments. The SBOE has the authority and responsibility to hire other external professionals, including custodians or consultants. The SBOE shall select each professional based solely on merit and subject to the provisions of §33.55 of this title (relating to Standards for Selecting Consultants, Investment Managers, Custodians, and Other Professionals To Provide Outside Expertise for the Fund).

(k) Responsibilities of PSF Service Providers. The PSF Service Providers shall be notified in writing of the code of ethics contained in this section. Any existing contracts for investment and any future investment shall strictly conform to this code of ethics. The PSF Service Provider shall report in writing any suggestion or offer by an SBOE Member to deviate from the provisions of this section to the commissioner of education for distribution to the SBOE within 30 days of the PSF Service Provider discovering the violation. The PSF Service Provider shall report in writing any violation of this code of ethics committed by another PSF Service Provider to the commissioner of education for distribution to the SBOE within 30 days of the PSF Service Provider discovering the violation. A PSF Service Provider or other person retained in a fiduciary capacity must comply with the provisions of this section.

(l) Gifts and entertainment.

(1) Bribery. SBOE Members are prohibited from soliciting, offering, or accepting gifts, payments, and other items of value in exchange for an official act, including a vote, recommendation, or any other exercise of official discretion (Texas Penal Code, §36.02).

(2) Acceptance of gifts.

(A) An SBOE Member may not accept gifts, favors, services, or benefits that may reasonably tend to influence the SBOE Member's official conduct or that the SBOE Member knows or should know are intended to influence the SBOE Member's official conduct. For purposes of this paragraph, a gift does not include an item with a value of less than \$50, excluding cash or negotiable instruments.

(B) An SBOE Member may not accept a gift, favor, service, or benefit from a person that the SBOE Member knows is interested or is likely to become interested in a charter, contract, purchase, payment, claim, or other pecuniary transaction over which the SBOE has discretion.

(C) An SBOE Member may not accept a gift, favor, service, or benefit from a person that the SBOE Member knows to be subject to the regulation, inspection, or investigation of the SBOE or the TEA.

(D) An SBOE Member may not solicit, accept, or agree to accept a benefit from a person with whom civil or criminal litigation is pending or contemplated by the SBOE or the TEA.

(E) So long as the gift or benefit is not given by a person subject to the SBOE's or the TEA's regulation, inspection, or investigation, an SBOE Member may accept a gift, payment, or contribution from an individual who is not registered as a lobbyist with the Texas Ethics Commission if it fits into one of the following categories:

(i) items worth less than \$50 (may not be cash, checks, or negotiable instruments);

(ii) independent relationship, such as kinship, or a personal, professional, or business relationship independent of the SBOE Member's official capacity;

(iii) fees for services rendered outside the SBOE Member's official capacity;

(iv) government property issued by a governmental entity that allows the use of the property; or

(v) food, lodging, entertainment, and transportation, if accepted as a guest and the donor is present.

(F) The following provisions govern the disposition of an individual who is a PSF Service Provider or who is both a lobbyist registered with the Texas Ethics Commission and who represents a person subject to the SBOE's or the TEA's regulation, inspection, or investigation.

(i) An SBOE Member may not accept:

(I) loans, cash, or negotiable instruments;

(II) travel or lodging for a pleasure trip;

(III) travel and lodging in connection with a fact-finding trip or to a seminar or conference at which the SBOE Member does not provide services;

(IV) entertainment worth more than \$50 in a calendar year;

(V) gifts, other than awards and mementos, that combined are worth more than \$50 in value for a calendar year. Gifts do not include food, entertainment, lodging, and transportation; or

(VI) individual awards and mementos worth more than \$50 each.

(ii) An SBOE Member may accept food and beverages if the PSF Service Provider or lobbyist is present.

(G) An SBOE Member may not solicit, agree to accept, or accept an honorarium in consideration for services that the SBOE Member would not have been asked to provide but for the SBOE Member's official position. An SBOE Member may accept food, transportation, and lodging in connection with a speech performed as a result of the SBOE Member's position. An SBOE Member must report the food, lodging, or transportation accepted under this subparagraph in the SBOE Member's annual personal financial statement.

(H) Under no circumstances shall an SBOE Member accept a prohibited gift if the source of the gift is not identified or if the SBOE Member knows or has reason to know that the gift is being offered through an intermediary.

(I) If an unsolicited prohibited gift is received by an SBOE Member, he or she should return the gift to its source. If that is not possible or feasible, the gift should be donated to charity. The SBOE Member shall report the return of the gift or the donation of the gift to the commissioner of education.

(J) A PSF Service Provider shall file a report annually on April 15 of each year on the expenditure report provided in this sub-

section entitled "Report of Expenditures of Persons Providing Services to the State Board of Education Relating to the Management and Investment of the Permanent School Fund." The report shall be for the time period beginning on January 1 and ending on December 31 of the previous year. The expenditure report must describe in detail any expenditure of more than \$50 made by the person on behalf of:

(i) an SBOE Member;

(ii) the commissioner of education; or

(iii) an employee of the TEA or of a nonprofit corporation created under the Texas Education Code, §43.006.

Figure: 19 TAC §33.5(l)(2)(J)(iii)

(K) A PSF Service Provider shall file a report annually with the TEA's PSF office, in the format specified by the PSF staff, on or before April 15 of each year. The report will be deemed to be filed when it is actually received. The report shall be for the time period beginning on January 1 and ending on December 31 of the previous year. It shall list any individuals who served in any of the following capacities at any time during the reporting period:

(i) all members of the governing body of the PSF Service Provider;

(ii) the officers of the PSF Service Provider;

(iii) any broker who conducts transactions with PSF funds;

(iv) all members of the governing body of the firm of a broker who conducts transactions with PSF funds; and

(v) all officers of the firm of a broker who conducts transactions with PSF funds.

(L) This subsection does not apply to campaign contributions.

(M) Each SBOE Member and each PSF Service Provider shall, no later than April 15, file an annual report affirmatively disclosing any violation of this code of ethics known to that person during the time period beginning January 1 and ending December 31 of the previous year which has not previously been disclosed in writing to the commissioner of education for distribution to all board members, or affirmatively state that the person has no knowledge of any such violation. For purposes of this subparagraph only, "SBOE Member" means only the individual elected official.

(m) Compliance with professional standards.

(1) SBOE Members and PSF Service Providers who are members of professional organizations which promulgate standards of conduct must comply with those standards.

(2) PSF Service Providers must comply with the Code of Ethics and Standards of Professional Conduct of the Association for Investment Management and Research.

(n) Transactions between PSF Service Providers and/or consultants.

(1) PSF Service Providers or persons who act as consultants to the SBOE regarding investment and management of the PSF shall not engage in any transaction involving the assets of the PSF with another PSF Service Provider or a person who acts as a consultant to the SBOE regarding investment and management of the PSF.

(2) PSF Service Providers and/or consultants to the SBOE who provide advice regarding investment and management of the PSF shall report to the SBOE on a quarterly basis all investment transactions or trades and any fees or compensation paid or received in connection

with the transactions or trades with another PSF Service Provider or a person who acts as a consultant to the SBOE regarding investment and management of the PSF.

(o) Compliance and enforcement.

(1) The SBOE will enforce this rule through its chair and vice chair and the commissioner of education.

(2) Any violation will be reported to the chair and vice chair of the SBOE and the commissioner of education and a recommended action will be presented to the SBOE. A violation of this section may result in the termination of the contract or a lesser sanction. Repeated minor violations may also result in the termination of the contract.

(3) The executive director of the PSF shall act as custodian of all statements, waivers, and reports required under this section for purposes of public disclosure requirements.

(4) The ethics officer of the TEA may respond to inquiries concerning the provisions of this section. The ethics officer may confer with the general counsel and the executive director of the PSF.

(5) No payment shall be made to a PSF Service Provider who has failed to timely file a completed report as described by subsection (k) of this section, until a completed report is filed.

(p) Ethics training. The SBOE shall receive annual training regarding state ethics laws through the Texas Ethics Commission and the TEA's ethics officer.

(q) TEA general ethical standards. The commissioner of education and PSF staff shall comply with the General Ethical Standards for the Staff of the Permanent School Fund and the Commissioner of Education.

(r) A new report required by an amendment to the code of ethics need only concern events after the effective date of the amendment. An amendment to a rule that presently requires a report does not effect the reporting period unless the amendment explicitly changes the reporting period.

(s) Statutory statement.

(1) A "statutory financial advisor or service provider" as defined in this subsection shall on or before April 15 file a statement as required by Texas Government Code, §2263.005, with the commissioner of education and the state auditor, for the previous calendar year. The statement will be deemed filed when it is actually received. A statutory financial advisor or service provider shall promptly file a new or amended statement with the commissioner of education and the state auditor whenever there is new information required to be reported under Texas Government Code, §2263.005(a).

(2) A "statutory financial advisor or service provider" is a member of the Investment Advisory Committee or an individual or business entity, including a financial advisor, financial consultant, money or investment manager, or broker, who is not an employee of the TEA, but who provides financial services or advice to the TEA or the SBOE or an SBOE member in connection with the management and investment of the PSF and who may reasonably be expected to receive, directly or indirectly, more than \$5,000 in compensation from the TEA or the SBOE during a fiscal year.

(3) An annual statement required to be filed under this subsection will be made using the form developed by the state auditor.

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 25, 2006.

TRD-200605294

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

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



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

### SUBCHAPTER A. GENERAL PROVISIONS

#### 19 TAC §66.10

The State Board of Education (SBOE) adopts an amendment to §66.10, concerning procedures governing violations of statutes and administrative penalties relating to the state adoption and distribution of instructional materials. The amendment is adopted with changes to the proposed text as published in the March 24, 2006, issue of the *Texas Register* (31 TexReg 2355). The rule establishes procedures addressing complaints; administrative and first- and second-year penalties; categories of factual errors; penalties for failure to correct factual errors, for selling textbooks with factual errors, and for failure to deliver adopted instructional materials in a timely manner; SBOE discretion regarding penalties; and payment of fines. The adopted amendment clarifies existing provisions, increases the maximum penalty amount for factual errors identified after publication, and adds language to address failure to deliver teacher components and failure to maintain websites in state-adopted products.

As proposed, subsection (c) would have been amended to establish penalties for errors identified after instructional materials are distributed to schools that are comparable to the penalties assessed for errors identified prior to distribution. This proposed amendment would also have removed the \$3,000 penalty cap for errors. However, in response to public comment, the SBOE took action at adoption to revise the amendment proposed in subsection (c). The SBOE took action to remove proposed language in subsection (c)(3) that would have imposed the same penalty that exists for uncorrected errors as for errors that are identified after publication. The adopted amendment reinstated existing language in subsection (c)(4) relating to penalties for factual errors identified after publication; however, the maximum penalty amount is increased to \$5,000 rather than \$3,000. The adopted amendment also clarifies in subsection (c)(3) that factual errors submitted by a publisher should not be considered "editorial corrections."

In subsection (f), the adopted amendment clarifies that the second-year penalties provision includes reference to the first-year penalties provisions described in subsection (e).

In subsection (g), the adopted amendment clarifies that back-order penalties include penalties for failure to deliver adopted teacher components in a timely manner or in the quantities which the school district or open-enrollment charter school is eligible to receive. In response to public comment, the SBOE took action at

adoption to clarify that "eligible quantities" will be determined as specified in the publisher's bid. Publishers specify in their bids the ratio of teacher components to student materials so that all districts can receive the same ratio.

In subsection (h), language is removed to clarify that it is impossible to determine whether a publisher "knowingly" sold textbooks with factual errors.

New subsection (i) is added and subsequent subsections re-lettered accordingly. New subsection (i) addresses penalties for failure to maintain websites in state-adopted products. In recent years, a number of Internet-based programs have been adopted. In most cases, the publisher manages web pages used for the Texas Essential Knowledge and Skills (TEKS) coverage. In the 2003 adoption, however, the board determined that publishers could cover TEKS by providing a link to another web page whether or not it was managed by the publisher. New subsection (i) requires that the publisher be responsible for ensuring that the web page used for TEKS coverage is available throughout the contract period. In response to public comment, the SBOE took action at adoption to clarify due process for assessment of penalties by requiring a show-cause hearing.

In accordance with the Texas Education Code, §7.102(f), the SBOE approved this rule action for final adoption by a vote of more than two-thirds of its members to specify an effective date earlier than the 2007-2008 school year in order for the amended rule to take effect in a timely manner. The effective date of the adopted amendment is 20 days after filing as adopted.

During the preparation of the review of 19 TAC Chapter 66 and previous SBOE meetings, staff met with representatives of the publishing industry and Textbook Coordinators' Association of Texas (TCAT). Publishers and textbook coordinators submitted comments and recommendations for amendments. Subsequent to the February 2006 SBOE meeting, notice of the proposed amendments was filed with the Texas Register initiating the official public comment period. Following is a summary of public comments received and corresponding responses regarding the proposed amendment to 19 TAC §66.10.

Comment. The TCAT commented that the SBOE should retain existing language relating to teacher editions, and expressed concern with allowing publishers to set ratios for teacher editions in the bid proposal as suggested by publishers.

Response. The SBOE disagreed and took action to specify that back-order penalties include penalties for failure to deliver adopted teacher components in a timely manner or in the quantities which the school district or open-enrollment charter school is eligible to receive. In response to public comment, the SBOE took action to clarify that "eligible quantities" will be determined as specified in the publisher's bid.

Comment. The Association of American Publishers (AAP) commented that the SBOE should retain existing language relating to penalties for errors identified after instructional materials are distributed to schools. The AAP stated that publishers currently undergo the rigorous review processes to ensure that materials are corrected in a timely manner before the materials are delivered to classrooms. The AAP expressed concern that the proposed changes would impose the same severe penalties that exist for uncorrected errors as those errors that are identified after publication.

Response. The SBOE agreed and took action to remove proposed language in subsection (c)(3) that would have imposed the same penalty that exists for uncorrected errors as for errors that are identified after publication. The SBOE's action reinstated existing language in subsection (c)(4) relating to penalties for factual errors identified after publication; however, the maximum penalty amount is increased to \$5,000 rather than \$3,000.

Comment. The AAP commented that the SBOE clarify that publishers should specify in their bids the ratio of teacher components to student materials so that all districts can receive the same ratio.

Response. The SBOE agreed and took action to clarify that "eligible quantities" will be determined as specified in the publisher's bid.

Comment. The AAP commented that the SBOE should clarify that due process will be required for assessment of penalties.

Response. The SBOE agreed and took action to specify that the commissioner will determine in a hearing whether a publisher has failed to maintain websites in state-adopted products.

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

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

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

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

(b) Administrative penalties. Under the Texas Education Code, §31.151(b), the SBOE may impose a reasonable administrative penalty against a publisher or manufacturer found in violation of a provision of §31.151(a). An administrative penalty shall be assessed only after the SBOE has granted the publisher or manufacturer a hearing in accordance with the Texas Education Code, §31.151, and the Administrative Procedure Act.

(c) Penalties for failure to correct factual errors.

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

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

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

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

(d) Categories of factual errors.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ucation, will not redirect any user accessing the web-based or online instructional materials to other Internet or electronic sites, and will not collect any information about the user or computer accessing the materials that would allow determination of personal information, including email addresses. This section applies only to a website that is a component used to address Texas Essential Knowledge and Skills as part of a state-adopted product.

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

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

This agency hereby certifies that the 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 22, 2006.

TRD-200605256

Cristina De La Fuente-Valadez

Director, Policy Coordination

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

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## SUBCHAPTER B. STATE ADOPTION OF INSTRUCTIONAL MATERIALS

### **19 TAC §§66.27, 66.28, 66.33, 66.36, 66.48, 66.51, 66.54, 66.60, 66.66, 66.69, 66.75**

The State Board of Education (SBOE) adopts amendments to §§66.27, 66.28, 66.33, 66.36, 66.48, 66.51, 66.54, 66.60, 66.66, 66.69, and 66.75, concerning the state adoption of instructional materials. The amendments to §§66.27, 66.28, 66.33, 66.36, 66.48, 66.60, 66.66, 66.69, and 66.75 are adopted without changes to the proposed text as published in the March 24, 2006, issue of the *Texas Register* (31 TexReg 2356) and will not be republished. The amendments to §66.51 and §66.54 are adopted with changes to the proposed text as published in the March 24, 2006, issue. The rules establish procedures addressing the proclamation, public notice, and schedule for adopting instructional materials; adoption by reference; appointment, duties, and conduct of state review panels; statement of intent to bid instructional materials, instructional materials purchased by the state; samples; public comment on instructional materials; consideration and adoption of instructional materials by the SBOE; ancillary materials; and revised editions. The adopted amendments update and clarify these rules, as follows.

In §66.27, Proclamation, Public Notice, and Schedule for Adopting Instructional Materials, the amendment modifies subsection (a) to clarify that publishers are not required to register to receive notice of the proclamation. Subsection (c) is also revised to allow use of the Internet for notification of proclamations and for soliciting input from the publishing industry concerning maximum costs.

In §66.28, Adoption by Reference, the adopted amendment updates reference to current proclamations. To comply with Texas Education Code (TEC), §28.002(c), the SBOE adopts by reference the Texas Essential Knowledge and Skills (TEKS) that are to be used for evaluating instructional materials submitted for consideration under a proclamation. The adopted amendment removes the reference to TEKS in Proclamations 2001 and 2002 since the products were reviewed and adopted in 2003 and 2004, respectively. The adopted amendment adds the reference to the TEKS in Proclamations 2004 and 2005 that will be used to evaluate new products submitted in 2006 and 2007. The adopted amendment also adds reference to the Texas Education Agency (TEA) website for viewing proclamations.

In §66.33, State Review Panels: Appointment, the adopted amendment adds language to subsection (a) requiring that the commissioner of education ensure that each state textbook review panel includes academic experts in the content area for which the new instructional materials have been submitted. This amendment incorporates a recommendation made by the Sunset Advisory Commission in 2005 and subsequent clarification by the SBOE. Academic expert was defined so as to include not only university professors but also classroom teachers with strong academic backgrounds.

In §66.36, State Review Panels: Duties and Conduct, the adopted amendment adds language to subsection (a) to include clarification that panel members must use the SBOE-approved procedures for evaluating coverage of TEKS.

In §66.48, Statement of Intent to Bid Instructional Materials, the adopted amendment adds language to subsection (a) to require publishers to provide preliminary price information at the time statements of intent to bid are submitted. This amendment provides publishers and staff additional time to review and compile pricing information and resolve issues on pricing and maximum costs that publishers might have.

In §66.51, Instructional Materials Purchased by the State, the adopted amendment deletes language in subsection (a)(2) that prohibits a publisher from submitting a final bid price for the program that exceeds the preliminary price. The preliminary price would be submitted with the statement of intent to bid information.

In response to public comment, the SBOE took action at adoption to revise language in subsection (a)(3) to clarify that teacher components are to be provided as specified in the publisher's bid.

Subsection (a)(5) was modified to coincide with the proposal that publishers submit price information with the statement of intent to bid rather than with the official samples. Subsection (a)(6) was modified to clarify that individual component prices are replacement costs for school districts and are not bid prices that should be offered by the publishers.

As proposed, subsection (a)(8) would have been modified to require publishers to mark their nonconsumable products to indicate that they are nonconsumable. However, in response to pub-

lic comment, the SBOE took action at adoption to remove the proposed language requiring publishers to mark nonconsumable products. The SBOE's action adds language to clarify that an item not marked as consumable is deemed to be nonconsumable. The adopted amendment also revises subsection (a)(8) to eliminate the requirement that the publisher's price for consumable material not exceed the state maximum cost. This requirement is inconsistent with state law that allows publishers to exceed the maximum cost with school districts paying the difference.

Subsection (a)(9) was added to provide clarification to publishers as to when the state would pay for consumable materials and when the consumable materials must be provided to school districts for the life of the contract; however, in response to public comment, the SBOE took action at adoption to replace the language as proposed. As requested by public comment, the SBOE's action in subsection (a)(9) allows publishers to submit consumable components that are not specifically called for in the proclamation and includes an expanded explanation of conditions that must be met for student materials offered for adoption that include consumable components.

Subsection (a)(11) was added to include the Texas Sunset Commission finding that the current "textbook process does not maximize the use of the State's textbook funds." Currently, the state pays up to the approved maximum cost for all adopted textbooks, including those that do not fully cover the TEKS. This change enables the state to save funds by reducing the maximum cost that could be paid for nonconforming textbooks.

In §66.54, Samples, the adopted amendment changes language in subsection (a) to generalize the requirement for printed samples to be complete as to content so as to extend the requirement to electronic media. The current rule refers to publishers' submissions of instructional materials with "finished-format binding." The adopted amendment addresses Internet-based or electronic products and requires that programs of these types be submitted in final form and completely functional.

Subsections (d) and (h) were modified to reduce the number of samples to be filed with the agency prior to and after state adoption. Subsection (d) was also modified to eliminate the requirement that preliminary price information be submitted with the sample. This change coincides with the change that price information be submitted with the statement of intent to bid.

Subsection (e) was revised to address delivery of samples for review by state review panels. Most samples are now submitted by publishers directly to the meeting location. The proposed amendment revised specifications regarding correlations, supplementary materials, and the definition of instructional materials. As published, the amendment proposed prohibiting publishers from providing correlations; however, as a technical correction, the SBOE took action at adoption to remove the reference restricting correlations because correlations are included in teacher edition textbooks in the margins and are provided to the review panel members. The adopted amendment deletes reference to "supplementary materials" which is consistent with the practice of allowing a wide range of materials to be submitted for adoption and adds statutory reference to the definition of a textbook.

In §66.60, Public Comment on Instructional Materials, the adopted amendment provides for public hearing testimony by non-Texas residents with priority given to Texas residents. In 2003, a number of requests to speak at public hearings were

submitted by non-Texas residents. The SBOE's action allows residents of other states to participate in public hearings instead of continuing the current practice of allowing only residents of Texas to provide official testimony.

In §66.66, Consideration and Adoption of Instructional Materials by the State Board of Education, the adopted amendment revises subsection (a) to eliminate the need for publishers to provide proof of authority to do business in Texas. This document is no longer required for participation in the adoption process. In subsection (c), the adopted amendment clarifies that each student expectation in the TEKS must be addressed in order for a program to be considered conforming. Current rule referred to performance descriptions rather than student expectations.

In §66.69, Ancillary Materials, the adopted amendment adds a definition of ancillary materials to ensure that all publishers have a common understanding of what constitutes an ancillary. Currently, different publishers use the term in different ways. Also for clarification, language was added to reference open-enrollment charter schools along with reference to school districts.

In §66.75, the adopted amendment changed the title to "Revisions, Updates, and Substitutions" from "Revised Editions." Subsections (a) and (c) were modified to add language to address electronic textbooks and Internet products. Ease of revision should not exempt electronic textbooks and Internet products, as instructional materials, from equal compliance with this rule. When school districts upgrade to a newer version of a computer operating system and the publisher has a corresponding software product available, it should be made available without regard to the one-year-policy. A new subsection (d) was added to include the provision that publishers must certify in writing that the new materials meets the applicable TEKS and is free from factual errors. Re-lettered subsection (e) was modified to include reference to revisions and updates as well as substitution requests. Re-lettered subsection (f) was modified to specify the requirement for SBOE approval of all requests for revisions, updates, or substitutions involving content prior to their introduction into state-adopted instructional materials. The adopted amendment also establishes that the SBOE may assess penalties against publishers that fail to obtain the necessary prior approval. The SBOE has statutory responsibility to monitor all revisions in all approved instructional materials for conformity to the TEKS and freedom from factual errors.

New subsection (g) was added to specify that publishers must request approval from the commissioner of education for electronic design changes and/or updates that do not include changes to TEKS coverage or new content. It will be more efficient if technological changes such as performance (programming upgrades), increased speed, user friendly design features (navigation, improved functionality), and technology upgrades (maintenance, changes in operating systems) are approved by the commissioner. The time needed for SBOE review and approval for changes not related to content could delay classroom use of the electronic instructional materials already adopted.

New subsection (h) was added to address the availability of the previous version of state adopted textbooks for school districts that choose to continue using the previous version.

New subsections (i) - (m) were added to address alternate formats of SBOE-approved products that may be provided by publishers. If a school district prefers a newer version of a program or an alternative format for the same content, the product should be available without further SBOE review. If the TEA agrees that

the alternate format includes the same SBOE-approved content, school districts would be made aware that it is available and publishers would work with districts to supply the appropriate format.

In accordance with the Texas Education Code, §7.102(f), the SBOE approved these rule actions for final adoption by a vote of more than two-thirds of its members to specify an effective date earlier than the 2007-2008 school year in order for the amended rule to take effect in a timely manner. The effective date of the adopted amendment is 20 days after filing as adopted.

During the preparation of the review of 19 TAC Chapter 66 and previous SBOE meetings, staff met with representatives of the publishing industry and Textbook Coordinators' Association of Texas (TCAT). Publishers and textbook coordinators submitted comments and recommendations for amendments. Subsequent to the February 2006 SBOE meeting, notice of the proposed amendments was filed with the Texas Register initiating the official public comment period. Following is a summary of public comments received and corresponding responses regarding the proposed amendments to 19 TAC Chapter 66, Subchapter B.

**Comment.** Concerning §66.36, the Association of American Publishers (AAP) commented that the SBOE should add language to clarify that any requirements for evaluating coverage should be provided up front in the proclamation.

**Response.** The SBOE disagreed. The SBOE took action to adopt the amendment as proposed with language in subsection (a) to specify that panel members must use the SBOE-approved procedures for evaluating coverage of TEKS.

**Comment.** Concerning §66.51(a)(3), the AAP commented that the SBOE should revise language to clarify that a publisher would provide teacher editions as specified in the publisher's bid. The AAP noted that publishers submit ratios of teacher editions to student editions in their bids to ensure all districts get the same ratio.

**Response.** The SBOE agreed and took action to clarify that teacher components are to be provided as specified in the publisher's bid.

**Comment.** Concerning §66.51(a)(8), the TCAT expressed support for requiring all nonconsumable soft-cover materials to be labeled as nonconsumable stating that, at the campus level, it is easy for materials to be confused. The TCAT commented that one source of the problem is that some consumables, which are already required to be labeled, are not being so designated, which causes more confusion.

**Response.** The SBOE disagreed. In response to public comment, the SBOE took action to remove the proposed language in subsection (a)(8) requiring publishers to mark nonconsumable products. The SBOE's action adds language to clarify that an item not marked as consumable is deemed to be nonconsumable.

**Comment.** Concerning §66.51(a)(8), the AAP commented that the SBOE should delete the words "clearly marked as nonconsumable" and add a sentence to state that an item not marked as consumable should be deemed to be nonconsumable. The AAP commented that requiring materials to be marked as nonconsumable would be costly, inefficient, and unnecessary.

**Response.** The SBOE agreed and took action to remove the proposed language in subsection (a)(8) requiring publishers to mark nonconsumable products. The SBOE's action adds language to clarify that an item not marked as consumable is deemed to be



nonconsumable. At the April 28, 2006, SBOE meeting, a TCAT representative expressed no objection to this change.

Comment. Concerning §66.51(a)(9), the AAP commented that the proposed language restricting consumable components was inconsistent with statute. The AAP recommended substitute language that allows publishers to submit consumable components that are not specifically called for in the proclamation and provided conditions that must be met for such materials.

Response. The SBOE agreed and took action to replace the proposed language. The SBOE's action in subsection (a)(9) allows publishers to submit consumable components that are not specifically called for in the proclamation and includes an expanded explanation of conditions that must be met for student materials offered for adoption that include consumable components.

Comment. Concerning §66.51(a)(11), the AAP commented that the SBOE should delete this proposed provision or clarify its implementation date to not interfere with existing proclamations.

Response. The SBOE disagreed and took action to adopt the language as proposed.

Comment. Concerning §66.75, the TCAT commented in support of requiring publishers to continue to provide an adopted version of instructional materials even if a substituted version becomes available.

Response. The SBOE agreed and took action to adopt the language as proposed.

Comment. Concerning §66.75(h), the AAP commented that the SBOE should delete the requirement that publishers continue to provide an adopted version even if a newer, substituted version becomes available or that the SBOE should revise language to provide for classroom compatibility. The AAP also commented that the SBOE specify the effective date for this new provision to clarify that substantive changes take effect with future proclamations.

Response. The SBOE disagreed and took action to adopt the language as proposed to require the availability of the previous version of state adopted textbooks for school districts that choose to continue using the previous version.

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

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

*§66.51. Instructional Materials Purchased by the State.*

(a) Instructional materials offered for adoption by the State Board of Education (SBOE).

(1) Publishers may not submit instructional materials for adoption that have been authored by an employee of the Texas Education Agency (TEA).

(2) The official bid price of an instructional material submission may exceed the price included with the statement of intent to bid filed under §66.48 of this title (relating to Statement of Intent to Bid Instructional Materials).

(3) A teacher's component submitted to accompany student instructional materials under consideration for adoption shall be

part of the publisher's official bid and shall be provided for the duration of the original contract and any contract extensions at no cost to the school district or open-enrollment charter school as specified in the publisher's bid.

(4) Under the Texas Education Code, §31.025, the official bid price for an instructional material submission may exceed the maximum cost to the state that is established in the proclamation. The state shall only be responsible for payment to the publisher in an amount equal to the maximum cost. A school district ordering instructional materials is responsible for the portion of the cost that exceeds the state maximum.

(5) Any discounts offered for volume purchases of adopted instructional materials shall be included in price information submitted with statement of intent to bid and in the official bid.

(6) The official bid filed by a publisher shall include separate prices for each item included in an instructional material submission. The publisher shall guarantee that individual items included in the student and/or teacher component shall be available for local purchase at the individual prices listed for the entire contract period. (Individual component prices are listed to show school districts the replacement costs of components and not to reflect publisher's bid prices for these components.)

(7) Publishers shall submit to the TEA a signed affidavit certifying that each individual whose name is listed as an author or contributor of a textbook contributed to the development of the textbook. The affidavit shall also state in general terms each author's involvement in the development of the textbook.

(8) Instructional materials submitted for adoption shall be self-sufficient for the period of adoption. Nonconsumable components shall be replaced by the publisher during the warranty period. Consumable materials included in a student or teacher component of a submission shall be clearly marked as consumable. An item not marked as "consumable" is deemed to be "nonconsumable." The cost of such consumables to the state for the entire contract period may exceed the maximum cost established in the proclamation. School districts may be required to pay the difference between the state maximum cost and the actual cost of the materials.

(9) Student materials offered for adoption may include consumable components in subjects and grade levels in which consumable materials are not specifically called for in the proclamation. In such cases, publishers must meet the following conditions.

(A) The per student price of the materials must include the cost of replacement copies of consumable student components for the full term of the adoption and contract, including any extensions of the contract terms, but for no more than nine years. The offer must be set forth in the publisher's official bid.

(B) The publisher's official bid shall contain a clear explanation of the terms of the sale, including the publisher's agreement to supply consumable student materials for the duration of the contract and extensions as noted in subparagraph (A) of this paragraph.

(C) The publisher and the school district shall determine the manner in which consumable student materials are supplied beyond the initial order year.

(10) On or before the deadline established in the schedule of adoption procedures, publishers shall submit correlations of instructional materials submitted for adoption with essential knowledge and skills required by the proclamation. Correlations shall be submitted in a format approved by the commissioner of education.

(11) The SBOE shall reduce the approved maximum cost for each nonconforming instructional material. The reduced maximum cost for each adopted nonconforming instructional material shall be equal to the original maximum cost for that instructional material times a certain percentage. This percentage shall be the same as the percentage of elements of the essential knowledge and skills covered by the instructional material and that was used by the SBOE to determine whether the instructional material should be designated as conforming, nonconforming, or rejected per the Texas Education Code. Each performance description shall count as an independent element of the essential knowledge and skills of the subject. For those courses where a student expectation is not identified, the knowledge and skill will replace the student expectation to determine the percentage of student expectations addressed. The reduced maximum cost for nonconforming instructional materials will apply to both foundation and enrichment courses. For nonconforming instructional materials, the state shall be responsible for payment to the publisher in an amount only equal to the reduced maximum cost. A school district ordering nonconforming instructional materials is responsible for the portion of the cost that exceeds the reduced state maximum cost.

(b) Non-adopted instructional materials. A publisher of non-adopted instructional materials selected and purchased by school districts or open-enrollment charter schools under §66.104(c) - (f) of this title (relating to Selection of Instructional Materials by School Districts) shall meet all applicable requirements of the Texas Education Code, §31.151.

#### §66.54. *Samples.*

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

(b) Four sample copies of the student and teacher components of each instructional materials submission shall be filed with each of the 20 regional education service centers (ESCs) on or before the date specified in the schedule for the adoption process. These samples shall be available for public review. Publishers of Internet-based instructional content submitted for review shall provide the ESCs with appropriate information, such as locator information and passwords, required to ensure public access to their programs throughout the review period.

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

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

(e) One sample copy of each student and teacher component of an instructional materials submission shall be filed with each member of the appropriate state review panel in accordance with instructions provided by the TEA. To ensure that the evaluations of state review panel members are limited to student and teacher components submitted for adoption, publishers shall not provide ancillary materials or descriptions of ancillary materials to state review panel members. Texas

Education Code, §31.002(3), defines a textbook as a book, a system of instructional materials, a combination of a book and supplementary instructional materials that conveys information to the student or otherwise contributes to the learning process, or an electronic textbook.

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

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

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

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

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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Cristina De La Fuente-Valadez

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

## SUBCHAPTER C. LOCAL OPERATIONS

### 19 TAC §§66.104, 66.107, 66.110

The State Board of Education (SBOE) adopts amendments to §66.104 and §66.107 and new §66.110, concerning local operations relating to the state adoption and distribution of instructional materials. The amendment to §66.104 and new §66.110 are adopted without changes to the proposed text as published in the March 24, 2006, issue of the *Texas Register* (31 TexReg 2361) and will not be republished. The amendment to §66.107 is adopted with changes to the proposed text as published in the March 24, 2006, issue. The adopted new rule establishes provi-

sions relating to a pilot project created by Senate Bill (SB) 151, 79th Texas Legislature, Regular Session, 2005. The existing rules establish procedures addressing the selection of instructional materials by school districts and local accountability. The adopted amendments update these rules, as follows.

In §66.104, Selection of Instructional Materials by School Districts, the adopted amendment revises subsection (k) to delete reference to the state textbook depository. The Electronic Materials and Textbook ordering system, *EMAT Online*, allows school districts to ship surplus instructional materials to other school districts.

In §66.107, Local Accountability, the adopted amendment modifies subsections (c) and (f) to reflect closure of the state textbook depository formerly used to redistribute surplus textbooks and the development of a statewide system for distributing surplus textbooks among school districts. Language was added in subsection (c) to define surplus. Language was added in subsection (d) to emphasize the need to count students actually working at a particular grade level rather than relying solely on PEIMS counts.

In response to public comment, the SBOE took action at adoption to include a new subsection (e) to allow the Texas Education Agency (TEA) to use a school district's enrollment growth or decline as the basis for determining any additional percentage of attendance for which a school district may requisition instructional materials. Subsequent subsections were re-lettered accordingly. A cross reference correction was made in re-lettered subsection (g). New subsection (i) was added to implement House Bill (HB) 2072, enacted by the 78th Texas Legislature, 2003, by stipulating that school districts shall not require teachers to pay for lost instructional materials.

New §66.110, Pilot Project for Certain Students Enrolled in Courses for Concurrent High School and College Credit, was added to reflect the requirements of SB 151, 79th Texas Legislature, Regular Session, 2005. The bill, which became effective June 18, 2005, creates a pilot program of dual credit in several junior colleges and waives tuition and fees for educationally disadvantaged high school students. It also entitles the students to free textbooks for the dual credit courses. The bill makes implementation conditional upon sufficient general revenue appropriations in an amount corresponding with the waived tuition and fees.

If funds are appropriated in the future, the adopted new rule establishes provisions relating to student eligibility and entitlement; the SBOE role in setting aside money for textbooks; and school district responsibilities for making payments, maintaining inventory, and reporting enrollment.

In accordance with the Texas Education Code, §7.102(f), the SBOE approved these rule actions for final adoption by a vote of more than two-thirds of its members to specify an effective date earlier than the 2007-2008 school year in order for the amended rule to take effect in a timely manner. The effective date of the adopted amendment is 20 days after filing as adopted.

During the preparation of the review of 19 TAC Chapter 66 and previous SBOE meetings, staff met with representatives of the publishing industry and Textbook Coordinators' Association of Texas (TCAT). Publishers and textbook coordinators submitted comments and recommendations for amendments. Subsequent to the February 2006 SBOE meeting, notice of the proposed amendments was filed with the Texas Register initiating the official public comment period. Following is a summary of public

comments received and corresponding responses regarding the proposed amendments to 19 TAC Chapter 66, Subchapter C.

**Comment.** Concerning §66.107, the TCAT requested that the SBOE reinstate language that had been considered in November 2005 relating to growth allowance for determining requisitions of additional instructional materials. The TCAT noted that without this provision a school district that experiences a rapid influx of students would have to wait weeks or months for additional books to be delivered. The TCAT commented that the growth allowance would allow the TEA to adjust the working overage on the basis of historical reality rather than an arbitrary ratio.

**Response.** The SBOE agreed and took action to include a new subsection (e) to allow the TEA to use a school district's enrollment growth or decline for the prior three years as the basis for determining any additional percentage of attendance for which a school district may requisition instructional materials.

The amendments and new section are adopted under the Texas Education Code (TEC), §7.102(c), which authorizes the SBOE to adopt rules required by TEC, Chapter 31; under TEC, §31.003, which authorizes the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of textbooks; and under TEC, §31.031, which requires the SBOE to adopt rules in accordance with which a school district shall pay the costs of textbooks for students enrolled in junior college courses for concurrent high school and higher education academic credit under the pilot project.

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

*§66.107. Local Accountability.*

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

(b) Each textbook, other than an electronic textbook, must be covered by the student under the direction of the teacher.

(c) After the beginning of every school year, each school district or open-enrollment charter school shall determine if it has surplus instructional materials for any subject area/grade level, based on its current enrollment for the subject area/grade level. In accordance with the Educational Materials and Textbooks (EMAT) online ordering system, surplus is defined as follows. For courses that use textbooks that are in the first year of adoption, any textbook in excess of 110% of enrollment shall be considered surplus. For courses that use textbooks that are in the second or later years of adoption, any textbook in excess of 120% of enrollment shall be considered surplus. Overages that exceed these definitions should be entered into the EMAT Online Adjust Surplus Screen, except that instructional materials that are needed for the following school year are not considered surplus and should not be entered into the Adjust Surplus Screen. Instructional materials determined by the school district or open-enrollment charter school to be surplus-to-quota shall be reported to the Texas Education Agency (TEA) by October 1 of each year in accordance with instructions provided by the TEA. A school district or open-enrollment charter school is entitled to retain surplus-to-quota instructional materials only when data approved by the TEA indicate that students will be enrolled in the subject and a need for the surplus-to-quota instructional materials exists.

(d) When placing orders for instructional materials, school districts and open-enrollment charter schools shall report enrollments as follows:

(1) Annual orders for instructional materials. Enrollments shall be reported based on the maximum number of students enrolled in the district or open-enrollment charter school during the previous school year and/or registered to attend the district during the next school year; and

(2) Supplemental orders for instructional materials. Enrollments shall be reported based on the actual number of students enrolled in the district when the order is submitted, adjusted for students reported as working above or below grade level.

(e) A school district's enrollment growth or decline for the prior three years shall be used by the TEA as the basis for determining any additional percentage of attendance for which a school district may requisition instructional materials.

(f) The TEA assumes that enrollments reported by a school district or open-enrollment charter school at the time an order for instructional materials is placed are accurate.

(g) A school district or open-enrollment charter school that orders instructional materials in excess of its eligibility by reporting enrollments above enrollments described in subsection (d)(1) and (2) of this section enters into a contract with the state to purchase the instructional materials supplied that exceed the school district or open-enrollment charter school's eligibility for the subject area/grade level. A school district or open-enrollment charter school may cancel the contract to purchase instructional materials supplied in excess of its eligibility by immediately notifying the TEA of the surplus and posting the surplus in accordance with instructions provided by the TEA. If prior approval is received, surplus instructional materials may be returned to the publisher's approved depository or placed into statewide surplus inventory in accordance with instructions from the TEA. A school district or open-enrollment charter school that fails to notify the TEA of surplus instructional materials for more than six months after the beginning of the school year shall reimburse the state at the full price for the surplus instructional materials.

(h) All textbooks must be turned in at the end of the school year or when the student withdraws from school.

(i) The board of trustees of a school district may not require an employee of the district to pay for a textbook or instructional technology that is stolen, misplaced, or not returned by a student.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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



## SUBCHAPTER D. SPECIAL INSTRUCTIONAL MATERIALS

### 19 TAC §66.121

The State Board of Education (SBOE) adopts an amendment to §66.121, concerning special instructional materials. The amendment is adopted with a change to the proposed text as published in the March 24, 2006, issue of the *Texas Register* (31 TexReg 2364). The rule establishes procedures addressing the distribution and control of braille and large type instructional materials. The adopted amendment updates the rule and adds language to make educational materials available for blind or visually impaired parents.

In subsection (e), the adopted amendment reflects the closing of the state textbook depository and implementation of a new process for redistributing braille and large type instructional materials.

New subsection (h) specifies in rule that educational materials are available for blind or visually impaired parents in accessible formats such as braille and large type. In September 2005, the American Council of the Blind of Texas sent the commissioner of education a resolution emphasizing that "blind or visually impaired parents want to play an integral part in their sighted children's education" and requested that the Texas Education Agency (TEA) make educational materials available for blind or visually impaired parents in accessible formats such as braille and large type. Since the mid-1990s, the TEA has provided braille versions of state adopted textbooks to blind or visually impaired parents of sighted public school students, when requested. The number of requests has been very small and there have been no problems associated with providing these materials to parents who are blind or visually impaired. Staff has determined that the requested materials can be made available without a need for additional resources.

As a technical edit, the SBOE took action at adoption to add wording in new subsection (h) to specify that the accessible material would be furnished "by the state" and not by another entity.

In accordance with the Texas Education Code, §7.102(f), the SBOE approved these rule actions for final adoption by a vote of more than two-thirds of its members to specify an effective date earlier than the 2007-2008 school year in order for the amended rule to take effect in a timely manner. The effective date of the adopted amendment is 20 days after filing as adopted.

During the preparation of the review of 19 TAC Chapter 66 and previous SBOE meetings, staff met with representatives of the publishing industry and Textbook Coordinators' Association of Texas. Publishers and textbook coordinators submitted comments and recommendations for amendments. Subsequent to the February 2006 SBOE meeting, notice of the proposed amendments was filed with the Texas Register initiating the official public comment period. No comments were received regarding the proposed amendment to 19 TAC §66.121.

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

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

§66.121. *Special Instructional Materials.*

(a) All laws and rules applying to instructional materials provided to sighted pupils that are not in conflict with the Texas Education

Code, §31.028, or this section shall apply to the distribution and control of braille and large type instructional materials.

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

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

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

(e) Gifts of instructional materials for educating students who are blind or visually impaired tendered by individuals, groups, or school district officials may be accepted by the State Board of Education and shall become state property and subject to the same regulations as similar items purchased with state funds. Gift materials may be shipped by Free Matter for the Blind and Visually Handicapped to the Special Textbook Redistribution Center or other location designated by the Texas Education Agency (TEA).

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

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

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

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

or visually impaired must be returned to the local school district at the end of the school year for reuse.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Director, Policy Coordination

Texas Education Agency

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

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## CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

### SUBCHAPTER C. GENERAL EDUCATIONAL DEVELOPMENT

#### 19 TAC §§89.42, 89.43, 89.47

The State Board of Education (SBOE) adopts amendments to §§89.42, 89.43, and 89.47, concerning general educational development (GED). The amendments to §§89.42, 89.43, and 89.47 are adopted without changes to the proposed text as published in the July 28, 2006, issue of the *Texas Register* (31 TexReg 5890) and will not be republished. The rules provide for high school equivalency testing in the state, including the establishment of testing centers, eligibility requirements for the Texas Certificate of High School Equivalency and the GED Test, and requirements for issuance of the certificate. The adopted amendments incorporate provisions relating to legislation passed during the 79th Texas Legislature, 2005, and provide necessary clarifications and updates identified during the recent statutorily- required review of rules in 19 TAC Chapter 89.

Texas Education Code (TEC), §7.111, High School Equivalency Examinations, requires the SBOE to provide for the administration of high school equivalency examinations, including administration by the adjutant general's department for specified students. TEC, §7.111, also requires the SBOE by rule to establish and require payment of a fee as a condition to the issuance of a high school equivalency certificate and a copy of the scores of the examinations. The fee must be reasonable and designed to cover the administrative costs of issuing the certificate and a copy of the scores. In accordance with statute, the SBOE rules in 19 TAC Chapter 89, Subchapter C, address and implement statute.

In accordance with the TEC, §7.102(f), the SBOE approved this rule action for final adoption by a vote of more than two-thirds of its members to specify an effective date earlier than September 1, 2007, in order to implement the latest policy in a timely manner. The effective date of the adopted amendment is 20 days after filing as adopted.

The adopted amendments to 19 TAC Chapter 89, Subchapter C, incorporate provisions relating to legislation passed during the 79th Texas Legislature, 2005, and provide necessary clarifica-

tions and updates identified during the recent statutorily-required review of rules in 19 TAC Chapter 89, as follows.

In 19 TAC §89.42, Official Testing Centers, changes were made to align provisions in the rule with the American Council of GED Testing Services (GEDTS) program and contract updates. Affected provisions include the following changes. Subsection (a) includes changes relating to the location of testing centers, number of copies of the annual contract that must be sent to the center, and required signatures on the contract. Subsection (b) includes changes to remove the requirement to maintain test records permanently. Subsection (d) includes changes to add inventory requirements of tests administered at addendum sites. Subsection (g) includes changes to modify required documentation for official testing centers and add assurances that must be provided to the GEDTS. The adopted amendment to 19 TAC §89.42 also includes a technical correction in subsection (e).

In addition, the adopted amendment to 19 TAC §89.42 modifies subsection (c) to clarify the educational requirements for chief examiners that are designated by institutions of higher learning to align with those currently required of school districts and ESCs.

A school district and ESC must designate a certified counselor to serve as a chief examiner. According to the State Board for Educator Certification (SBEC) rule in 19 TAC Chapter 239, Student Services Certificates, Subchapter A, School Counselor Certificate, certification as a Kindergarten-Grade 12 school counselor requires successful completion of an approved Texas school counselor program, two years of classroom teaching experience, the school counselor exam, and a master's degree. This school counselor certification includes the functional areas of regular education school counselor, vocational counselor, and special education counselor.

Currently, 19 TAC §89.42(c) states that the administrative officer of an institution of higher learning must designate a professional person with a background in testing and counseling to serve as the chief examiner; however, the rule does not specify or clarify the educational requirements of a "professional person," although it is implied by the school district or ESC designation of a "certified counselor" as the chief examiner. The adopted amendment in 19 TAC §89.42(c) provides this clarification.

In 19 TAC §89.43, Eligibility for a Texas Certificate of High School Equivalency, the adopted amendment incorporates provisions relating to legislation passed during the 79th Texas Legislature, 2005, that provides for Seaborne ChalleNGe Corp members who are 16 years of age to be administered the GED examination. Subsection (a)(2) was reorganized for clarity.

In 19 TAC §89.47, Issuance of the Certificate, the adopted amendment made in subsection (c) establishes that the \$5.00 paid for processing a request for a duplicate GED certificate is nonrefundable. Individuals are required to pay a fee of \$5.00 for each request for a duplicate certificate. In some cases, requests are received from individuals who either (1) did not pass the GED, and thus, no certificate exists or (2) took the GED in another state. The Texas Education Agency (TEA) incurs costs for personnel and other operating expenses relating to processing these requests regardless of whether the individual actually has a GED certificate on record at the TEA. The TEA incurs additional costs to return the \$5.00 fee to such individuals. Making the fee nonrefundable establishes a cost savings for the use of public resources.

Following the July 2006 SBOE meeting, notice of the proposed amendments was filed with the *Texas Register* initiating the official public comment period. The following comment was received regarding adoption of the amendments.

Comment. An individual expressed concern about the requirement that a school district or education service center (ESC) must designate a certified counselor to serve as the GED chief examiner, noting that a certified counselor must hold a master's degree. The individual stated that a master's degree is extreme overkill for the requirements of the job and that this has placed an unfunded mandate on school districts by forcing them to hire overqualified personnel to administer GED tests. The individual commented that this requirement has cost one particular school district over \$100,000 in the past year, and that requiring a bachelor's degree would be a more appropriate education requirement for the job of chief examiner based on the actual duties assigned the position.

Response. The SBOE disagreed and took action to adopt the amendments as proposed. The adopted amendments include the modification of 19 TAC §89.42(c) to clarify the educational requirements for chief examiners that are designated by institutions of higher learning to align with those currently required of school districts and ESCs. The responsibilities of a GED chief examiner include those required of a certified counselor, such as providing career development and guidance, knowing assessment principles and procedures, having an awareness of social and cultural factors affecting the community, facilitating students' access to community resources, and serving as an advocate for higher education. The lowering of the qualifications for the GED chief examiners may diminish access to educational guidance students may need and decrease the quality of services provided.

The amendments are adopted under the Texas Education Code, §7.111, which authorizes the SBOE to provide for the administration of high school equivalency examinations and to by rule establish and require payment of a fee as a condition to the issuance of a high school equivalency certificate and a copy of the scores of the examinations. The statute further states that the fee must be reasonable and designed to cover the administrative costs of issuing the certificate and a copy of the scores.

The amendments implement the Texas Education Code, §7.111.

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 25, 2006.

TRD-200605295

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

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



## TITLE 22. EXAMINING BOARDS

# PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

## CHAPTER 73. LICENSES AND RENEWALS

### 22 TAC §73.4

The Texas Board of Chiropractic Examiners (Board) adopts an amendment to §73.4(b), relating to Inactive Status, to delete the requirement of a processing fee for inactive licenses. This amendment is a companion to §75.7(a), relating to Required Fees and Charges. The Board has decided to no longer assess this fee. The amendment is adopted without changes to the proposed text as published in the August 11, 2006, issue of the *Texas Register* (31 TexReg 6303).

No comments were received on the proposed rule.

The amendment is adopted under Texas Occupation Code §201.152, relating to Rules, and §201.153, relating to Fees. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.153 authorizes the Board to set fees by rule in amounts reasonable and necessary to cover the costs of administering the Chiropractic Act. The proposed rule amendment has been reviewed by legal counsel and is within the Board's authority to adopt.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 22, 2006.

TRD-200605265

Glenn Parker

Executive Director

Texas Board of Chiropractic Examiners

Effective date: October 12, 2006

Proposal publication date: August 11, 2006

For further information, please call: (512) 305-6901



## CHAPTER 75. RULES OF PRACTICE

### 22 TAC §75.17

The Texas Board of Chiropractic Examiners (Board) adopts amendments to §75.17, relating to scope of practice. The Board's 2005 Sunset legislation, H.B. 972, 79th Legislature, Regular Session, mandated that the Board adopt rules regarding the scope of practice of chiropractic in Texas (Tex. Occ. Code §1525). The Board published the proposed rule regarding scope of practice in the December 16, 2005, issue of the *Texas Register* (30 TexReg 8383). The Board adopted the scope of practice rule at its meeting on May 11, 2006. The final rule was published in the June 2, 2006, issue of the *Texas Register* (31 TexReg 4613). As the result of public comments received on the proposed rule, the Board determined that additional definitions were needed to clarify terms used in the scope of practice rule and that a description of cosmetic therapies outside of the scope of practice should be included. The amended definitions are

adopted with changes to the proposed text as published in the August 11, 2006, issue of the *Texas Register* (31 TexReg 6304).

The Board now amends the scope of practice rule to include definitions under subsection (b) for the following terms: incision, musculoskeletal system, and subluxation complex. These are terms used in the Texas Chiropractic Act and in the scope of practice rule. The Board compiled the proposed definitions after considering how the terms are used in the Chiropractic Act and based on definitions from medical dictionaries. The definition for "subluxation complex" is based on a definition previously included in the Board's rules.

The Board received comments on the proposed amendments from the Texas Chiropractic Neurological Society (TCNS), Texas Medical Association (TMA), and the Texas Neurological Society (TNS).

TMA requested that the definition of "incision" be revised to include other cutting tools such as a laser or other radiofrequency devices. The Board accepts this comment and has revised the definition to refer to "made with a knife or hot laser."

TNS commented in opposition to the proposed definition of "incision" and requested that "incision" refer to any puncture of the skin. The Board disagrees. The definition proposed by TNS would conflict with the specific authorization in the Chiropractic Act that chiropractors may use a needle to draw blood for diagnostic testing (Texas Occupations Code §201.002(3) and the authority under the Acupuncture Act (Texas Occupations Code §205.003). Furthermore, as noted in the Board's original adoption of §75.17, the Board has found that the use of needles for nonincisive and nonsurgical procedures is within the scope of chiropractic under the Texas Chiropractic Act (31 TexReg at 4614 - 4615). No change was made in response to this comment.

TMA commented in opposition to the proposed definition of "musculoskeletal system," criticizing it as so broad as to include the nervous system and brain, and requested that the definition be limited to the spine. The Board disagrees. The proposed definition was based on the definition used in medical dictionaries such as Stedman's. In addition, the definition by its terms is limited to "the system of muscles and tendons . . . and nerves that move the body and maintain its form." No change was made in response to this comment.

TMA also pointed out that some systemic diseases can have musculoskeletal manifestations beyond the scope of practice of chiropractic that would require surgical consultation. The Board agrees. The scope of practice rule specifically provides for referral to a medical doctor or other health care provider (§75.17(d)(1)(H)). In addition, in order to conform to the minimal acceptable standards of practice of chiropractic, a chiropractor is prohibited from performing or attempting to perform procedures in which the chiropractor is untrained by education or experience (22 TAC §75.2(a)(1)(B)). No change was made in response to this comment.

TNS submitted a comment on the application of the definition of "on-site" to electromyogram testing. No change was proposed to the definition of "on-site" beyond renumbering, and application of the definition to electromyogram testing or other procedures is beyond the scope of this rulemaking. No change was made in response to this comment.

TMA commented in opposition to the proposed definition of "subluxation complex," criticizing it as expansive, and request-

ing that it be revised to narrowly focus on the spine. The Board disagrees. The Legislature has provided that "a person practices chiropractic under [the Chiropractic Act] if the person: (1) uses objective or subjective means to analyze, examine, or evaluate the biomechanical condition of the spine and musculoskeletal system of the human body; (2) performs nonsurgical, nonincisive procedures, including adjustment and manipulation, to improve the subluxation complex or the biomechanics of the musculoskeletal system" (Texas Occupations Code §201.002(b)). The statute links improvement of the subluxation complex to the musculoskeletal system. As defined in these amendments, as commonly used by health care providers, and as commonly described in medical dictionaries, the musculoskeletal system includes more than the spine. No change was made in response to this comment.

TCNS commented in support of the proposed amendments.

These amendments are adopted under Texas Occupations Code §201.152, relating to rules, and §201.1525, relating to the development of proposed rules regarding scope of practice of chiropractic. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 1525 mandates that the Board adopt rules clarifying what activities are included within the scope of practice of chiropractic and what activities are outside the scope.

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

§75.17. *Scope of Practice.*

(a) Aspects of Practice.

(1) A person practices chiropractic if they

(A) use objective or subjective means to analyze, examine, or evaluate the biomechanical condition of the spine and musculoskeletal system of the human body; or

(B) perform nonsurgical, nonincisive procedures, including adjustment and manipulation, to improve the subluxation complex or the biomechanics of the musculoskeletal system.

(2) The practice of chiropractic does not include:

(A) incisive or surgical procedures;

(B) the prescription of controlled substances, dangerous drugs, or any other drug that requires a prescription; or

(C) the use of x-ray therapy or therapy that exposes the body to radioactive materials.

(3) Needles may be used in the practice of chiropractic under standards set forth by the Board but may not be used for procedures that are incisive or surgical.

(A) The use of a needle for a procedure is incisive if the procedure results in the removal of tissue other than for the purpose of drawing blood.

(B) The use of a needle for a procedure is surgical if the procedure is listed in the surgical section of the CPT Codebook.

(4) This section does not apply to:

(A) a health care professional licensed under another statute of this state and acting within the scope of their license; or

(B) any other activity not regulated by state or federal law.

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

(1) Board--the Texas Board of Chiropractic Examiners.

(2) CPT Codebook--the American Medical Association's annual Current Procedural Terminology Codebook (2004). The CPT Codebook has been adopted by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services as Level I of the common procedure coding system.

(3) Incision--A cut or a surgical wound; also, a division of the soft parts made with a knife or hot laser.

(4) Musculoskeletal system--The system of muscles and tendons and ligaments and bones and joints and associated tissues and nerves that move the body and maintain its form.

(5) On-site--the presence of a licensed chiropractor in the clinic, but not necessarily in the room, while a patient is undergoing an examination or treatment procedure or service.

(6) Practice of chiropractic--the description and terms set forth under Texas Occupations Code §201.002, relating to the practice of chiropractic.

(7) Subluxation complex--a neuromusculoskeletal condition that involves an aberrant relationship between two adjacent articular structures that may have functional or pathological sequelae, causing an alteration in the biomechanical and/or neuro-physiological reflections of these articular structures, their proximal structures, and/or other body systems that may be directly or indirectly affected by them.

(c) Examination and Evaluation

(1) In the practice of Chiropractic, licensees of this board provide necessary examination and evaluation services to:

(A) Determine the bio-mechanical condition of the spine and musculoskeletal system of the human body including, but not limited to, the following:

(i) the health and integrity of the structures of the system;

(ii) the coordination, balance, efficiency, strength, conditioning and functional health and integrity of the system;

(iii) the existence of the structural pathology, functional pathology or other abnormality of the system;

(iv) the nature, severity, complicating factors and effects of said structural pathology, functional pathology or other abnormality of the system;

(v) the etiology of said structural pathology, functional pathology or other abnormality of the system; and

(vi) the effect of said structural pathology, functional pathology or other abnormality of the system on the health of an individual patient or population of patients;

(B) Determine the existence of subluxation complexes of the spine and musculoskeletal system of the human body and to evaluate their condition including, but not limited to:

(i) The nature, severity, complicating factors and effects of said subluxation complexes;

(ii) the etiology of said subluxation complexes; and

(iii) The effect of said subluxation complexes on the health of an individual patient or population of patients;



(C) Determine the treatment procedures that are indicated in the therapeutic care of a patient or condition;

(D) Determine the treatment procedures that are contraindicated in the therapeutic care of a patient or condition; and

(E) Differentiate a patient or condition for which chiropractic treatment is appropriate from a patient or condition that is in need of care from a medical or other class of provider.

(2) To evaluate and examine individual patients or patient populations, licensees of this board are authorized to use:

(A) physical examinations;

(B) diagnostic imaging;

(C) laboratory examination;

(D) electro-diagnostic testing;

(E) sonography; and

(F) other forms of testing and measurement.

(3) Examination and evaluation services which require a license holder to obtain additional training or certification, in addition to the requirements of a basic chiropractic license, include:

(A) Electro-neuro Diagnostic Testing training requirements and standards (paraspinal surface electromyography excluded) include:

(i) Board approved training consisting of one hundred and twenty (120) hours of initial clinical and didactic training in the technical and professional components of the procedures or completion of a neurology diplomate program with sixty (60) hours of certification training in the technical and professional components of the procedures (these hours may be applied to a doctor's annual continuing education requirement);

(ii) The professional component of these procedures may not be delegated to a technician and must be directly performed by a qualified and licensed doctor of chiropractic who must be on-site during the technical component of the procedures;

(iii) The technical component of these procedures may be delegated to a technician if, said technician meets the training requirements of this section and is a licensed health care provider authorized to provide those services under Texas law;

(iv) The technical component of surface (non-needle) procedures may be delegated to a technician that has successfully completed Board approved training consisting of sixty (60) hours of initial clinical and didactic training in the technical component of the procedures; and

(v) Procedures must be performed in a manner consistent with generally accepted parameters, including clean needle techniques, standards of the Center for Communicable Disease, and meet safe and professional standards.

(B) Performance of radiologic procedures, which are authorized under the Texas Chiropractic Act, Texas Occupations Code, Chapter 201, may be delegated to an assistant who meets the training requirements set forth under §78.1 of this title (relating to Registration of Chiropractic Radiologic Technologists).

(4) Examination and evaluation services, and the equipment used for such services, which are outside the scope of chiropractic practice include:

(A) incisive or surgical procedures;

(B) the prescription of controlled substances, dangerous drugs, or any other drug that requires a prescription;

(C) the use of x-ray therapy or therapy that exposes the body to radioactive materials; or

(D) other examination and evaluation services that are inconsistent with the practice of chiropractic and with the examination and evaluation services described under this subsection.

(d) Analysis, Diagnosis, and Other Opinions

(1) In the practice of chiropractic, licensees may render an analysis, diagnosis, or other opinion regarding the findings of examinations and evaluations. Such opinions could include, but are not limited to, the following:

(A) An analysis, diagnosis or other opinion regarding the biomechanical condition of the spine or musculoskeletal system including, but not limited to, the following:

(i) the health and integrity of the structures of the system;

(ii) the coordination, balance, efficiency, strength, conditioning and functional health and integrity of the system;

(iii) the existence of structural pathology, functional pathology or other abnormality of the system;

(iv) the nature, severity, complicating factors and effects of said structural pathology, functional pathology, or other abnormality of the system;

(v) the etiology of said structural pathology, functional pathology or other abnormality of the system; and

(vi) the effect of said structural pathology, functional pathology or other abnormality of the system on the health of an individual patient or population of patients;

(B) An analysis, diagnosis or other opinion regarding a subluxation complex of the spine or musculoskeletal system including, but not limited to, the following:

(i) the nature, severity, complicating factors and effects of said subluxation complex;

(ii) the etiology of said subluxation complex; and

(iii) the effect of said subluxation complex on the health of an individual patient or population of patients;

(C) An opinion regarding the treatment procedures that are indicated in the therapeutic care of a patient or condition;

(D) An opinion regarding the likelihood of recovery of a patient or condition under an indicated course of treatment;

(E) An opinion regarding the risks associated with the treatment procedures that are indicated in the therapeutic care of a patient or condition;

(F) An opinion regarding the risks associated with not receiving the treatment procedures that are indicated in the therapeutic care of a patient or condition;

(G) An opinion regarding the treatment procedures that are contraindicated in the therapeutic care of a patient or condition;

(H) An opinion that a patient or condition is in need of care from a medical or other class of provider;

(I) An opinion regarding an individual's ability to perform normal job functions and activities of daily living, and the assessment of any disability or impairment;

(J) An opinion regarding the biomechanical risks to a patient, or patient population from various occupations, job duties or functions, activities of daily living, sports or athletics, or from the ergonomics of a given environment; and

(K) Other necessary or appropriate opinions consistent with the practice of chiropractic.

(2) Analysis, diagnosis, and other opinions regarding the findings of examinations and evaluations which are outside the scope of chiropractic include:

(A) incisive or surgical procedures;

(B) the prescription of controlled substances, dangerous drugs, or any other drug that requires a prescription;

(C) the use of x-ray therapy or therapy that exposes the body to radioactive materials; or

(D) other analysis, diagnosis, and other opinions that are inconsistent with the practice of chiropractic and with the analysis, diagnosis, and other opinions described under this subsection.

(e) Treatment Procedures and Services

(1) In the practice of chiropractic, licensees recommend, perform or oversee the performance of the treatment procedures that are indicated in the therapeutic care of a patient or patient population in order to:

(A) Improve, correct, or optimize the biomechanical condition of the spine or musculoskeletal system of the human body including, but not limited to, the following:

(i) the health and integrity of the structures of the musculoskeletal system; and

(ii) the coordination, balance, efficiency, strength, conditioning, and functional health and integrity of the musculoskeletal system;

(B) Promote the healing of, recovery from, or prevent the development or deterioration of abnormalities of the biomechanical condition of the spine or musculoskeletal system of the human body including, but not limited to, the following:

(i) the structural pathology, functional pathology, or other abnormality of the musculoskeletal system;

(ii) the effects and complicating factors of any structural pathology, functional pathology, or other abnormality of the musculoskeletal system;

(iii) the etiology of any structural pathology, functional pathology, or other abnormality of the musculoskeletal system; and

(iv) the effect of any structural pathology, functional pathology, or other abnormality of the musculoskeletal system on the health of an individual patient or population of patients; and

(C) Promote the healing of, recovery from, or prevent the development or deterioration of a subluxation complex of the spine or musculoskeletal system, including, but not limited to, the following:

(i) the structural pathology, functional pathology, or other abnormality of a subluxation complex;

(ii) the effects and complicating factors of any structural pathology, functional pathology, or other abnormality of a subluxation complex;

(iii) the etiology of any structural pathology, functional pathology, or other abnormality of a subluxation complex; and

(iv) the effect of any structural pathology, functional pathology, or other abnormality of a subluxation complex on the health of an individual patient or population of patients.

(2) In order to provide therapeutic care for a patient or patient population, licensees are authorized to use:

(A) osseous and soft tissue adjustment and manipulative techniques;

(B) physical and rehabilitative procedures and modalities;

(C) acupuncture and other reflex techniques;

(D) exercise therapy;

(E) patient education;

(F) advice and counsel;

(G) diet and weight control;

(H) immobilization;

(I) splinting;

(J) bracing;

(K) cold or low-level light laser;

(L) durable medical goods and devices;

(M) homeopathic and botanical medicines, including vitamins, minerals; phytonutrients, antioxidants, enzymes, nutraceuticals, and glandular extracts;

(N) non-prescription drugs;

(O) referral of patients to other doctors and health care providers; and

(P) other treatment procedures and services consistent with the practice of chiropractic.

(3) The treatment procedures and services provided by a licensee which are outside of the scope of practice include:

(A) incisive or surgical procedures;

(B) the prescription of controlled substances, dangerous drugs, or any other drug that requires a prescription;

(C) the use of x-ray therapy or therapy that exposes the body to radioactive materials; or

(D) other treatment procedures and services that are inconsistent with the practice of chiropractic and with the treatment procedures and services described under this subsection.

(f) Questions Regarding Scope of Practice. Further questions regarding whether a service or procedure is within the scope of practice and this rule may be submitted in writing to the Board and should contain the following information:

(1) a detailed description of the service or procedure that will provide the Board with sufficient background information and detail to make an informed decision;

(2) information on the use of the service or procedure by chiropractors in Texas or in other jurisdictions; and

(3) an explanation of how the service or procedure is consistent with either:

(A) using subjective or objective means to analyze, examine, or evaluate the biomechanical condition of the spine and musculoskeletal system of the human body; or

(B) performing nonsurgical, nonincisive procedures, including adjustment and manipulation, to improve the subluxation complex or the biomechanics of the musculoskeletal system.

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 22, 2006.

TRD-200605266

Glenn Parker

Executive Director

Texas Board of Chiropractic Examiners

Effective date: October 12, 2006

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For further information, please call: (512) 305-6901



## PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

### CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

#### 22 TAC §153.21

The Texas Appraiser Licensing and Certification Board adopts an amendment to §153.21, concerning Appraiser Trainees and Sponsors, with changes to the proposed text as published in the June 30, 2006, issue of the *Texas Register* (31 TexReg 5241).

The Texas Appraiser Licensing and Certification Board adopts the amendment to §153.21 to remove the requirement that a trainee and sponsor must use the same Business address; set a limit of three trainees per sponsor, establish that an appraiser trainee shall have access to appraisals and work files, and require that sponsors be in good standing with the Board which is consistent with the Appraiser Qualifications Board criteria.

No comments were received regarding the amendment.

The amendment is adopted under the Texas Appraiser Licensing and Certification Act, Subchapter D, concerning Board Powers and Duties (Occupations Code, Chapter 1103), which provides the board with authority to adopt rules under §1103.151, concerning Rules Relating to Certification and Licenses.

§153.21. *Appraiser Trainees and Sponsors.*

(a) A person desiring to be an appraiser trainee under the sponsorship of one or more state certified appraisers may apply to the board on the application form prescribed by the board on the application form prescribed by the board. For all applications received after March 31, 2006, a prospective appraiser trainee must meet the requirements set forth in §1103.353 of the Texas Appraiser Licensing and Certification

Act, complete 75 creditable classroom hours as set forth in the Trainee Core Curriculum of the Appraiser Qualifications Board, and must pass the 15 hours National USPAP course and examination. A prospective trainee must be a citizen of the United States or a lawfully admitted alien; be at least 18 years of age; be a legal resident of this state for at least 60 days immediately before the filing of the application; and satisfy the board as to the prospective trainee's honesty, trustworthiness, and integrity. Once a person is approved as an appraiser trainee by the board, the person may perform appraisals or appraiser services only under the active, personal and diligent direction and supervision of a sponsoring certified appraiser unless one of the following events occurs:

(1) the appraiser trainee approval expires due to nonpayment of the annual renewal fee or the educational or experience requirements for renewal have not been met;

(2) the sponsorship is terminated by either the sponsor or the trainee, leaving the appraiser trainee without a sponsoring certified appraiser; or

(3) the trainee's authority to act has been suspended or revoked by the board.

(b) The sponsoring certified appraiser shall immediately notify the board in writing of any termination of sponsorship of an appraiser trainee, on a form prescribed by the board and pay a fee set by the board not later than the 10th day after the date of such termination. The board will notify the trainee that the sponsorship has been terminated.

(c) If an appraiser trainee's approval has expired or been revoked by the board or the trainee is no longer under the sponsorship of a certified appraiser, the appraiser trainee may not perform the duties of an appraiser trainee until an application to sponsor the trainee has been filed together with the appropriate fee and approved by the board.

(d) Certified appraisers who sponsor appraiser trainees or who sign a report shall be responsible to the public and to the board for the conduct of the appraiser trainee under the Act. After notice and hearing, the board may reprimand a sponsoring appraiser or may suspend or revoke a sponsoring appraiser's certification based on conduct by the appraiser trainee constituting a violation of the Act or a rule of the board.

(e) A certified appraiser may be added as a sponsor during the term of an appraiser trainee's authorization, by completing a form prescribed by the board and paying a fee set by the board, and shall assume all the duties, responsibilities, and obligations of an appraiser trainee sponsor as specified in these rules.

(f) Both the sponsoring certified appraiser and any authorized supervisor as well as the appraiser trainee must reside in this state.

(g) No individual shall sponsor more than three appraiser trainees at one time after December 31, 2007. Prior to January 1, 2008, individuals sponsoring three or more appraiser trainees may not take on any additional appraiser trainees nor shall they be allowed to renew any sponsorship which would result in the individual sponsoring more than three appraiser trainees.

(h) An approved appraiser trainee who signs an appraisal report must include his or her TALCB approval or authorization number and the word "Trainee."

(i) Certified appraisers may sponsor no more than three trainees at one time. Notification of sponsorship of an appraiser trainee must be provided in writing to the board on a form prescribed by the board with the appropriate fee prior to the assumption of sponsorship. Termination of sponsorship of an appraiser trainee must be provided in writing to the board on a form prescribed by the

board with the appropriate fee prior to the release from sponsorship. A sponsor may designate another certified appraiser to serve as an authorized supervisor on specific appraisal projects for which state authorization is required. An authorized supervisor assumes the same responsibilities as a sponsor when supervising the work of an appraiser trainee.

(j) Certified appraisers who sponsor appraiser trainees must provide the trainee with access to any appraisals and work files completed under the sponsor or any authorized supervisor designated by the sponsor.

(k) Certified appraisers who sponsor appraiser trainees or serve as an authorized supervisor must be in good standing and not subject to any disciplinary action within the last two years that affects the supervisor's legal eligibility to engage in appraisal practice.

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 22, 2006.

TRD-200605280  
Wayne Thorburn  
Commissioner  
Texas Appraiser Licensing and Certification Board  
Effective date: October 12, 2006  
Proposal publication date: June 30, 2006  
For further information, please call: (512) 465-3959



## CHAPTER 157. RULES RELATING TO PRACTICE AND PROCEDURE

### SUBCHAPTER B. CONTESTED CASE HEARINGS

#### 22 TAC §157.12

The Texas Appraiser Licensing and Certification Board adopts an amendment to §157.12, concerning Failure to Attend Hearing; Default Judgment, without changes to the proposed text as published in the June 30, 2006, issue of the *Texas Register* (31 TexReg 5241) and it will not be republished.

The Texas Appraiser Licensing and Certification Board adopts the amendment to §157.12 to replace the phrase "proposal for decision" with the phrase "final order" for consistency in terminology.

No comments were received regarding the amendment.

The amendment is adopted under the Texas Appraiser Licensing and Certification Act, Subchapter D, concerning Board Powers and Duties (Occupations Code, Chapter 1103), which provides the board with authority to adopt rules under §1103.151, concerning Rules Relating to Certification and Licenses.

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 22, 2006.

TRD-200605279  
Wayne Thorburn  
Commissioner  
Texas Appraiser Licensing and Certification Board  
Effective date: October 12, 2006  
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For further information, please call: (512) 465-3959



## SUBCHAPTER C. POST HEARING

#### 22 TAC §157.18

The Texas Appraiser Licensing and Certification Board adopts an amendment to §157.18, concerning Motions for Rehearing; Finality of Decisions, without changes to the proposed text as published in the June 30, 2006, issue of the *Texas Register* (31 TexReg 5242) and it will not be republished.

The Texas Appraiser Licensing and Certification Board adopts an amendment to §157.18 to change the days in which the Board may take action on a motion from 90 days to 20 days. The amendment makes the period consistent with the period provided in the Texas Occupations Code, §1103.519.

No comments were received regarding the amendment.

The amendment is adopted under the Texas Appraiser Licensing and Certification Act, Subchapter D, concerning Board Powers and Duties (Occupations Code, Chapter 1103), which provides the board with authority to adopt rules under §1103.151, concerning Rules Relating to Certification and Licenses.

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 22, 2006.

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Wayne Thorburn  
Commissioner  
Texas Appraiser Licensing and Certification Board  
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For further information, please call: (512) 465-3959



## PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

### 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 August 4, 2006 issue of the *Texas Register* (31 TexReg 6163). The text of the rule will not be republished.

The amendments to §511.57 will add clarity to the courses that the Board may consider in meeting the definition of accounting coursework for the CPA examination by clarifying that the internship can be taken after completing a requisite number of upper division accounting courses; and clarifying that the Board may accept up to three semester hours of credit as accounting for coursework with substantial merit in the context of a career in public accounting, provided the course is predominately accounting or auditing in nature but not included elsewhere in the rule.

The amendment provides clarification of the educational requirements for certification.

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.

Filed with the Office of the Secretary of State on September 22, 2006.

TRD-200605267

J. Randel (Jerry) Hill  
General Counsel

Texas State Board of Public Accountancy

Effective date: October 12, 2006

Proposal publication date: August 4, 2006

For further information, please call: (512) 305-7848



## CHAPTER 519. PRACTICE AND PROCEDURE SUBCHAPTER A. GENERAL PROVISIONS

### 22 TAC §519.2

The Texas State Board of Public Accountancy adopts an amendment to §519.2 concerning Definitions with changes to the proposed text as published in the August 4, 2006 issue of the *Texas Register* (31 TexReg 6164). The text will reflect Roman numeral II instead of Arabic 2 to identify the Technical Standards Review II Committee.

The amendment to §519.2 will eliminate the Major Case Enforcement Committee and replace it with the Technical Standards Review II Committee.

The amendment will expedite investigations and prosecutions of cases involving technical standard violations.

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.

§519.2. *Definitions.*

In this chapter:

(1) "Address of record" means the last address provided to the board by a certificate or registration holder pursuant to board rule 501.93 of this title (relating to Responses);

(2) "ALJ" means administrative law judge;

(3) "APA" means the Texas Administrative Procedure Act, chapter 2001 of the Texas Government Code;

(4) "Board staff" means the employees or independent contractors of the board;

(5) "Committee" means an enforcement committee of the board which are the Behavioral Enforcement Committee, the Technical Standards Review I Committee and the Technical Standards Review II Committee;

(6) "Complaint" means information available to or provided to the board indicating that a certificate or registration holder may have violated the Act, board rules, or order of the board;

(7) "Complainant" means the person or entity who initiates a complaint with board against a certificate or registration holder;

(8) "Direct Administrative costs" means those costs actually incurred by the board through payment to outside vendors and the resources expended by the board in the investigation and prosecution of a matter within the board's jurisdiction, including but not limited to, staff salary, payroll taxes and benefits and other non-salary related expenses, expert fees and expenses, witness fees and expenses, fees and expenses paid to the Office of the Attorney General, filing fees, SOAH utilization fees, court reporting fees, copying fees, delivery fees, case management fees, costs of exhibit creation, technical fees, travel costs and any other cost or fee that can reasonably be attributed to the matter;

(9) "PFD" means the proposal for decision prepared by an administrative law judge;

(10) "Respondent" means a certificate or registration holder against whom a complaint has been filed; and

(11) "SOAH" means the State Office of Administrative Hearings.

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 22, 2006.

TRD-200605272

J. Randel (Jerry) Hill  
General Counsel

Texas State Board of Public Accountancy

Effective date: October 12, 2006

Proposal publication date: August 4, 2006

For further information, please call: (512) 305-7848



## PART 28. EXECUTIVE COUNCIL OF PHYSICAL THERAPY AND OCCUPATIONAL THERAPY EXAMINERS

### CHAPTER 651. FEES

## 22 TAC §651.1, §651.2

The Executive Council of Physical Therapy and Occupational Therapy Examiners adopts amendments to §651.1, concerning Occupational Therapy Board Fees, without changes. It also adopts amendments to §651.2, concerning Physical Therapy Board Fees, with changes to the proposed text as published in the June 30, 2006, issue of the *Texas Register* (31 TexReg 5249). The changes move the new retired status fees upwards in the list of fees, placing them before the individual license late fees, with no changes to the fees themselves. Also, the word "our" has been corrected to "out" in 651.2(j).

The rules were amended to remove the waiver for some OT Facilities, but will enable the OT linked facilities to apply and renew online through the Texas Online System. They will also add a new fee for the retired status and raise fees to support the FY 2006/2007 Appropriations Act.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Executive Council of Physical Therapy and Occupational Therapy Act, Title 23, Subchapter H, Chapter 452, Occupations Code, which provides the Executive Council of Physical Therapy and Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapters 452 - 454, of the Occupations Code are affected by this amended section.

### §651.2. *Physical Therapy Board Fees.*

- (a) Application/Permanent License.
  - (1) PT--\$170.
  - (2) PTA--\$116.
- (b) Application to Retake the Examination.
  - (1) PT--\$25.
  - (2) PTA--\$25.
- (c) Temporary License.
  - (1) PT--\$80.
  - (2) PTA--\$60.
- (d) Provisional License.
  - (1) PT--\$80.
  - (2) PTA--\$75.
- (e) Active to Inactive License.
  - (1) PT--a fee equal to one-half of the renewal fee.
  - (2) PTA--a fee equal to one-half of the renewal fee.
- (f) License Renewal.
  - (1) Active license
    - (A) PT--\$217.
    - (B) PTA--\$167.
  - (2) Inactive license. (Inactive license renewal fees are effective September 1, 2001)
    - (A) PT--a fee equal to one-half of the renewal fee.
    - (B) PTA--a fee equal to one-half of the renewal fee.

- (g) Inactive to Active License (Reactivation).
    - (1) PT--a fee equal to the renewal fee.
    - (2) PTA--a fee equal to the renewal fee.
  - (h) Retired Status.
    - (1) Application--\$25
    - (2) Renewal--\$25
  - (i) Late Fees--Renewal (all licensees).
    - (1) Late 90 days or less--the renewal fee plus a late fee equal to one-half of the examination fee.
    - (2) Late more than 90 days but less than one year--the renewal fee plus a fee equal to the examination fee.
  - (j) License Restoration (all licensees, under the conditions set out in §341.6 of the Physical Therapy Board Rules)--a fee equal to the examination fee.
  - (k) Facility Registration.
    - (1) First facility--\$314
    - (2) Additional site--\$124
  - (l) Facility Renewal.
    - (1) First facility--\$306
    - (2) Additional site--\$126
  - (m) Late Fees--All Facilities.
    - (1) Late 90 days or less--a fee equal to one-half of the renewal fee, in addition to the renewal fee.
    - (2) Late more than 90 days but less than one year--a fee equal to the renewal fee, in addition to the renewal fee.
  - (n) Facility Restoration (all facilities)--renewal fee(s) plus a restoration fee that is double the renewal fee.
- 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 22, 2006.

TRD-200605254

John P. Maline

Executive Director

Executive Council of Physical Therapy and Occupational Therapy Examiners

Effective date: October 12, 2006

Proposal publication date: June 30, 2006

For further information, please call: (512) 305-6900

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## PART 39. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

### CHAPTER 851. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS LICENSING RULES

## SUBCHAPTER C. COMPLIANCE AND ENFORCEMENT

### 22 TAC §851.152

The Texas Board of Professional Geoscientists (TBPG) adopts an amendment to §851.152 concerning firm compliance without changes to the proposed text as published in the April 14, 2006 issue of the *Texas Register* (30 TexReg 3152).

The amendment establishes compliance guidelines for firms registered in this state. The proposed amendment adds language to §851.152 that provides further details as to how a firm will comply with the firm registration requirements, and is necessary as a means for creating parameters for enforcement of registered firms.

Public comments were received regarding the amended rule. One individual's comment made reference to terms in subsection (a) of the rule, stating that the phrase "work that is both engineering and geoscience" is ambiguous. This individual has received differing interpretations of this section from the TBPG and the Texas Board of Professional Engineers (TBPE). The Board's response to this comment is that defining particular work to be either engineering or geoscience or to be both engineering and geoscience may involve professional judgment on the part of the individual P.E. or P.G. The TBPG has formed a standing joint committee with members of the TBPE to address such items of mutual interest as they arise. Additionally, the phrase "work that is both engineering and geoscience" is the exact language contained in section 1002.351(b) of the Board's enabling statute.

Other comments state that certain aspects of the rule, such as what constitutes an "assessment" or "engaging in this type of work" are ambiguous. The Board's response is that the intent of the rule is to protect public health, safety and welfare by ensuring that only qualified persons carry out the public practice of geoscience. The TBPG will provide further clarification on a specific basis as required.

Other comments were received from several individuals regarding the requirement to have a P.G. physically present at each branch or office. One comment states that modern technology makes it unnecessary for a P.G. to be physically present in a branch, remote or project office; another states that it should be at the discretion of the P.G. if he or she wants to sign off on work performed remotely; another that there is no evidence to support a public need to have the TBPG regulate whether a P.G. is present in remote offices and that the requirement serves only to enhance employment opportunities for licensees. Another comment states that the requirement to hire a full-time P.G. is a capricious act, not founded on specific technical merit and is economically unacceptable. The TBPG understands that sophisticated communication and data transmission technologies are widely available and widely used. Such technologies are not an automatic substitute for the physical presence and professional judgment of a licensed professional geoscientist. Further, no P.G. is prohibited from sealing and taking personal and professional responsibility for work performed remotely by another P.G. The TBPG believes that the physical presence of a P.G. during the performance of geoscientific work is the best way to protect public health, safety and welfare by ensuring that only qualified persons carry out the public practice of geoscience.

Other comments suggest that this amendment will be a burden for all businesses; that it will be a burden for small businesses; that it is not economically feasible for every office; and that small

businesses will be put out of business if they have to employ a P.G. in every office. The TBPG has seen no information that would indicate these statements to be true or even likely, and the Board does not agree with these statements. Evaluations of economic feasibility will be different for every P.G. and every registered geoscience firm, regardless of size. No firm that practices or offers to practice geoscience before the public is included or excluded from TBPG requirements based on size.

Other comments mention that the requirements to hire a full-time P.G. in each office as applied could discriminate against those who choose to work part-time; that the only "benefit" to requiring a full-time P.G. in each office is to artificially create additional positions for P.G.s, which would be at the expense of those who wish to work part-time and other environmental professionals. The TBPG has no rule or policy in effect that promotes discrimination. The TBPG has authority over the public practice of geoscience and licensed Professional Geoscientists only and does not regulate other disciplines or professions.

Another comment states that the proposed amendment might be interpreted as providing geoscientists and engineers a monopoly in environmental practice, and thus would be against the public interest. TBPG's response is that this would be an incorrect interpretation with regard to Professional Geoscientists. The TBPG has no authority over engineers.

Another comment states that the amendment could also serve to limit the range of professionals involved in addressing complex and interdisciplinary problems, and unnecessarily and unfairly limit competition and innovation. The Board's response is that the intent of the rule is to protect public health, safety and welfare by ensuring that only qualified persons carry out the public practice of geoscience. The TBPG does not regulate other disciplines or professions.

The amendment is adopted under the Texas Occupations Code, §1002.151 and §1002.351 which allow the Board to adopt rules relating to the public practice of geoscience by a firm.

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, 2006.

TRD-200605242

Frank Knapp

Attorney, Office of the Attorney General

Texas Board of Professional Geoscientists

Effective date: October 11, 2006

Proposal publication date: April 14, 2006

For further information, please call: (512) 936-4405



### 22 TAC §851.156

The Texas Board of Professional Geoscientists (TBPG) adopts an amendment to §851.156, regarding geoscientist's seals, without changes to the proposed text as published in the April 14, 2006, issue of the *Texas Register* (31 TexReg 3153).

The adopted amendment adds language to §851.156(f) and (j) which clarifies the requirements for use of an electronic seal and signature, and use of the seal on submitted reports. These clar-

ifications were necessary based on feedback from licensees regarding electronic seals and their proper usage.

No comments were received regarding adoption of this amendment.

The amendment is adopted under the Texas Occupations Code, §1002.263, which authorizes the Board to adopt rules outlining the requirements for the use of the Professional Geoscientist seal.

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 22, 2006.

TRD-200605249

Frank Knapp

Attorney, Office of the Attorney General

Texas Board of Professional Geoscientists

Effective date: October 12, 2006

Proposal publication date: April 14, 2006

For further information, please call: (512) 936-4405



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

##### SUBCHAPTER A. AUTOMOBILE INSURANCE

#### DIVISION 6. NOTICE REQUIREMENTS TO CLAIMANTS REGARDING MOTOR VEHICLE REPAIRS

##### 28 TAC §5.501

The Commissioner of Insurance adopts amendments to §5.501, concerning the procedures an insurer must follow in order to give the proper notice to first- and third-party claimants regarding their motor vehicle repair rights as required by the Insurance Code Article 5.07-1. The amendments are adopted with changes to the proposed text published in the June 23, 2006, issue of the *Texas Register* (31 TexReg 5041).

The amendments to §5.501 are necessary to reduce confusion, eliminate consumer frustration, and enable the Department to more efficiently allocate agency resources. Article 5.07-1(a) provides that under an auto insurance policy delivered, issued for delivery, or renewed in this state which covers damage to a motor vehicle, an insurer may not, directly or indirectly, limit its coverage under the policy by specifying the brand, type, kind, age, vendor, supplier, or condition of parts or products that may be used to repair the vehicle or by limiting the beneficiary of the policy from selecting a repair person or facility to repair damage to the motor vehicle covered under the policy, except as provided by rules adopted by the Commissioner. Article 5.07-1(g) provides that in the settlement of liability claims by a third-party

against an insured for property damage claimed by the third-party, an insurer may not require the third-party claimant to have repairs made by a particular repair person or facility or to use a particular brand, type, kind, age, vendor, supplier, or condition of parts or products. Article 5.07-1(e) provides that at the time the vehicle is presented to an insurer or an insurance adjuster or other person in connection with a claim for damage repair, the insurance adjuster or other representative of the insurer must provide to the beneficiary or third-party claimant notice of the provisions of Article 5.07-1. Article 5.07-1(e) also requires the Commissioner to adopt a rule establishing the method or methods insurers must use to comply with the statutorily required notice provisions of this subsection.

Many consumers confuse the role of the Department and the role of the insurance company under the notice requirements outlined in former §5.501. The notice does not state how to contact the responsible insurance company nor does it clearly indicate the role of the insurance company in the claims process. Instead, it prominently displays the contact information for the Department and encourages claimants to call with questions about their rights. As a result, many calls to the Department must be redirected to the appropriate insurance company. These consumers must then make contact with the appropriate insurer. The redirection of initial calls results in confusion and consumer frustration. It also taxes the Department's resources, increasing the amount of time other consumers must wait to have their calls answered.

To address these concerns, adopted §5.501 clarifies the role of the Department and distinguishes it from the responsibilities of the insurance company by adding new language and requiring special formatting in the notice to indicate the different responsibilities. The new language makes clear that the Department is responsible for providing information about Insurance Code Article 5.07-1, while insurance companies are responsible for providing detailed information about the nature of coverage under a particular policy. To emphasize the role of the insurer, the new notice requires the insurance company to display its name, mailing address, phone number, and fax number prominently in bold face type. Insurance companies are also encouraged to provide an optional e-mail or website address.

The amendments to §5.501 are also necessary to make a second important change. In an effort to better serve the Department's increasing number of Spanish-speaking callers, the notice must also be provided in Spanish. In 2002, the Department's Consumer Protection Division received 8,277 calls from Spanish-speaking consumers. By 2005, the inquiries had increased to more than 13,000 calls. The Department is requiring that the notice be provided in Spanish to address this increased demand.

In response to written comments received from interested parties, the Department has changed some of the proposed language in the text of the rule as adopted. The changes, however, do not introduce new subject matter or affect persons in addition to those subject to the proposal as published. The changes are as follows.

The proposed effective date of the rule is changed from January 1, 2007 to April 1, 2007 after two commenters stated concern that if the effective date remained January 1, 2007, the rule would need revision within 90 days. This revision would be necessary because of the repeal of the Insurance Code Article 5.07-1 effective April 1, 2007, which is referenced in the notice. The repeal and the re-adoption of Article 5.07-1 as §§1952.301 - 1952.307 are part of the nonsubstantive code revision by the 79th Legis-



lature. According to the commenters, it would be more administratively efficient and less costly if the effective date could be delayed to April 1, 2007. The Department agrees. In response to the comments, subsection (j) has been added to the rule to provide for an effective date for the amendments of April 1, 2007. References to Article 5.07-1 in the text of subsection (h), subsection (i), and the notice have also been updated accordingly.

One commenter said that third-party claimants have no specified or stated rights under an insurance policy issued to a first party, and there is no "description of your legal rights under the contract" in a policy that may be providing funding for a third-party claimant. For this reason, the commenter suggested that the sentence "[i]f the damage to your vehicle is covered by an insurance policy, the nature of the coverage and your legal rights under the contract are described in more detail in the applicable policy," be replaced by: "If the costs of repairing your vehicle are to be paid under an insurance policy issued by us, the nature of the coverage is stated in more detail in the applicable policy." The Department agrees and has changed the language in the proposed notice to incorporate the commenter's language.

According to one commenter, the statement in the proposed notice "For detailed information regarding our insurance policy, contact [Name of the insurance company]" could confuse third parties because of the reference to "our insurance policy." The commenter suggested that the words "this notice" be substituted for "our insurance policy" in order to reduce confusion. The Department agrees with the commenter that the language in the proposed notice could cause a third-party claimant some confusion. However, in order to address the concern, the Department has substituted "the" for "our" so that the notice as adopted reads: "For detailed information regarding the insurance policy, contact [Name of the insurance company]."

One commenter expressed concern about the proposed requirement to include the e-mail or web address of the insurance company in the notice. According to the commenter, some insurance companies do not communicate with their customers via e-mail; therefore, it would be expensive and difficult to provide this service by January 1, 2007. The commenter also states that his interpretation of the proposal is that by web address, the Department means a web address to which someone could send an e-mail, which would eliminate the use of already established information sites that do not have that capacity. The proposed inclusion of a web address requirement in the notice is not intended to supersede established information websites. The intent of the notice is to encourage claimants to contact the insurance company with questions about the policy applicable to their motor vehicle repairs claim. However, as a result of the concerns raised by the commenter, the rule as adopted does not require insurance companies to provide an e-mail or web address in the notice, but allows them to do so at their option.

One commenter states that capital letters serve a useful purpose when emphasizing a matter, but when the entire text of a notice is capitalized it may not be delivered with as much force. Therefore, the commenter suggests that the notice should follow the standard usage of capital and lower-case letters with two exceptions: the optional provision and the title of the notice. The Department agrees, and the notice as adopted has been changed to reflect this suggestion.

One commenter states that in the Spanish language notice the word *naturaleza* should be replaced by *propósito* because it more accurately reflects the meaning of the word *nature* used in the English notice. The Department agrees that the word

*naturaleza* should be replaced but has substituted the term *naturaleza técnica*, which means technical nature. In the context of the Spanish notice, this term is an accurate translation of the word *nature* as used in the English portion of the notice.

The adopted amendments to §5.501(a), a subsection defining the terms *business day* and *insurer*, changes the format of the subsection to include two new paragraphs. In the adopted rule, subsection (a)(1) defines *business day* while subsection (a)(2) defines *insurer*. No substantive changes are made to subsection (a).

The adopted amendments to §5.501(h), a subsection regarding the required format for the written notice, requires that the insurer's name, mailing address, phone number, and fax number be provided in bold face type. If the insurer chooses to provide an e-mail address or web address, it must also be provided in bold face type. The revised notice incorporates new language clarifying the responsibilities of the Department and of the insurance company under the notice. The new notice also requires insurers to add their contact information. Furthermore, a Spanish translation of the English version is added to the face of the one-page notice.

Section 5.501(j) provides an effective date for the amendments of April 1, 2007. This change permits insurers to make use of existing inventories and switch to the amended forms when the timing is most appropriate.

#### Effective date of the notice

Comment: Two commenters state concern about the effective date of the rule. The commenters note Insurance Code Article 5.07-1 will be repealed effective April 1, 2007 and replaced by Insurance Code §§1952.301 - 1952.307 as part of the nonsubstantive code revision by the 79th Legislature. Therefore, according to the commenters, if the proposed changes were implemented on January 1, 2007, it will be necessary to revise the rule and forms only 90 days after the effective date because of the change in statutory references. The commenters state it would be more administratively efficient and less costly if the effective date could be delayed to April 1, 2007.

Agency's Response: The Department agrees and has changed the effective date to April 1, 2007, and has updated the references to the Insurance Code Article 5.07-1 to the Insurance Code §§1952.301 - 1952.307 in accordance with the nonsubstantive code revision by the 79th Legislature.

#### Language and formatting of the notice

Comment: One commenter says that third-party claimants have no specified or stated rights under an insurance policy issued to a first party, and there is no "description of your legal rights under the contract" in a policy that may be providing funding for a third-party claimant. For this reason, the commenter suggests that the sentence "[i]f the damage to your vehicle is covered by an insurance policy, the nature of the coverage and your legal rights under the contract are described in more detail in the applicable policy," be replaced by: "If the costs of repairing your vehicle are to be paid under an insurance policy issued by us, the nature of the coverage is stated in more detail in the applicable policy."

Agency's Response: The Department agrees. The notice has been revised to reflect this suggestion.

Comment: One commenter states that the language in the notice explaining whom to contact should one have questions about the insurance policy could confuse third-parties because a third-

party claimant, as opposed to a first-party claimant, has different rights under an insurance policy. Therefore, the commenter suggests the words "this notice" be substituted for "our insurance policy" in order to reduce confusion.

Agency's Response: The Department agrees that the language in the proposed notice could cause a third-party claimant some confusion; however, in order to address this concern the Department has substituted "the" for "our" so that the notice now reads: "For detailed information regarding the insurance policy. . . ."

Comment: One commenter expresses concern about including the insurance companies' e-mail or web addresses in the notice. The commenter states that some insurance companies do not communicate with their customers via e-mail; therefore, it would be expensive and extremely difficult to provide this service by January 1, 2007. The commenter also states that by requiring an insurer's web address, the Department means a web address to which someone could send an e-mail, which would eliminate the use of already established information sites that do not have that capacity.

Agency's Response: The intent of the Department's proposal was to require a web address as a source for claimants who wanted to gather more information on how they might contact the company. The inclusion of a web address in the notice was not intended to supersede established information sites. The intent of the notice is to encourage claimants to contact the insurance company with questions about the policy applicable to their motor vehicle repairs claim. However, the Department does not want to create unnecessary costs or unrealistic expectations. Therefore, subsection (h) and the notice as adopted have been revised so that insurance companies are not required to provide an e-mail or web address, but may do so at their option.

Comment: One commenter states that capital letters serve a useful purpose when emphasizing a matter, but when the entire text of a notice is capitalized it may not be delivered with as much force. Therefore, the commenter suggests that the notice follow the standard usage of capital and lower-case letters with two exceptions: the optional provision and the title of the notice.

Agency's Response: The Department agrees, and the notice has been changed to reflect this suggestion.

#### Spanish language notice

Comment: Two commenters express some concern about providing a Spanish language notice with an English language notice. One commenter is not opposed to the Spanish language notice; however, the commenter suggests the notice indicate a Spanish notice would only be provided on request. A second commenter also makes this suggestion, and expresses concern about the cost of complying with the required notice if a Spanish version must be delivered to a recipient in all cases. The commenter states that under the proposed rule it would require an additional page be affixed to the notice it currently provides because of the way the company formats its notice.

Agency's Response: The Department disagrees because the notice can be provided in both English and Spanish on one page.

Comment: One commenter states that in the Spanish notice the word *naturaleza* should be replaced by *propósito* because it more accurately reflects the meaning of the word *nature* as used in the English notice.

Agency Response: The Department agrees that the word *naturaleza* should be changed but has substituted the term *natu-*

*raleza técnica*, which means technical nature. In the context of the Spanish notice, this term is an accurate translation of the word *nature* as used in the English portion of the notice.

For, with recommended changes: Insurance Council of Texas.

Neither for nor against, with recommended changes: Farmers Insurance Group and State Farm Insurance Companies.

The amendments are adopted under the Insurance Code Article 5.07-1, Article 5.98, and §36.001. Article 5.07-1 specifically charges the Commissioner with adopting rules to establish the method insurers must use to provide claimants with notice of their motor vehicle repair rights. Under Article 5.98, the Commissioner is authorized to adopt reasonable rules appropriate to accomplishing the purposes of Chapter 5 of the Insurance Code. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

#### §5.501. Notice Requirements to Claimants Regarding Motor Vehicle Repairs.

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

(1) Business day--A day other than a Saturday, Sunday, or holiday recognized by the State of Texas.

(2) Insurer--An insurer or any person authorized to act on behalf of an insurer regarding damage to a vehicle, regardless of whether employed by the insurer.

(b) An insurer must give the notice prescribed by subsection (h) of this section (hereinafter referred to as the written notice) to any insured or third-party claimant who makes a claim regarding damage to a vehicle. If a claimant presents the vehicle to the insurer in connection with a claim for damage repair, or otherwise makes the claim in person, the written notice must be given to the claimant at that time.

(c) If the claim is made instead in writing (including e-mail or FAX), an insurer must mail the written notice to the claimant within three business days of receiving notice of the claim, unless the insurer otherwise delivers the claimant the written notice within those three business days.

(d) If the claim is made by telephone, an insurer must:

(1) mail the written notice to the claimant within three business days; or

(2) give the verbal notice prescribed by subsection (i) of this section (hereinafter referred to as the verbal notice) to the claimant at the time of the claimant's telephone call and mail the written notice to the claimant within 15 business days of receiving notice of the claim.

(e) An insurer, if it chooses to address the liability issue initially, may send or deliver its own letter along with the written notice. The written and verbal notice may include the Optional Provision. The written notice must be on a separate page from any letter or other material, except as otherwise provided in this section.

(f) Notwithstanding any other subsection of this section, no insurer is required to furnish more than one written notice to the insured or third party claimant in regard to the claim.

(g) These notice requirements do not apply to towing and labor costs coverage.

(h) The written notice must be printed in at least ten-point type with the insurer's name, mailing address, phone number, and fax num-

ber printed in bold face type. The insurer may provide an e-mail address or web address printed in bold face type. The notice must be attached to, or printed on the reverse side of, a copy of the Insurance Code §§1952.301 - 1952.307. The written notice must read as follows: Figure: 28 TAC §5.501(h)

(i) The verbal notice at a minimum must consist of the following: BY LAW, YOU HAVE THE RIGHT TO SELECT WHERE YOUR MOTOR VEHICLE IS REPAIRED AND THE PARTS USED FOR REPAIRS. HOWEVER, AN INSURANCE COMPANY IS NOT REQUIRED TO PAY MORE THAN A REASONABLE AMOUNT FOR SUCH REPAIRS AND PARTS. YOUR RIGHTS CONCERNING MOTOR VEHICLE REPAIRS ARE EXPLAINED IN THE INSURANCE CODE §§1952.301 - 1952.307, A COPY OF WHICH WILL BE MAILED TO YOU WITHIN 15 BUSINESS DAYS. IF YOU HAVE ANY QUESTIONS ABOUT YOUR MOTOR VEHICLE REPAIR RIGHTS, CONTACT THE TEXAS DEPARTMENT OF INSURANCE AT 1-800-252-3439.

(j) These amendments are effective April 1, 2007.

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 22, 2006.

TRD-200605250

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: October 12, 2006

Proposal publication date: June 23, 2006

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



## TITLE 30. ENVIRONMENTAL QUALITY

### PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

#### CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

##### SUBCHAPTER K. MOBILE SOURCE INCENTIVE PROGRAMS

The Texas Commission on Environmental Quality (commission) adopts amendments to §114.620 and §114.622. The commission also adopts new §§114.624, 114.640, 114.642, 114.644, 114.646, and 114.648. The amendments and new sections are adopted *without changes* to the proposed text as published in the April 14, 2006, issue of the *Texas Register* (31 TexReg 3187) and will not be republished.

The amended §114.620 and §114.622 and new §§114.624, 114.640, 114.642, 114.644, 114.646, and 114.648 are adopted to be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

House Bill (HB) 3469, 79th Legislature, 2005, added Chapter 390 to the Texas Health and Safety Code. This new chapter directs the commission to establish and administer a clean school bus program within the financial limits set by amended §386.051 and §386.052 (HB 3469, 79th Legislature). This clean school bus program will fund efforts by school districts to improve the health of children by reducing emissions of diesel exhaust from school buses. Reduction of emissions from diesel-powered school buses will also benefit the public in ozone nonattainment areas by reducing emissions of nitrogen oxides (NO<sub>x</sub>).

The commission is adopting new §§114.640, 114.642, 114.644, 114.646, and 114.648 to establish this program. Under these sections, school districts, charter schools, and regional planning organizations would be eligible for reimbursement grants for the use of emissions reducing catalysts, particulate filters, qualifying fuels, and other emissions reducing add-on equipment or technology that the commission finds will reduce emissions.

House Bill 2481, 79th Legislature, 2005, added §386.117 to the Health and Safety Code to add a rebate grant program under the Texas Emissions Reduction Plan (TERP). New §114.624 is adopted to implement this program. The rebate grant will streamline the grant application process for some applicants and will ease the administrative burden on the agency.

Amendments to §114.622 will clarify that for replacement and re-power projects, the baseline vehicle, equipment, or engine must be scrapped or permanently removed from the State of Texas. Amendments to §114.620 and §114.622 create an option for the commission to use an equivalent measure to the current \$13,000 per ton cost effectiveness standard or an alternative approved by the commission. These amendments will improve TERP program effectiveness by ensuring that high-emitting engines cannot be reintroduced into an affected county and allowing the commission to increase the emissions reductions created by grants.

#### SECTION BY SECTION DISCUSSION

The commission adopts administrative changes throughout this rulemaking to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The adopted amendment to §114.620 modifies the definition of "Cost-effectiveness" to clarify how the cost-effectiveness of TERP grant applications will be determined. The adopted amendment to §114.622 clarifies that, for grants entailing replacement or re-power of an engine or other equipment, the original equipment must be permanently removed from the State of Texas. The adopted amendment to §114.622 also clarifies that the commission may establish cost-effectiveness standards lower than the statutory \$13,000 per ton and that the commission may also make project selection decisions on a variety of factors in addition to cost-effectiveness.

Adopted new §114.624, Rebate Grant Process, establishes a process that awards TERP funds as a rebate. This new process would provide for ongoing, first-come, first-served awarding of standardized rebates for designated project types. It would create a simple, streamlined process to award TERP funds.

Amended §114.620 and §114.622 and new §114.624 are also adopted to be submitted to the EPA as revisions to the SIP.

Adopted new §114.640, Definitions, provides definitions for the Texas Clean School Bus Program. This section provides definitions for important terms in the proposed new division.

Adopted new §114.642, Applicability, establishes program eligibility for school districts and charter schools. This section also allows regional planning organizations, such as councils of government, and private nonprofit organizations to apply for and receive grants to improve the program.

Adopted new §114.644, Clean School Bus Program Requirements, establishes basic program requirements, including: the types of projects eligible for a clean school bus grant; the ability of the commission to limit or prioritize funding for the Texas Clean School Bus Program; the minimum useful life of a project under the grant program; a requirement that replaced equipment be permanently removed from the State of Texas; restricting the use of grant funds to pay incremental costs associated with the project and prohibition against using the grant for administrative expenses; prohibition against recipients using grant funding to meet federal or state legal requirements and using emissions reductions as part of an emissions banking or trading program; grant application requirements; and obligation of the grant recipient to return grant funds if they fail to meet the terms of a project grant or conditions of the proposed division.

Adopted new §114.646, Monitoring, Recordkeeping, and Reporting Requirements, establishes that grant recipients must adhere to the reporting requirements of their grant, which will occur no less frequently than annually.

Adopted new §114.648, Implementation Schedule, establishes that the Texas Clean School Bus program will expire on August 31, 2013.

New §§114.640, 114.642, 114.644, 114.646, and 114.648 are also adopted to be submitted to the EPA as revisions to the SIP.

#### FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this rule action is not subject to §2001.0025 because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" means 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, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The adopted amendments to Chapter 114 modify the existing rules in accordance with House Bill 3469, 79th Legislature, which amended Texas Health and Safety Code, §386.051(b) and added Texas Health and Safety Code, Chapter 390 to require the commission to establish a Clean School Bus Program. The Clean School Bus Program is intended to reduce diesel exhaust emissions from school buses by funding eligible projects. The adopted rule amendments are part of a voluntary incentive program with the goal of reducing diesel emissions and as such, the adopted rules 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.

Further, the adopted amendments to Chapter 114 modify the existing rules in accordance with House Bill 2481, 79th Legislature, which amended Chapter 386, Subchapter C of the Texas Health and Safety Code by adding §386.117, directing the commission to adopt a process to award grants in the form of rebates to streamline the grant application, contracting, reimbursement,

and reporting processes for certain projects under the TERP. These rule amendments will implement procedural changes and will have no effect on the environment or human health. These rule amendments are part of a voluntary incentive program with the goal of reducing diesel emissions and as such, the adopted rules 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.

In addition, a regulatory impact analysis is not required because the adopted rules do not meet any of the four applicability criteria for requiring a regulatory analysis of a "major environmental rule" as defined in the Texas Government Code. Section 2001.0225 applies only to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) 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 and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not exceed a standard set by federal law, and the adopted technical requirements are consistent with applicable federal standards. In addition, this rulemaking does not exceed an express requirement of state law and is not adopted solely under the general powers of the agency, but is specifically authorized by the provisions cited in the STATUTORY AUTHORITY section of this preamble. Finally, this rulemaking does not exceed a requirement of a delegation agreement or contract to implement a state and federal program.

The commission invited public comment on the draft regulatory impact analysis determination during the public comment period that ended May 16, 2006. No comments were received on the draft regulatory impact analysis.

#### TAKINGS IMPACT ASSESSMENT

The commission evaluated this rulemaking action and performed an analysis of whether the adopted rules are subject to Texas Government Code, Chapter 2007. The primary purpose of the rulemaking is to amend Chapter 114 in accordance with House Bill 3469 and House Bill 2481. These amendments implement a voluntary program and only affect motor vehicles and equipment which are not considered to be private real property. Therefore, promulgation and enforcement of these adopted rules are neither a statutory nor a constitutional taking because they do not affect private real property. Therefore, these rules do not constitute a taking under Texas Government Code, Chapter 2007.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found that the rulemaking is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.*, and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22, and found the adopted rulemaking is consistent with the applicable CMP goals and policies.

The applicable goal of the CMP is to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and val-

ues of coastal natural resource areas. The specific CMP policy applicable to these rules is that commission rules comply with 40 Code of Federal Regulations (CFR), to protect and enhance air quality in coastal natural resource areas (31 TAC §501.32). The commission reviewed this adopted rulemaking for consistency with the Texas CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the amendments are consistent with CMP goals and policies because this rulemaking action would reduce air pollution from diesel-powered school buses. No new sources of air contaminants are authorized and nitrogen oxides and particulate air emissions would be reduced as a result of these rules. This adopted rulemaking complies with 40 CFR Part 51. This adopted action is part of the control strategy for ozone nonattainment areas in accordance with SIP requirements in 40 CFR Part 51 and reduces emissions of particulate matter consistent with National Ambient Air Quality Standards set for particulate matter in 40 CFR Part 50.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rules are consistent with these CMP goals and policies, because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas, and because the adopted rules will reduce emissions of air pollutants.

Written comments on the consistency of this rulemaking were invited during the public comment period which closed May 16, 2006. No comments were received on the consistency of this rulemaking with the CMP.

#### PUBLIC COMMENT

A public hearing on the adopted rules was held in Austin on May 9, 2006, at 2:00 p.m. at the Texas Commission on Environmental Quality Complex. The public comment period closed May 16, 2006. No comments were received at the public hearing, but the commission did receive written comments from the Houston Regional Group of the Sierra Club (HSC), Environmental Defense (ED), the United States Environmental Protection Agency (EPA), the Texas Center for Policy Studies (TCPS), and one individual generally supporting the proposed rules.

#### RESPONSE TO COMMENTS

The HSC supports provisions in §114.622(c) and §114.644(e) which require grant recipients for replacement or repower projects to permanently remove old engines or vehicles from Texas.

The commission appreciates the support. Removing these "old" vehicles or engines from use in Texas ensures that they cannot continue to pollute the air in Texas.

The HSC does not support limiting the use of diesel oxidation catalysts and particulate filters to certain model years of school buses under §114.644(a)(1) and (2), but rather supports the widespread use of these pollution control devices. ED comments that these pollution control devices are verified by the U.S. EPA or certified by the California Air Resources Board for model years beyond those included in the proposed rules. ED asks that the commission expand the range of model years covered by the clean school bus program to match those for which there are verified technologies.

The commission appreciates these comments. The model year designations in §114.644(a)(1) and (2), 1994 for oxidation catalysts and 1994 to 1998 for particulate filters, reflect

requirements set in the statute (Texas Health and Safety Code, §390.002). The commission notes that §114.644(a)(5) allows the commission to approve "other technologies that the commission finds will bring about significant emissions reductions." This ability would allow the commission to fund a wide variety of emission-reducing projects. The commission did not revise the proposed rules as a result of this comment.

The HSC supports reducing the requirement for a project life of five years proposed under §114.644(d) to three years of useful life. The HSC wants installation of pollution control devices to be as widespread as possible as quickly as possible.

The commission appreciates this comment. The requirement for five years of useful life proposed under §114.644(d) reflects statutory requirements (Texas Health and Safety Code, §390.004(b)). State law and the proposed rule (§114.644(d)) also allow for a pollution control device to be used on a particular school bus for a period less than five years if that pollution control device is reinstalled on another school bus for the remainder of the required five years.

One individual comments school buses are used year-round for a variety of activities such as class, special events/field trips, sporting events or other competitions, summer events, and after school programs.

The commission acknowledges this comment.

One individual comments school buses should be air-conditioned and filtered, similar to classrooms, in order to increase learning and protect the health of students, teachers, and other staff. The first step in protecting students and teachers from exposure to air pollution on school buses would be to require that all new school buses be air-conditioned and fitted with filters. The second step would be to establish a modification program for existing school buses so that standards for existing buses could be met as time and budget allow.

Air-conditioning school buses is outside the scope of this rulemaking. The commission agrees that reducing air pollution from school buses would help protect the health of students, teachers, and other staff who work in our school systems.

The EPA and ED comment that many studies have confirmed the detrimental effect of diesel exhaust on children's health and that they support the commission's efforts to establish a clean school bus program for the State of Texas.

The commission appreciates the support.

The EPA comments that there are very few retrofits available that provide the substantial NO<sub>x</sub> reductions for which the TERP program was established. It is improbable those retrofits would meet the \$13,000 per ton cost effectiveness requirements used in the TERP program. They comment making the clean school bus program a viable part of the TERP program could require some modifications to the program. The EPA recommends proposed §114.622(d) be revised to identify what the "additional measures" are in addition to, and that the commission provide guidance describing such additional measures and how they will be considered.

The commission notes while the TERP program and the Clean School Bus program share a similar method of finance, they are two separate programs. The programs are authorized by separate chapters of the Texas Health and Safety Code. Furthermore, Texas statute and the commission's rules do not establish a specific cost effectiveness requirement for emissions re-

duction projects under the Clean School Bus program. Section 114.622(d) does not apply to projects under the newly adopted Division 4. The commission did not revise the proposed rules as requested.

The EPA recommends the proposed definition of "Qualifying fuel" under §114.640 be modified by placing a comma after the word "bus" to indicate that the final "that" clause does not apply to school buses but instead to the fuel.

The commission appreciates the EPA's comment. The definition included in the rule is the literal definition that was adopted into the Texas Health and Safety Code by the 79th Legislature. The commission did not revise the proposed rules as suggested.

The EPA comments additional documentation may be necessary if the clean school bus program is submitted as a SIP revision. More specifically, the EPA comments the commission should provide a demonstration of the adopted rules' consistency with Federal Clean Air Act, §110(l). The EPA also comments if the clean school bus program is to be approvable into the SIP under the Economic Incentive Program, reductions must be surplus, quantifiable, enforceable, and permanent. The EPA requests the commission confirm that the adopted rule changes are consistent with Federal Clean Air Act, §110(l) and with its guidance entitled "EPA's Improving Air Quality with Economic Incentive Programs" (Chapters 4 and 8, January 2001). The EPA notes it has previously approved the TERP program under these conditions.

Adopted rules for the Texas Clean School Bus Program are consistent with requirements of the Federal Clean Air Act, §110(l). Under the EPA's guidance for economic incentive programs, the Texas Clean School Bus Program meets the requirements of a financial mechanism economic incentive program. Although the Clean School Bus Program derives its funding from the same source, the program is separate from the TERP Emissions Reduction Incentive Grant Program. The primary requirements of the EPA guidance are:

**Surplus:** Under the Clean School Bus Program an activity will not be eligible if it is required by any state or federal law, regulation, memorandum of agreement, or other legally binding document. The program solicitation documents and grant instructions will outline additional restrictions and describe other eligible activities.

**Enforceable:** The Clean School Bus program will require a review of each project funded. Contracts will require achievement of the emission reductions over the designated project life. Emission reductions will be verified through reports on use of the grant-funded buses and on-site monitoring and audit visits. Contracts will contain provisions that allow the state to recapture grant money for the failure to comply with grant obligations. The reports and monitoring activities will be used by TCEQ to track compliance and effectiveness of the grant recipients in fulfilling their obligations under the contract. The TCEQ may, at any time, before or after reimbursement, request additional evidence concerning costs.

**Quantifiable:** Emissions reductions achieved through the Texas Clean School Bus Program will be quantified using a comparison of baseline NO<sub>x</sub> and particulate matter emissions with reduced NO<sub>x</sub> and particulate matter emissions. Engine emissions certifications and retrofit system verifications by the EPA will be used to verify the emissions of the reduced-emissions engines and retrofit systems. Baseline emission rates for uncontrolled engines will be based on factors developed and used for SIP modeling purposes by the TCEQ.

The Clean School Bus Program solicitation documents and grant instructions will outline the approach for determining incremental costs, emission reductions and cost-effectiveness. The application forms will require the applicant to provide data on the incremental costs of each activity, vehicle or equipment usage patterns, and information about the vehicle or equipment needed to determine emission rates. Emission factors, load factor, and usage pattern information will be used by the TCEQ to calculate emission reductions attributed to an activity. The solicitation documents and grant instructions will contain information on how to determine the level of NO<sub>x</sub> and particulate matter emissions for the baseline and the new vehicle and equipment. Using this information, the TCEQ will determine the emissions reductions and cost effectiveness of the project.

For a project to be eligible for Clean School Bus Program funding, the emission rate of engines or the emission reduction factor for retrofit systems must be certified or verified under an applicable EPA certification or verification program. In accordance with agreements between the EPA and California Air Resources Board (CARB), CARB certification or verification will also be accepted. In some cases, the TCEQ may also accept testing results under EPA, CARB, and/or TCEQ approved test protocols to determine the emission rate or emission reduction factor. This approach will provide the most flexibility for the program while also restricting the evaluation process to those technologies or products that can provide documentation that will be acceptable to the EPA.

**Permanent:** The TCEQ will establish minimum requirements for the life of a project, which will be at least five years. The project life will be the period in which the grant recipient is contractually obligated to monitor and report on the use of the grant-funded vehicle, equipment, and/or fuel. Environmental benefits from projects under the Clean School Bus Program will occur for at least this period. Emissions reductions achieved through this program are contractually and statutorily permanent for the project life established in the grant contract and will be permanently retired. Emissions reductions from the Clean School Bus Program will not be usable in an averaging, banking, or trading program.

**General Equity Principle and Environmental Justice Principle:** The Texas Clean School Bus Program is not a banking and trading program so program disbenefits are not expected. By design, this program reduces NO<sub>x</sub> and particulate matter emissions with a concentration on cleaner diesel engines through economic incentives in the form of grants. Eligible projects include (but are not necessarily limited to) diesel oxidation catalysts, diesel particulate filters, purchase and use of emission reducing add-on equipment, the use of qualifying fuel, and other technologies that the commission finds will bring about significant emissions reductions.

**Penalty Provisions:** Upon the performing party's failure to comply with the requirements of a Clean School Bus grant, the TCEQ may, at its own discretion, require that the performing party return or repay all or a portion of the reimbursement funds.

**Procedures for Public Disclosure of Information and Provisions for Addressing Uncertainty:** Performing parties will maintain project financial information and data used in the preparation or support of any request for reimbursement (direct and indirect) and copies of any cost information or analysis submitted to the TCEQ. The TCEQ, the Texas State Auditor's Office, or any of their authorized representatives will have access to all such books, records, documents, and other evidence for the

purpose of review, inspection, audit, excerpts, transcriptions, and/or copying during normal business hours. Furthermore the performing party must agree to the disclosure of all information and reports resulting from access to records under the grant.

Additionally, property records of grant equipment will be maintained that describe the usage, ownership, and any other details as outlined in the grant contract. All data and other information developed under the grant agreement will be furnished to the TCEQ and will be public information except to the extent that it is exempted from public access by the Texas Public Information Act, Texas Government Code, Chapter 552.

Safeguards will be established to monitor program funding and emission reductions. Applicants of Clean School Bus Program funding will be required to monitor the use of grant-funded vehicles, equipment, and fuel and to report to the TCEQ for the life of each grant-funded activity. Grant recipients will be required to complete the project according to the time frames explained in the grant agreement.

Adopted revisions to the TERP program rules in Division 3 are also consistent with Federal Clean Air Act, §110(l) and are being submitted to the EPA as a SIP revision. The adopted rules will serve to make the program more accessible and more cost-effective; thereby making the program more effective overall. As the EPA notes in its comment, the TERP program is already approved under federal guidelines for economic incentive programs and the revised rules will continue to meet federal guidance.

ED generally supports the rule and comments that it is crucial to have basic rules in place for the Texas Clean School Bus Program so that the commission can proceed quickly to award grants when funding becomes available.

The commission agrees and appreciates ED's support.

ED and TCPS comment while they generally support the rules as proposed, they would like to see the rules refined to "better reflect the legislatively-stated goal of improving the 'micro-environment' in and around school buses."

The commission contends the adopted rules for the Texas Clean School Bus Program are consistent with HB 3469. The adopted rules develop the basic framework of a clean school bus program. The program will be implemented with a more comprehensive set of guidelines and requirements.

ED supports new §114.640 and §114.642. ED notes certain school districts contract out some or all of their transportation services to private companies and suggests that the commission explore ways to ensure buses operated by third parties can participate in the Texas Clean School Bus program.

The commission appreciates ED's support. HB 3469, as enacted, empowers the commission to issue grants only to school districts (including countywide school districts), charter schools, a regional planning commission (or a similar regional agency created under Texas Government Code, Chapter 391), councils of government, and private nonprofit organizations. The commission is not aware of a way to include buses owned by private companies in the Texas Clean School Bus Program, but it does welcome further ideas from stakeholders as the program is implemented.

ED and TCPS comment that proposed §114.644(b) is inconsistent with the statutory language of HB 3469 and should be removed.

The commission contends proposed §114.644(b) is consistent with language in HB 3469 which gives the commission the authority to "establish criteria for setting priorities for projects eligible to receive grants under this chapter" (Texas Health and Safety Code, §390.004(a)). Setting program priorities will allow the commission to ensure that available funds are spent as effectively as possible.

ED comments the commission should clarify what it means by "additional pollutants to be addressed" during a funding period (§114.644(c)). ED contends that such language is superfluous in light of the specific technologies enumerated in §114.644(a).

In order to spend available funds as effectively as possible, the commission wishes to have the ability to prioritize one or more pollutants over others if scientific evidence warrants such a priority.

ED comments the clean school bus program should be made as simple as possible for school districts by expressly targeting grants to a small number of already verified technologies like those in §114.644(a). It believes administrative ease will attract participation from smaller school districts.

The commission appreciates ED's suggestion.

### DIVISION 3. DIESEL EMISSIONS REDUCTION INCENTIVE PROGRAM FOR ON-ROAD AND NON-ROAD VEHICLES

#### 30 TAC §§114.620, 114.622, 114.624

#### STATUTORY AUTHORITY

The amendments and new section are adopted under Texas Water Code, §5.102, which provides the commission with the general powers to carry out its duties under the Texas Water Code; §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state; and §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments and new section are also adopted under Texas Health and Safety Code, Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and Chapter 386, which establishes the TERP. Finally, the amendments and new section are adopted as part of the implementation of House Bill 2481, 79th Legislature, 2005.

The adopted amendments and new section implement Texas Clean Air Act, §§382.002, 382.011, 382.012, 382.017, 386.051, and House Bill 2481, 79th Legislature, 2005.

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 22, 2006.

TRD-200605251

Robert Martinez  
Director, Environmental Law Division  
Texas Commission on Environmental Quality  
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Proposal publication date: April 14, 2006  
For further information, please call: (512) 239-0177



## DIVISION 4. TEXAS CLEAN SCHOOL BUS PROGRAM

### 30 TAC §§114.640, 114.642, 114.644, 114.646, 114.648

#### STATUTORY AUTHORITY

The new sections are adopted under Texas Water Code, §5.102, which provides the commission with the general powers to carry out its duties under the Texas Water Code; §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state; and §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The new sections are also adopted under Texas Health and Safety Code, Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; Chapter 386, which establishes the TERP; and Chapter 390, which establishes the Clean School Bus Program. Finally, the new sections are adopted as part of the implementation of House Bill 3469, 79th Legislature, 2005.

The new sections implement Texas Clean Air Act, §§382.002, 382.011, 382.012, 382.017, 386.051, and House Bill 3469, 79th Legislature, 2005.

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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Robert Martinez  
Director, Environmental Law Division  
Texas Commission on Environmental Quality  
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For further information, please call: (512) 239-0177



## CHAPTER 116. CONTROL OF AIR POLLUTION BY PERMITS FOR NEW CONSTRUCTION OR MODIFICATION

### SUBCHAPTER F. STANDARD PERMITS

#### 30 TAC §116.603

The Texas Commission on Environmental Quality (agency or commission) adopts an amendment to §116.603 *without changes* to the proposed text as published in the May 12, 2006, issue of the *Texas Register* (31 TexReg 3839), and will not be republished.

The amended section will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

The commission is adopting a revision to §116.603, Public Participation in Issuance of Standard Permits, that will require newspaper notice of proposed standard permits with statewide applicability in Austin, Dallas, Houston, and any other regional newspapers designated by the executive director on a case-by-case basis. Also, the executive director will use press releases and appropriate electronic means to inform state and local officials. Electronic means include, but are not limited to, the use of e-mail addresses, Web sites, or electronic bulletin boards and publications. This change will increase notification with state and local officials and provide an opportunity for more statewide newspaper coverage through commission press releases.

Texas Health and Safety Code, §382.05195(b), requires the commission to publish notice of a standard permit in one or more statewide or regional newspapers designated by rule that will, in the commission's judgement, provide reasonable notice throughout the state. The regulation in §116.603 required publication in 11 newspapers. Six standard permits have been issued under the requirements of §116.603 and over 80% of the comments originated from the Austin, Dallas, and Houston areas. The amendment will also save up to \$4,500 per standard permit notice at a time that an increase in the number of new standard permits may be expected. Publishing notice in Austin, Dallas, Houston, and any other regional newspapers designated by the executive director on a case-by-case basis, along with the required *Texas Register* publication and posting on the agency Web site will provide reasonable notice of proposed standard permits and will give the commission discretion to target the specific areas affected.

The amendment makes the standard permit public notice more consistent with the agency's existing non-individual permit requirements. This includes the Water Quality General Permits, which require publication in at least one newspaper of statewide or regional circulation. Also, air standard permit amendments and revocations, permits by rule, and Title V general operating permits with statewide applicability are required to be published in newspapers in Austin, Dallas, and Houston.

#### SECTION DISCUSSION

The commission adopts an amendment to §116.603(a). The amendment requires newspaper notice of proposed standard permits with statewide applicability in Austin, Dallas, Houston, and any other regional newspapers designated by the executive director on a case-by-case basis. This allows the commission to focus its efforts in areas most affected by standard permits. The commission will continue to post each draft standard permit on its Web site and conduct stakeholder meetings, as appropriate. The executive director will issue a press release and will publish notice in the *Texas Register*. The executive director may also use appropriate electronic means to notify selected state and local officials in the affected area. The rule no longer requires newspaper notice for each standard permit proposal in Amarillo,



Corpus Christi, El Paso, the Lower Rio Grande Valley, Lubbock, the Permian Basin, San Antonio, or Tyler.

#### FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this rule is not subject to §2001.0025 because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" means 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, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent is not to protect the environment. This rulemaking changes notice requirements and does not affect any environmental standards.

The amendment to §116.603(a) modifies the existing rule in accordance with Texas Health and Safety Code, §382.05195(b), which requires the commission to publish notice of a proposed standard permit in the *Texas Register* and in one or more statewide or regional newspapers by rule that will provide reasonable notice throughout the state. This amendment provides for a more efficient public notice of proposed standard permits. The rule 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.

In addition, a regulatory impact analysis is not required because the rule does not meet any of the four applicability criteria for requiring a regulatory analysis of a "major environmental rule" as defined in the Texas Government Code. Texas Government Code, §2001.0225 applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) 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 and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not exceed a standard set by federal law, and the requirements are consistent with applicable federal standards. In addition, this rule does not exceed an express requirement of state law and is not adopted solely under the general powers of the agency, but is specifically authorized by the provisions cited in the STATUTORY AUTHORITY section of this preamble. Finally, this rulemaking does not exceed a requirement of a delegation agreement or contract to implement a state and federal program.

#### TAKINGS IMPACT ASSESSMENT

The commission evaluated this rulemaking action and performed an analysis of whether the adopted rules are subject to Texas Government Code, Chapter 2007. The primary purpose of the rulemaking is to amend §116.603(a) in accordance with Texas Health and Safety Code, §382.05195(b), which requires the commission to publish notice of a proposed standard permit in the *Texas Register* and in one or more statewide or regional newspapers designated by rule that will provide reasonable notice throughout the state. This amendment does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence

of the governmental action. Therefore, promulgation and enforcement of this adopted rule is neither a statutory nor a constitutional taking because it does not affect private real property. Therefore, this rulemaking does not constitute a taking under Texas Government Code, Chapter 2007.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). No new sources of air contaminants will be authorized and the adopted revisions will maintain the same level of emissions control as the existing rules. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations, to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking action complies with 40 Code of Federal Regulations Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

#### EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

The adopted revisions will not affect sites subject to the Federal Operating Permits Program.

#### PUBLIC COMMENT

A public hearing on this proposal was held on June 12, 2006, and the public comment period closed on June 14, 2006. No comments were received at the public hearing. The commission received written comments on the rule proposal from the Houston Regional Group of the Sierra Club, Lone Star Chapter (Sierra Club) and the EPA, Region 6.

#### RESPONSE TO COMMENTS

The Sierra Club did not support removing the requirement to publish public notices in the largest general circulation newspapers in Amarillo, Corpus Christi, El Paso, the Lower Rio Grande Valley, Lubbock, the Permian Basin, San Antonio, and Tyler. The Sierra Club commented that this would provide less opportunity for the public to become aware of and participate in decisions concerning rulemaking for standard permits.

The commission makes no changes in response to this comment because it determined that the use of press releases to newspapers will provide an opportunity for a wider distribution of information, resulting in more awareness of the public. More newspapers will have an opportunity to publish information regarding new standard permit requirements. Newspapers reflect

local community interests and would be able to provide information about local activities requiring these types of standard permit requirements.

The Sierra Club does support notification of state and local officials electronically and the use of press releases to widen distribution of the notice of rulemaking for standard permits.

The commission appreciates their support.

The EPA believes the revisions to §116.603 will continue to ensure an adequate opportunity for the public to comment on proposed standard permits. The EPA recommends that the TCEQ review all prior comments concerning proposed standard permits originating from areas other than Austin, Dallas, and Houston. They suggest the commission report the number of significant comments from these areas.

The commission determined that it is not appropriate to evaluate the significance of each comment because that exercise would be subjective. When evaluating and responding to comments from the public, the commission addresses each comment as being significant and important. This rule may result in more public participation and the use of press releases to newspapers will provide an opportunity for a wider distribution of information, resulting in more awareness of the public. More newspapers will have an opportunity to publish information regarding new standard permit requirements.

The EPA recommends that the TCEQ develop criteria that it will use to determine when to publish notice in other newspapers beside Austin, Dallas, and Houston.

The commission agrees with the EPA that criteria may need to be developed for guidance when determining the need to publish notice in other newspapers. The executive director will establish the criteria as internal guidance and not in the rule. There should be ample flexibility and discretion for making the decision to publish in other newspapers. The commission also wants to ensure that the criteria would not prohibit wider publication of notice.

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; §5.103, concerning Rules, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and §5.105, concerning General Policy, which authorizes the commission, by rule, to establish and approve all general policy of the commission. The amendment is also adopted under Texas Health and Safety Code (THSC), Texas Clean Air Act (TCAA), §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and §382.05195, which authorizes the commission to issue a standard permit.

The adopted amendment implements TWC, §§5.102, 5.103, and 5.105; and THSC, §§382.017, 382.011, 382.012, and 382.05195.

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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Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-6087

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## CHAPTER 321. CONTROL OF CERTAIN ACTIVITIES BY RULE

### SUBCHAPTER B. CONCENTRATED ANIMAL FEEDING OPERATIONS

#### 30 TAC §321.33

The Texas Commission on Environmental Quality (TCEQ or commission) adopts an amendment to §321.33 *with changes* to the proposed text as published in the May 19, 2006, issue of the *Texas Register* (31 TexReg 4166).

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

This rulemaking implements Senate Bill (SB) 1707, 79th Legislature, 2005, which changed the permitting requirements under Texas Water Code (TWC), Chapter 26 for certain concentrated animal feeding operations (CAFOs) located in the protection zone of a sole-source surface drinking water supply. Prior to SB 1707, any CAFO where any part of the production area of the CAFO was located or proposed to be located within the protection zone of a sole-source surface drinking water supply was required to obtain an individual permit. SB 1707 revised TWC, §26.0286 by removing the requirement to obtain an individual permit for poultry CAFOs that do not use a liquid waste handling system (dry litter poultry) located in the protection zone of a sole-source surface drinking water supply. This allows these facilities the ability to apply for coverage under a general permit.

Additionally, this rulemaking would modify the permitting requirements for dry litter poultry CAFOs to modify the duty to apply for permit coverage by stating that they do not have a duty to apply for permit coverage for a potential to discharge. The Second Circuit Court of Appeals in *Waterkeeper Alliance, Inc. v. EPA*, 399 F.3d 486 (2nd Cir. 2005), vacated and remanded portions of the federal CAFO rules to the United States Environmental Protection Agency (EPA). EPA has issued proposed rules to address the *Waterkeeper* decision in the National Pollutant Discharge Elimination System (NPDES) rules. In light of this, TCEQ is modifying the permitting requirements for dry litter poultry operations.

#### SECTION DISCUSSION

Section 321.33, Applicability and Required Authorizations, modifies subsection (a) to state that this subsection is applicable except as provided in subsection (f). The following sentence was added to subsection (b)(3): "This paragraph does not apply to a poultry operation that does not use a liquid waste handling system, which is commonly referred to as a dry litter poultry operation." The adopted change to subsection (d) adds the following sentence: "This subsection does not apply to dry litter poultry

operations." The adopted change to subsection (f) is modified to now read "Dry litter poultry operations. Dry litter poultry CAFOs do not have a duty to apply for permit coverage for a potential discharge of manure or litter into or adjacent to water in the state. A dry litter poultry CAFO shall only be required to obtain authorization by an individual water quality permit or a CAFO general permit in accordance with subsection (a), (b), or (c) of this section if it proposes to discharge or the executive director determines that a permit is necessary due to an unauthorized discharge; the operation's failure to comply with, or timely obtain, a certified water quality management plan approved by the Texas State Soil and Water Conservation Board; or other pertinent factors." The adopted change to subsection (f) also adds the following sentence: "A dry litter poultry CAFO is authorized to be constructed and operated if the operation has a certified water quality management plan approved by the Texas State Soil and Water Conservation Board or is otherwise in compliance with the plan implementation schedule set forth in the notes following the codified sections of TWC, §26.302." This change clarifies that dry litter poultry CAFOs can be constructed and operated as long as the facility has a water quality management plan or is in compliance with the schedule as set forth in the TWC.

#### FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirement of Texas Government Code, §2001.0225, and made a determination that the rulemaking is not subject to §2001.0225. The adopted rulemaking does not meet the definition of a "major environmental rule" as defined in §2001.0225, and the rulemaking is not subject to the regulatory analysis provisions of §2001.0225(b) because it does not meet any of the four applicability requirements listed in §2001.0225(a). Section 2001.0225(a) applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) 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 and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

"Major environmental rule" means 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 because the change incorporates new state requirements. The rulemaking does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or adopt a rule solely under the general powers of the agency. The commission invited public comment on the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis.

#### TAKINGS IMPACT ASSESSMENT

The commission performed an assessment of the rulemaking in accordance with Texas Government Code, §2007.043. The rulemaking implements SB 1707 and allows dry litter poultry facilities

located in the protection zone of a sole-source surface drinking water supply the ability to obtain coverage under either an individual or general permit. Additionally, the rulemaking modifies the duty to apply for dry litter poultry operations. The rule substantially advances these stated purposes. The commission's assessment indicates that Texas Government Code, Chapter 2007 applies to the implementation of SB 1707 and the addition of the permitting deadline because this rulemaking is a governmental action that results in the adoption of a rule or regulatory requirement. However, this governmental action does not result in a burden on private real property. This rulemaking allows certain dry litter poultry facilities to obtain coverage under either an individual or general permit. Also, this rulemaking would change the dates when all dry litter poultry CAFOs are required to obtain authorization. Therefore, the adoption of this change does not result in a constitutional or statutory taking of private real property and no real property interests are burdened or impacted by this rulemaking.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found that it is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.*, and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rule in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22, and found the adopted rulemaking is consistent with the applicable CMP goals and policies.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the amendments are consistent with CMP goals and policies because the rulemaking is an administrative rule that changes the authorization type available to dry litter poultry CAFOs located in the protection zone of a sole-source surface drinking water supply; makes permitting requirements consistent for all dry litter poultry CAFOs; will not have a direct or significant adverse effect on any coastal natural resource areas; will not have a substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the amendment will not violate (exceed) any standards identified in the applicable CMP goals and policies.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received on the CMP.

#### PUBLIC COMMENT

A public hearing for this rulemaking was held in Austin on June 13, 2006. The public comment period for this rulemaking closed at 5:00 p.m. on June 19, 2006. Comments were received from the Texas Poultry Federation represented by Jackson Walker L.L.P. (TPF).

#### RESPONSE TO COMMENTS

##### Comment

TPF commented that it supports the rule proposal to implement the requirements of SB 1707, so as to exclude dry litter poultry operations located within the protection zone of a sole-source surface drinking water supply from the requirement to obtain individual water quality permits and it supports the rule that ex-

tends the deadline for all dry litter poultry CAFOs to apply for authorization under a general permit or individual permit.

#### Response

The commission acknowledges TPF's support for the rule changes.

#### Comment

TPF suggested that §321.33(a) be modified to include the phrase "except as provided in subsection (f) of this section," to remove any ambiguity that subsection (f) provides the necessary authorization for dry litter poultry CAFOs to be constructed and operated. It stated that without this clarification, subsection (a) could be read to require all such CAFOs to obtain authorization under a general permit or individual permit, rather than the permit by rule contained in this rule.

#### Response

The commission agrees with this comment and has amended §321.33(a) to reflect this change.

#### Comment

TPF commented that the wording in §321.33(f) inadvertently omits from authorization those dry litter poultry operations that do not yet have a Texas State Soil and Water Conservation Board (TSSWCB) water quality management plan but that are in compliance with the schedule to obtain a plan as provided in SB 1339, 77th Legislature, Regular Session, 2001. It suggested adding language to the end of §321.33 to include "or is otherwise in compliance with the plan implementation schedule set forth in Senate Bill 1339 (77th Legislature, Regular Session)."

#### Response

The commission agrees that the purpose was not to exclude those operations that are not required to have a water quality management plan under the implementation schedule in the notes following the codified sections of TWC, §26.503 as required by SB 1339 from the extension deadline. The commission revised §321.33(f) to reflect this change.

#### Comment

TPF commented that while it supports the deadline extension, it urges the commission to go further. TPF stated that the Second Circuit Court of Appeals in the *Waterkeeper Alliance, et al. v. EPA*, 399 F.3d 486, 534 (2nd Cir. 2005) eliminated the portion of the federal CAFO rule that was the basis to regulate dry litter poultry. It stated the Second Circuit clearly vacated those provisions and that the Second Circuit decision is final and that portion of the federal rule that Texas relied upon to regulate dry litter poultry operations is no longer the law. Based on the action of the Second Circuit, the commission should eliminate the requirement for dry litter poultry operations to obtain a permit and amend the rule language to reflect that change. It further commented that new and existing operations in the state have, or will soon have, water quality management plans developed by the TSSWCB and to require them to comply with the CAFO rules is inefficient and unnecessary. TPF urges the commission to adopt a rule that makes clear that dry litter poultry operations do not have a duty to apply for CAFO permit coverage. It stated that a duty to apply exceeds federal requirements and puts Texas at a competitive disadvantage when seeking new poultry investments.

#### Response

In light of the Second Circuit decision, EPA's proposed rulemaking, and in response to TPF's comment, the commission has modified §321.33(a), (d), and (f) to address the duty to apply for dry litter poultry operations. Dry litter poultry operations do not have the duty to apply unless they propose to discharge or the executive director determines that a permit is necessary based on an unauthorized discharge, the operation's failure to comply with or obtain a certified water quality management plan, or other pertinent factors.

#### STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to the conservation of natural resources and protection of the environment; TWC, §5.103 and §5.105, which establish the commission's general authority to adopt rules; TWC, §26.027, regarding TCEQ's authority to issue permits for the discharge of waste into or adjacent to water in the state; and TWC, §26.121, which provides that no person may discharge sewage, municipal waste, recreational waste, agricultural waste, industrial waste, or other waste into or adjacent to any water in the state except as authorized by the commission.

This amendment is also adopted under TWC, §26.011, regarding the commission's authority over water quality in the state; and TWC, §26.0286, which requires the commission to process an application for authorization to construct or operate a CAFO, except dry litter poultry CAFOs, located in the protection zone of a sole-source surface drinking water supply as an application for an individual permit. Finally, this amendment is also adopted under Texas Government Code, §2001.006, which provides state agencies the authority to adopt rules or take other administrative action that the agency deems necessary to implement legislation.

The adopted amendment implements SB 1707, 79th Legislature, 2005, which changed the permitting requirements under TWC, §26.0286, for dry litter poultry CAFOs located in the protection zone of a sole-source surface drinking water supply.

#### §321.33. *Applicability and Required Authorizations.*

(a) Permit required. All concentrated animal feeding operations (CAFOs) are point sources that require owners and operators to seek and obtain authorization under a water quality general permit or individual permit, except as provided in subsection (f) of this section. CAFO owners and operators have a duty to seek coverage as described in this section.

(b) Individual permit required. A discharge from the following CAFOs may be authorized only under an individual water quality permit in accordance with §321.34 of this title (relating to Permit Applications). Except as provided by subsections (e) and (f) of this section, any operator who is required to obtain an individual water quality permit under this subsection may not commence physical construction and/or operation of any new control facilities until an individual water quality permit is issued for that CAFO, or unless otherwise authorized by the commission in accordance with Texas Water Code (TWC), §26.027(c).

(1) Any CAFO located within one mile of coastal natural resource areas as defined by Texas Natural Resources Code, §33.203, unless the CAFO was authorized by the commission prior to January 10, 1997.

(2) Any dairy CAFO located in a major sole-source impairment zone.

(3) Any CAFO where, on the date the executive director determines that the application is administratively complete, any part of the production area of the CAFO is located or proposed to be located within the protection zone of a sole-source surface drinking water supply, in accordance with TWC, §26.0286. This paragraph does not apply to a poultry operation that does not use a liquid waste handling system, which is commonly referred to as a dry litter poultry operation.

(4) Any CAFO where any part of the production area or land management units is located in a watershed of a segment listed on the current United States Environmental Protection Agency-approved 303(d) list of impaired water bodies, as required by 33 United States Code (USC), §1313(d), and where a total maximum daily load implementation plan has been adopted by the commission that established additional water quality protection measures for CAFOs that are not required by the CAFO general permit.

(5) Any animal feeding operation (AFO) that the executive director designates and requires to be authorized by an individual water quality permit to achieve the policies and purposes enumerated in TWC, §5.120 and §26.003; Texas Health and Safety Code, Chapters 341, 361, or 382; or §321.31 of this title (relating to Manure, Litter, and Wastewater Discharge and Air Emission Limitations). Cases for which the executive director may require an AFO to obtain an individual water quality permit include, but are not limited to, the following:

(A) the operation is located near surface or groundwater resources;

(B) compliance with standards in addition to those listed in this subchapter is necessary in order to protect water in the state from pollution;

(C) the operation is not or has not been in substantial compliance with the standards of this subchapter;

(D) the operation is under a formal commission enforcement order or has been referred to the commission for enforcement action by the Texas State Soil and Water Conservation Board;

(E) the operation does not qualify for a CAFO general permit under §205.4 of this title (relating to Authorizations and Notices of Intent);

(F) the production area or land management unit of any new CAFO is located in a watershed of a segment listed on the current 303(d) list of impaired water bodies for bacteria, nutrients, and/or pathogens as required by 33 USC, §1313(d); or

(G) the executive director determines that an individual water quality permit is appropriate considering other pertinent factors.

(c) Individual permit or general permit required. A discharge from any other CAFO shall be authorized either by an individual water quality permit or an applicable CAFO general permit. Except as provided by either subsection (e) or (f) of this section, any operator required to obtain an individual water quality permit or authorization under a CAFO general permit according to this subsection may not begin physical construction or operation of any new control facility until the CAFO operator receives an individual water quality permit or authorization under a CAFO general permit, unless otherwise authorized by the commission under TWC, §26.027(c).

(d) New or expanding AFO. After the effective date of this subchapter, no person may commence construction or operation of a new CAFO or alter any existing AFO such that it becomes defined as a CAFO without prior authorization through an individual water quality permit or a CAFO general permit, unless otherwise authorized by the commission under TWC, §26.027(c). This subsection does not apply to dry litter poultry operations specified in subsection (f) of this section.

(e) Newly defined CAFO. An AFO that becomes classified as a CAFO after the effective date of this subchapter may not begin physical construction or operation of any new control facility until the CAFO operator receives authorization through an individual water quality permit or a CAFO general permit, unless otherwise authorized by the commission under TWC, §26.027(c).

(f) Dry litter poultry operations. Dry litter poultry CAFOs do not have a duty to apply for permit coverage for a potential to discharge manure or litter into or adjacent to water in the state. A dry litter poultry CAFO shall only be required to obtain authorization by an individual water quality permit or a CAFO general permit in accordance with subsection (a), (b), or (c) of this section if it proposes to discharge or the executive director determines that a permit is necessary due to an unauthorized discharge; the operation's failure to comply with, or timely obtain, a certified water quality management plan approved by the Texas State Soil and Water Conservation Board; or other pertinent factors. Any dry litter poultry CAFO is authorized to be constructed and operated if the operation has a certified water quality management plan approved by the Texas State Soil and Water Conservation Board or is otherwise in compliance with the plan implementation schedule set forth in the notes following codified TWC, §26.302.

(g) Facilities operating under an existing authorization. A CAFO currently authorized by registration must apply for an individual water quality permit before July 27, 2004 in order to continue to operate. An application for renewal of a registration will be considered an application for an individual permit, so long as the application fee for an individual permit is paid. If such an application is timely filed, operation of the CAFO under the terms and conditions of the existing permit by rule will continue to be authorized, and authorization under the existing permit by rule does not expire, until final commission action on the permit application or until the CAFO qualifies for coverage under a general permit.

(h) Expansion or modification requirements. A CAFO operator authorized under an individual water quality permit shall comply with §305.62 of this title (relating to Amendment). Before the permittee begins physical construction or operation of any new control facility, the operator must obtain commission authorization. Changes for which a permit amendment is required include, but are not limited to:

(1) increasing the maximum number of animals authorized for confinement;

(2) increasing the wastewater storage volume; and

(3) adding land management units.

(i) AFOs that are not defined or designated as CAFOs. Discharges of manure, litter, or wastewater from an AFO that is not a CAFO as defined in this subchapter are authorized under this subchapter. Requirements applicable to these AFOs are described in §321.47 of this title (relating to Requirements for Animal Feeding Operations (AFOs) Not Defined or Designated As Concentrated Animal Feeding Operations (CAFOs)).

(j) Runoff from a land management unit.

(1) The runoff of manure, litter, or wastewater to water in the state from a CAFO as the result of the proper land application of that manure, litter, or wastewater to land management units under the operator's control is subject to the requirements of this subchapter in accordance with paragraph (2) of this subsection.

(2) Where manure, litter, or wastewater is applied in accordance with a site-specific nutrient management plan that complies with §321.36(d) of this title (relating to Texas Pollutant Discharge Elimination System General Requirements for Concentrated Animal Feed-

ing Operations (CAFOs)) or when the land application conforms to §321.40 of this title (relating to Concentrated Animal Feeding Operation (CAFO) Land Application Requirements), precipitation-related runoff from land management units under the control of a CAFO operator is authorized as:

(A) a pollutant discharge if the source is land associated with a CAFO in a major sole-source impairment zone; or

(B) an agricultural storm water discharge for all other sources.

(k) Edwards Aquifer. New CAFOs are prohibited on the Edwards Aquifer recharge zone.

(l) Permit term. Individual and general permits issued under this subchapter shall be effective for a term not to exceed five years from the date the permit is issued. Any previously issued individual water quality permit or authorization by rule that did not include an expiration date shall expire 180 days after the effective date of this subchapter. The permittee shall comply with the requirements of subsection (g) of this section.

(m) Dual authorization. No person may concurrently hold both an individual water quality permit and authorization under a CAFO general permit for the same CAFO.

(n) Additional requirements. Authorization under this subchapter, a general permit, or an individual permit does not release the operator from any responsibilities or requirements under other federal, state, or local statutes or regulations.

(o) State-only authorizations. Any AFO that is a state-only CAFO, as defined by §321.32(13)(D) of this title (relating to Definitions) shall be authorized in accordance with subsection (a) or (b) of this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 22, 2006.

TRD-200605255

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Effective date: October 12, 2006

Proposal publication date: May 19, 2006

For further information, please call: (512) 239-5017

## TITLE 34. PUBLIC FINANCE

### PART 5. TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM

#### CHAPTER 103. CALCULATIONS OR TYPES OF BENEFITS

##### 34 TAC §103.4

The Texas County and District Retirement System adopts new §103.4, concerning the manner for calculating the amount of a member's prior service and the average prior service compensation for use in the determination of the member's maximum

and allocated prior service credit. The new rule is adopted without changes to the proposed text as published in the August 4, 2006, issue of the *Texas Register* (31 TexReg 6184).

Under the new rule, instead of using the actual compensation paid to the member during each month of service during the 36 months preceding the subdivision participation date, a subdivision may use an average of the compensation reported to the Texas Workforce Commission for each full calendar quarter of the member's employment during the 36-month period.

The new rule provides a reasonable alternative method for computing average prior service compensation which permits the subdivision to use existing data from employment reports filed with the Texas Workforce Commission in lieu of reconstructing information in a form that may require manipulation of data from information that may not be readily retrievable by the subdivision from its original payroll records. The alternate calculation method will not disadvantage the members.

No comments were received regarding adoption of this new rule.

The new rule is adopted under the Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for efficient administration of the system.

The Government Code, §843.104 and §843.201 are affected by this new rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 22, 2006.

TRD-200605260

Tom Harrison

Deputy Director and General Counsel

Texas County and District Retirement System

Effective date: October 12, 2006

Proposal publication date: August 4, 2006

For further information, please call: (512) 637-3230

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 7. TEXAS COUNCIL ON PURCHASING FROM PEOPLE WITH DISABILITIES

#### CHAPTER 189. PURCHASES OF PRODUCTS AND SERVICES FROM PEOPLE WITH DISABILITIES

##### 40 TAC §189.6

The Texas Council on Purchasing from People with Disabilities (Council) adopts amendments to 40 TAC §189.6, relating to certification and re-certification of community rehabilitation programs (CRPs). The amendments are adopted without changes to the text as published in the July 14, 2006 issue of the *Texas Register* (31 TexReg 5581).

The amendments clarify the statutory requirements and the Council's requirements related to eligibility to participate as a CRP in the State Use Program and applications for CRP certification and recertification. The amendments accomplish the following: (1) permit the Council to delegate, to a central nonprofit agency, administrative duties related to the certification and recertification process while retaining sole authority to vote on CRP applications or to take action regarding a CRP's continued participation in the State Use Program; (2) explain in more detail required CRP recordkeeping; (3) clarify the approval process of applications for CRP certification and recertification and preserves the right to protest a recommendation of non-approval by the Council's Certification Subcommittee; (4) delineate required CRP reporting to a central nonprofit agency and to the Council; (5) discuss the Council's right to review a CRP's performance and compliance with the laws governing the State Use Program and the Council's right to suspend or revoke a CRP's certification; and (6) emphasize existing standards of conduct for CRPs during the application process and while certified to participate in the State Use Program.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the authority of Texas Human Resources Code, §122.003(j) and §122.013(c)(2), which

require the Council to adopt rules to establish a process for the certification of CRPs.

The statutory provisions affected by the adopted rule are those set forth in Chapter 122 of the Texas Human Resources Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 22, 2006.

TRD-200605282

Ingrid K. Hansen

General Counsel

Texas Council on Purchasing from People with Disabilities

Effective date: October 12, 2006

Proposal publication date: July 14, 2006

For further information, please call: (512) 463-3562



# 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

Texas Appraiser Licensing and Certification Board

### Title 22, Part 8

TRD-200605292

Filed: September 25, 2006



## Proposed Rule Reviews

Texas Appraiser Licensing and Certification Board

### Title 22, Part 8

The Texas Appraiser Licensing and Certification Board (TALCB) proposes to review Chapter 153, Rules Relating to Provisions of the Texas Appraiser Licensing and Certification Board, in accordance with the Texas Government Code, §2001.039.

Review of the rules under this chapter will determine whether the reasons for adoption of the rules continues to exist. During the review process, TALCB may also determine that a specific rule may need to be amended to further refine TALCB's legal and policy considerations, whether the rules reflect current TALCB procedures, that no changes to a rule as currently in effect are necessary, or that a rule is no longer valid or applicable. Rules will also be combined or reduced for simplification and clarity when feasible. Readopted rules will be noted in the *Texas Register's* "Rules Review" section without publication of the text. Any proposed amendments or repeal of a rule or chapter as a result of the review will be published in the "Proposed Rules" section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal.

The Texas Appraiser Licensing and Certification Board invites comments during the review process for 30 days following the publication of this notice in the *Texas Register*. Any questions or comments pertaining to this notice of intention to review should be directed to Wayne Thorburn, Commissioner, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 within 30 days of publication.

TRD-200605293

Wayne Thorburn

Commissioner

Texas Appraiser Licensing and Certification Board

Filed: September 25, 2006



Texas Water Development Board

## Title 31, Part 10

Chapter 360. Designation of River and Coastal Basins.

The Texas Water Development Board (Board) files this notice of intent to review 31 Texas Administrative Code (TAC), Part 10, Chapter 360, Designation of River and Coastal Basins, in accordance with the Texas Government Code, §2001.039. The Board finds that the reason for adopting the chapter continues to exist.

As required by §2001.039 of the Texas Government Code, the Board will accept comments and make a final assessment regarding whether the reason for adopting the rules in 31 TAC Chapter 360 continues to exist. The comment period will last 30 days beginning with the publication of this notice of intention to review.

Comments or questions regarding this rule review may be submitted to Robert Flores, Attorney, Office of the General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by e-mail to [robert.flores@twdb.state.tx.us](mailto:robert.flores@twdb.state.tx.us) or by fax at (512) 463-5580.

TRD-200605236

Wendall Corrigan Braniff

General Counsel

Texas Water Development Board

Filed: September 20, 2006



Chapter 365. Investment Rules.

The Texas Water Development Board (Board) files this notice of intention to review 31 Texas Administrative Code (TAC), Part 10, Chapter 365, Investment Rules, in accordance with Texas Government Code §2001.039. Concurrently with this proposed rule review, the Board proposes amendments to §365.13(a) and (b) concerning Authorized and Suitable Investments.

As required by §2001.039 of the Texas Government Code, the Board will accept comments and make a final assessment regarding whether the reason for adopting each of the rules in 31 TAC Chapter 365 continues to exist. The comment period will last 30 days beginning with the publication of this notice of intent to review.

Comments or questions regarding this rule review may be submitted to Jim Bateman, Attorney, Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by e-mail to [jim.bateman@twdb.state.tx.us](mailto:jim.bateman@twdb.state.tx.us) or by fax at (512) 463-5580.

TRD-200605238



Wendall Corrigan Braniff  
General Counsel  
Texas Water Development Board  
Filed: September 20, 2006

◆ ◆ ◆  
**Adopted Rule Review**

Texas Department of Agriculture

**Title 4, Part 1**

The Texas Department of Agriculture (the department) and the Texas Agricultural Finance Authority adopt without changes the rule review of Title 4, Texas Administrative Code, Part 1, Chapter 25, concerning the Rural Development Finance Program and Chapter 27, concerning the Preferred Lender Program. The proposed notice of intent to review was published in the August 18, 2006, issue of the *Texas Register* (31 TexReg 6519). No comments were received on the proposal.

Section 2001.039 of the Texas Government Code requires state agencies to review each of their rules 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.

The assessment of Title 4, Part 1, Chapters 25 and 27 by the department and the Authority at this time indicates that the reason for readopting without changes all sections in Chapters 25 and 27 continues to exist.

TRD-200605243

Dolores Alvarado Hibbs  
Deputy General Counsel  
Texas Department of Agriculture  
Filed: September 21, 2006

# TABLES & GRAPHICS

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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.

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**REPORT OF EXPENDITURES OF PERSONS PROVIDING SERVICES TO THE  
STATE BOARD OF EDUCATION RELATING TO THE MANAGEMENT AND  
INVESTMENT OF THE PERMANENT SCHOOL FUND**

**January 1, \_\_\_\_\_ through December 31, \_\_\_\_\_**

Individual making report \_\_\_\_\_

**Signature** \_\_\_\_\_

Employer \_\_\_\_\_

Position \_\_\_\_\_

Services Rendered to SBOE \_\_\_\_\_

**Expenditure(s) over \$50 occurred (Yes or No)?** \_\_\_\_\_ (If yes, complete transaction details below.)

**Transaction 1.**

DATE \_\_\_\_\_

AMOUNT, if greater than \$50.00 \_\_\_\_\_

NAME OF PERSON(S) (SBOE MEMBER, COMMISSIONER, EMPLOYEE)

\_\_\_\_\_

DETAILED DESCRIPTION OF EXPENDITURE \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Transaction 2.**

DATE \_\_\_\_\_

AMOUNT, if greater than \$50.00 \_\_\_\_\_

NAME OF PERSON(S) (SBOE MEMBER, COMMISSIONER, EMPLOYEE)

\_\_\_\_\_

DETAILED DESCRIPTION OF EXPENDITURE \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Transaction 3.**

DATE \_\_\_\_\_

AMOUNT, if greater than \$50.00 \_\_\_\_\_

NAME OF PERSON(S) (SBOE MEMBER, COMMISSIONER, EMPLOYEE)

\_\_\_\_\_

DETAILED DESCRIPTION OF EXPENDITURE \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Job Corps Diploma Program Accountability Procedures Manual  
September 2006**

## **Background**

In 2005, the 79<sup>th</sup> Legislature enacted statute that allows Job Corps to establish a diploma program to offer a secondary school curriculum, a diploma program, and a General Educational Development (GED) program. The requirements of the Job Corps diploma program are found under Chapter 18 of the Texas Education Code (TEC). Under Chapter 18 of the TEC, the Texas Education Agency (TEA) is required to implement appropriate accountability procedures consistent with Chapter 39 of the TEC, to be used in assigning an annual performance rating to Job Corps diploma programs that are consistent with the ratings assigned to school districts.

The goals of a Job Corps diploma program are to:

1. serve at-risk students who have not been successful in a traditional school setting;
2. increase student success rates in obtaining and maintaining employment; and
3. decrease future societal costs by offering a diploma program to students who would benefit from Job Corps academic and vocational programs.

## **Job Corps Diploma Program Student Eligibility Criteria**

1. Any person enrolled in the Job Corps Training Program and who does not have a diploma is eligible to enroll in the Job Corps diploma program. Any person enrolled in the diploma program is eligible for programs or services under Chapter 18 of the TEC.
2. A person's eligibility for programs and services under Chapter 18 of the TEC does not exclude the person from being eligible for an education program or service under any other chapter of the TEC.

## **Requirements of a Job Corps Diploma Program**

The diploma program shall:

1. provide a course of instruction that includes the required curriculum under Subchapter A, Chapter 28, of the TEC;
2. require that students enrolled in the diploma program satisfy the requirements of Section 39.025 of the TEC before receiving a diploma; and
3. comply with requirements established in rule to determine compliance with Chapter 18 of the TEC, as determined by the commissioner of education.

## **Student Records**

The Job Corps diploma program must ensure that education records include information used to document the data it submits to TEA, including leaver, dropout, and completion data, that are used in the diploma program accountability procedures and reports. The education records of the diploma program must be made available to the TEA in the conduct of authorized monitoring, investigation, or audit activities.

## **Purpose of Job Corps Diploma Accountability Procedures**

The purpose of the Job Corps accountability procedures is to ensure the implementation of accountability procedures consistent with Chapter 39 of the TEC, where appropriate, to assign an annual performance rating to Job Corps diploma programs that are consistent with the ratings assigned to school districts under Section 39.072 of the TEC.

In addition to other factors determined by the commissioner of education under Section 39.051 of the TEC, the diploma program accountability procedures consider:

1. student performance on the subject matters assessed by the secondary exit-level assessment instruments, the Texas Assessment of Knowledge and Skills (TAKS) required by Section 39.023(c) of the TEC;
2. dropout rate aggregated for the grade levels served by the diploma program; and
3. completion rate (students who leave the diploma program and receive GED certificates are not counted as completers in the Job Corps diploma program completion rate).

### **Description of the Job Corps Diploma Program**

The state's accountability system is required to rate all districts and campuses serving students in Grades 1-12. Where appropriate, the accountability procedures for the Job Corps diploma programs are consistent with the state's accountability system. However, the accountability procedures for the Job Corps diploma programs necessitate separate accountability procedures that meet the characteristics of the students served in the diploma program and to appropriately evaluate the performance of the diploma program.

The diploma program is designed to expedite the progress of enrolled students toward performing at grade level and completing credits and passing the assessments necessary to attain a diploma. The diploma program accomplishes this goal by providing a variety of instructional services, including accelerated instruction, to meet the needs of students.

#### Job Corps Diploma Program School Year

The Job Corps diploma program operates on a year round school calendar: **September 1 - August 31**.

An eligible student may enroll and withdraw at any time during the diploma program school year.

#### Job Corps Diploma Program Grade and Age Levels Served

The Job Corps diploma program serves Grades 9-12. Students who are eligible to enroll in the Job Corps training program are also eligible to enroll in the Job Corps diploma program. The eligibility age of enrollment in the Job Corps training program is age 16 through 24.

### **Job Corps Diploma Program Accountability Requirements**

1. The diploma program shall comply with applicable state and federal laws and regulations, including Section 504 of Rehabilitative Act of 1973 (§504) and the Individuals with Disabilities Education Act (IDEA).
2. The diploma program must have appropriately certified instructional staff for each subject matter taught in the diploma program.
3. The diploma program must demonstrate required improvement when accountability standards are not met.

### **Evaluation of Job Corps Diploma Programs**

The Job Corps diploma program accountability procedures are used to rate performance of the diploma program. Ratings are based on aggregate performance of the diploma program. Performance results of all students in the diploma program are included in the diploma program's annual performance rating and used in determining the diploma program's rating. Diploma programs receiving ratings under these accountability procedures are evaluated on the following indicators:

1. performance on the exit-level TAKS only
2. diploma program completion rate (Grades 9-12)
3. diploma program dropout rate (aggregate of all grade levels served in the diploma program)

Each of these performance indicators is described in the following section.

## Job Corps Diploma Program Accountability Performance Indicators and Procedures

### I. TAKS Indicator

#### Indicator Definition.

1. Total number of exit-level TAKS tests administered to diploma program students any time during the school year (September 1, 2005 - August 31, 2006).
2. Total number of exit-level TAKS tests on which the students met the passing standard.

$$\frac{\text{Tests passed}}{\text{Tests administered}} = \% \text{ Met Standard}$$

Subjects. The exit-level TAKS tests include the following subjects:

English Language Arts  
Mathematics  
Social Studies  
Science

Test Administrations. The exit-level TAKS must be administered to Job Corps diploma program students on the same date and in accordance with the same testing calendar established for the statewide student assessment program. The indicator includes results for first-time testers and retesters from all TAKS administrations for the year (September 1 - August 31). The indicator is based on tests rather than students. If a student has results from multiple administrations for the same subject, all are included in the indicator.

Student Groups. The indicator is calculated for All Students and the following student groups.

- African American – A non-Hispanic person having origins in any of the Black racial groups of Africa.
- Hispanic – A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.
- White – A non-Hispanic person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

Economically Disadvantaged is not included as a student group because the definition used for public school accountability is based on National School Lunch Program enrollment, which would not be applicable to the Job Corps diploma program. A definition based on family income could be developed but it is likely that all Job Corps students would be counted as economically disadvantaged under such a definition. The ethnicity definitions are from the Public Education Information Management System (PEIMS) Data Standards.

Minimum Size Criteria. Performance is always evaluated at the All Students level. Student groups are evaluated if there are *at least 10 tests for the subject area tested.*

Data Source. Test results are provided to the Job Corps diploma program by the test contractor. TEA will calculate the rates.

## II. Job Corps Diploma Program Completion Rate Indicator

Indicator Definition. Completion of the Job Corps diploma program is defined as meeting all of the requirements of the diploma program, including passing all portions of the exit-level TAKS. Students participating in an approved adult education GED program and receiving a GED certificate are **not included** in the Job Corps diploma program Completion Rate.

Data used to calculate the Completion Rate:

1. Total number of students who completed the Job Corps diploma program at any time between September 1, 2005 - August 31, 2006 (2005-2006 school year).
2. Total number of students who did not complete the Job Corps diploma program, between September 1, 2005 - August 31, 2006, but who are enrolled in the diploma program on the first school day in September 2006 (the first day of school for the 2006-2007 school year), are counted as "still enrolled" in the diploma program.
3. Total number of students who left the diploma program without completing the program between September 1, 2005 - August 31, 2006 (2005-2006 school year). These students will be reported with the appropriate "leaver" code listed in the Job Corps Diploma Program Leaver Code table.

Job Corps Diploma Program Completion Rate Calculation

$$\frac{\text{diploma recipients + still enrolled}}{\text{students enrolled in diploma program}} = \text{diploma program completion rate (\%)} \\ \text{(diploma recipients + still enrolled + leavers + dropouts)}$$

*Important:* Students who enroll in the Job Corps diploma program for the first time on the first school day in September 2006 are not included in the completion rate for 2005-2006. New enrollees on the first school day in September 2006 will be included in the completion rate for the 2006-2007 school year when the rate is calculated in 2008.

Leavers. The Job Corps diploma program must document the withdrawal of students and maintain on file the appropriate paperwork associated with student withdrawals. The Job Corps diploma program is required to maintain all documentation related to all leaver reason codes at the diploma program site. Merits of leaver documentation are assessed at the time the documentation is requested by the TEA for program monitoring purposes, including verifying data integrity. Determination of the acceptability of documentation is made by the TEA staff reviewing the documentation.

Leaver Documentation. In determining the merits of reported leaver codes, the TEA may review written documentation. When the Job Corps diploma program obtains oral withdrawal information, the information must be verified by telephone and noted in writing by an authorized representative of the Job Corps diploma program.

Withdrawal information should include:

- the date, signature(s) of the adult student or the person responsible for the student, such as the parent or legal guardian
- the leaver code and statement of reason for withdrawal
- the student's destination
- documentation of the telephone call to verify the withdrawal information that was obtained orally
- documentation of enrollment in another public or private school (i.e., request for records)



The **Job Corps Diploma Program Leaver Codes** are provided below and in the Appendix of this document.

Leaver Code	Explanation of Reason
01 – Student completed Job Corps diploma requirements	Use for students who meet all diploma requirements (which includes passing the exit-level TAKS) at any time during the school year (September 1, 2005 - August 31, 2006).
02 – Student withdrew from Job Corps to enter an institution of higher education or technical institution	Student withdrew from the Job Corps diploma program and training program to enroll in an institution of higher education or a technical institution. Documentation of enrollment must indicate that the student is enrolled under a planned degree or certificate program for at least 3 semester hours or one class.
03 – Student received GED by August 31, 2006	Student received a GED certificate by August 31, 2006.
04 – Student withdrew from Job Corps to enroll in a public school in Texas	Student withdrew from the Job Corps diploma program and training program with the intent to enroll in a public school in Texas. Documentation must indicate that the student enrolled in a <u>public</u> school in Texas.
05 – Student withdrew from Job Corps to enroll in another Job Corps diploma program in Texas	Student withdrew from this Job Corps diploma program in order to enroll in another Job Corps diploma program. Documentation must indicate that the student enrolled in another Job Corps diploma program in Texas.
06 – Student withdrew from Job Corps to enroll in a private school in Texas	Student withdrew from the Job Corps diploma program and training program with the intent to enroll in a private school in Texas. Documentation must indicate that the student enrolled in a <u>private</u> school in Texas.
07 – Student died while enrolled in the diploma program	This code requires documentation of the student's death.
08 – Other	This code is used when the reason for student withdrawal is unknown or not listed in this chart, or when a student is withdrawn by the diploma program after a period of time because the student has quit participating in the diploma program and the reason is unknown. The diploma program must determine the number of days that will be implemented for these types of withdrawals, and provide written notice to each student upon enrollment in the diploma program that he/she will be withdrawn if he/she quits participating in the program for the specified number of days.

Student Groups. The indicator is calculated for All Students and the following student groups.

- African American – A non-Hispanic person having origins in any of the Black racial groups of Africa.
- Hispanic – A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.
- White – A non-Hispanic person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

Economically Disadvantaged is not included as a student group because the definition used for public school accountability is based on National School Lunch Program enrollment, which would not be applicable to the Job Corps diploma program. A definition based on family income could be developed but it is likely that all Job Corps students would be counted as economically disadvantaged under such a definition. The ethnicity definitions are from the PEIMS Data Standards.

Minimum Size Criteria. The Completion Rate is evaluated at the All Students level, if there are *at least 10 students enrolled* in the Job Corps diploma program at any time during the school year (September 1 – August 31). Student groups are evaluated if there are *at least 10 students in the student group*. If the minimum size requirement for All Students is not met, the Job Corps diploma program is not evaluated on Completion Rate.

Data Source. Completion data are reported for the prior school year. For example, completion data submitted in December 2006 will be for the September 1, 2005 - August 31, 2006 school year. The Job Corps diploma program must submit data to the TEA by December 15, 2006. TEA will calculate the rates.

### III. Job Corps Diploma Program Dropout Rate Indicator

The Job Corps Diploma Program Dropout Rate indicator is based on the total number of students participating (enrolled) in the diploma program during the Job Corps diploma program school year: September 1 - August 31. The dropout rate is an aggregate of Grades 9-12 dropouts as a percent of all students enrolled in the diploma program in Grades 9-12 from September 1 - August 31.

Indicator Definition. A student is counted as a dropout if the student was enrolled in the Job Corps diploma program at any time during the school year (September 1, 2005 - August 31, 2006) and is not enrolled in the diploma program on the first school day in September 2006.

Exceptions: A student is **not** counted as a dropout if the student:

- received diploma by August 31 of the same school year;
- died;
- received a GED certificate by August 31 of the same school year;
- withdrew to enroll in college or a technical institution;
- withdrew to enroll in a Texas public or private school providing secondary education or another Job Corps Diploma Program in Texas.

Diploma Program Dropout Rate Calculation:

$$\frac{\text{dropouts (leaver code 08)}}{\text{students enrolled in diploma program (diploma recipients + still enrolled + leavers + dropouts)}} = \text{diploma program dropout rate (\%)}$$

Examples of Dropout and Non-Dropout Definitions:

1. A student who withdraws from the diploma program on November 15, 2005, and re-enrolls in the diploma program on May 15, 2006, does not receive a diploma from the diploma program by August 31, 2006, and is enrolled on first school day in September 2006 is not a dropout for 2005-2006.
2. A student who withdraws from the diploma program on June 15, 2006, and enrolls in the GED program on July 15, 2006, and receives a GED certificate on August 1, 2006, then re-enrolls in the diploma program on August 15, 2006, and is enrolled on the first school day in September 2006 is not a dropout for 2005-2006.
3. A student who withdraws from the diploma program on May 15, 2006, and re-enrolls in the diploma program on June 15, 2006, and does not complete the diploma program by August 31, 2006, and is not enrolled on the first school day in September 2006 is reported as a dropout for 2005-2006.

Student Groups. The indicator is calculated for All Students and the following student groups.

- African American – A non-Hispanic person having origins in any of the Black racial groups of Africa.
- Hispanic – A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.
- White – A non-Hispanic person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

Economically Disadvantaged is not included as a student group because the definition used for public school accountability is based on National School Lunch Program enrollment, which would not be applicable to the Job Corps diploma program. A definition based on family income could be developed but it is likely that all Job Corps students would be counted as economically disadvantaged under such a definition. The ethnicity definitions are from the PEIMS Data Standards.

Minimum Size Criteria. The Dropout Rate is evaluated at the All Students level, if there are *at least 10 students enrolled* in the diploma program at any time during the school year (September 1 - August 31). Student groups are evaluated if there are *at least 10 students in the student group*. If the minimum size requirement for All Students is not met, the diploma program is not evaluated on Dropout Rate.

Data Source. Dropouts are reported for the prior school year. For example, dropout data submitted in December 2006 will be for the September 1, 2005 - August 31, 2006 school year. The Job Corps diploma program must submit data to the TEA by **December 20, 2006**. TEA will calculate the rates.

### **How Students Are Counted for the Job Corps Diploma Program Accountability Performance Indicators**

#### Student Enrollment Status and the "One-day" Snapshot Date

For accountability purposes, the Job Corps diploma program has a "one-day" snapshot date. The "one-day" snapshot date is the **first school day in September**. On the first school day in September 2006, the diploma program must assign an enrollment status to each student who was enrolled in the diploma program at any time during the 2005-2006 school year.

The enrollment statuses (and leaver codes) are:

1. diploma recipient: the student was awarded a diploma by August 31 of the 2005-2006 school year (leaver code 01);
2. still enrolled: the student was still enrolled in the diploma program on the first school day in September of the 2006-2007 school year (no leaver code);
3. leaver: the student
  - a. received a GED by August 31 of the 2005-2006 school year (leaver code 03)
  - b. withdrew from the diploma program to enroll in another educational setting (leaver code 02, 04, 05, or 06)
  - c. died (leaver code 07);
4. dropout: the student left the diploma program for any reason not categorized above (leaver code 08).

Each student enrolled in the diploma program in the 2005-2006 school year should fit into one of the above four categories.

Counting Leavers and Students Who Re-enroll. Any student enrolled in the diploma program in the 2005-2006 school year is assigned only one leaver code, regardless of the number of times or reasons for withdrawing and re-enrolling in the diploma program. The student's leaver code must reflect the student's last leaver status as of the first school day in September.

Counting Diploma Recipients. August 31<sup>st</sup> is the date by which students must receive their diplomas to be counted as diploma recipients of the Job Corps diploma program.

### **Job Corps Diploma Program Data Collection and Reporting**

By **December 15** of each school year, the diploma program is required to submit to TEA certain data for use in determining the annual performance rating of the diploma program.

The "one-day" snapshot date used to determine the data is <b>the first school day in September</b> .
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#### Data Collection Form

The Job Corps diploma program is required to submit and correct data in the format determined by TEA. The data collection form is included in the Appendix of this document. The collection of data is reviewed annually and revised, as necessary, to assign an annual performance rating to the diploma program. The Job Corps diploma program must retain auditable individual student data and documentation for monitoring, etc.

#### Requests for Extensions to Submission Deadline

Extenuating circumstances may occur that preclude the diploma program from submitting its data to TEA on time. These extenuating circumstances are limited to circumstances that are not within the control of the diploma program including natural disasters or catastrophes and for which there are no practical options to providing the data to TEA. Extensions for these circumstances are considered and granted on a case-by-case basis. If the diploma program anticipates that it will not be able to meet the due date, a written statement signed by the director of the Job Corps diploma program (or designee) must be sent to the TEA no later than 30 calendar days from the due date and include the following information.

- the reasons for the delay or anticipated delay in submitting the data;
- the plan of action for resolving the existing problems;
- a request for an extension; and
- a commitment to a specific date for submitting the data to TEA. Extensions greater than 30 days after the TEA due date will not be approved unless it is substantiated that the circumstances are extreme and for which no alternative is available.

Requests for extension are to be mailed or faxed to:

Associate Commissioner  
School District Services  
Texas Education Agency  
1701 N. Congress Ave.  
Austin, TX 78701-1494  
FAX (512) 475-3665

The TEA division responsible for school district services will notify the Job Corps diploma program director (or designee) whether the extension was or was not granted. If the data submission is delayed and communication is not received from the diploma program, the diploma program campus name will be forwarded to TEA General Counsel for further action.

#### Correcting Data Submission

The diploma program may find it necessary to correct data submitted. All diploma program resubmissions must be submitted to the TEA no later than the **last school day in January**. If extenuating circumstances arise and the diploma program is not able to correct its data within this timeline, the same procedures used to request an extension to data submission (above) must be followed.

#### Release of Diploma Program Accountability Preview Data Tables and Ratings

By August 1 of each year, the Job Corps diploma program accountability rating will be released.

The Job Corps diploma program will not have access to their data tables or ratings electronically, such as through a TEA Secure Environment (TEASE). TEA will provide accountability data and rating reports to the diploma program by certified U.S. Mail. TEA will not fax or email accountability data reports and ratings.

## Job Corps Diploma Program Performance Standards

This section prescribes the standards and criteria for each performance indicator used to evaluate the diploma program. TEA staff will annually recommend to the commissioner of education the appropriate standards for each performance indicator listed below to meet the characteristic of students served in the diploma program.

1. Exit-level TAKS Passing Standard
2. Diploma Program Completion Rate Standard
3. Diploma Program Dropout Rate Standard

For students receiving special education services, the standard for meeting Admission, Review, and Dismissal (ARD) expectations will continue to be set locally, consistent with state law. Students receiving services under an individualized education plan (IEP) and taking TAKS will be included in the TAKS indicator.

The diploma program must demonstrate required improvement when accountability standards are not met.

The standards for each performance indicator will be established for 2006-2007, based on data collected for 2005-2006.

### Job Corps Diploma Program Accountability Standards for 2007 and Beyond

Indicator	Rating	
	2005-2006 Report data	2006-2007 -TBD (For example)
<b>Exit-level TAKS</b>	<i>Not Evaluated</i>	Acceptable -TBD (i.e., 40%)
<b>Diploma Program Completion Rate</b>  $\frac{\text{Diploma recipients + still enrolled}}{\text{Students enrolled in diploma program}} = \text{completion rate (\%)}$ (diploma recipients + still enrolled + leavers + dropouts)	<i>Not Evaluated</i>	Acceptable -TBD (i.e., 75%)
<b>Diploma Program Dropout Rate</b> dropouts (leaver code 08)  $\frac{\text{dropouts (leaver code 08)}}{\text{students enrolled in diploma program}} = \text{dropout rate (\%)}$ (diploma recipients + still enrolled + leavers + dropouts) Students dropping out in 2004-2005 are reported in 2005-2006 Students dropping out in 2005-2006 are reported in 2006-2007 <i>"Dropout" is defined in the Job Corps Diploma Program Accountability Procedures.</i>	<i>Not Evaluated</i>	Acceptable -TBD (i.e., 10%)

### Job Corps Diploma Program Accountability Ratings

The diploma program rated under the Job Corps diploma program accountability procedures is assigned one of the three ratings listed below:

1. *Acceptable*
2. *Unacceptable*
3. *Not Evaluated*

Acceptable or Unacceptable	If there are no exit-level TAKS results, the diploma program will not be rated. If there are exit-level TAKS results, the program will be rated if the program meets the minimum size criteria.
Not Evaluated	Assigned to diploma programs with no exit-level TAKS results or to programs that do not meet the minimum size criteria.

## **Special Analysis for Small Numbers**

The TEA conducts special analysis when very small amounts of data are used in determining the performance rating of the Job Corps diploma program. For special analysis, the Job Corps Diploma Program accountability procedures use comparative data from the prior year.

## **First-Year of Operation and Initial On-site Review**

For the first year of operation, the Job Corps diploma program will not have prior-year data to compare with current-year performance in order to conduct special analysis. Therefore, for the first year of operation, the diploma programs will not be evaluated and will be assigned the "Not Evaluated" rating. Additionally, during the first year of operation, the TEA will conduct an on-site review of the diploma programs to validate data reporting and integrity.

## **Job Corps Diploma Program Appeal Process**

### Preview Data Tables

The diploma program will receive a preview of its data table as determined by the TEA and described in the Job Corps Diploma Program Accountability Procedures Manual. After receipt of the data table, the diploma program may appeal the rating to the commissioner of education or the commissioner's designee. For the Job Corps diploma program, the Associate Commissioner of School District Services is designated to review the appeal and recommend the final rating to the commissioner of education.

### Appeal Ratings

1. The diploma program may appeal the data or calculation error attributable to the TEA or the test contractor for the student assessment program.
2. Problems due to the diploma program's errors in data submission or on TAKS answer sheets are considered on a case-by-case basis.
3. The statutes permit consideration of data reporting quality in evaluating the merits of an appeal. Poor data quality is not a valid reason to appeal the accountability rating. Only appeals that would result in a changed rating will be considered.

### How to Appeal a Rating

The diploma program appealing an accountability rating must submit to the commissioner of education a letter that includes the following:

1. A statement that the letter is an appeal of the [YEAR] Job Corps diploma program accountability rating;
2. The name and ID number of the diploma program for which the appeal is being submitted.
3. The specific indicator(s) appealed.
4. The problem, including details of the data affected and what caused the problem.
5. If applicable, the reason(s) why the cause of the problem is attributable to the TEA or the test contractor for the student assessment program.
6. The reason(s) why the change would result in a different rating, including calculations that support the different outcome.
7. A statement that all information included in the appeal is true and correct to the diploma program's best knowledge and belief.
8. The signature of the official representative of the diploma program.

### Additional Appeal Procedures

- The Job Corps diploma program is provided one opportunity to appeal each indicator.
- When student-level information is in question, supporting information must be provided for review, including the student's name and identification number.
- The diploma program must ensure all relevant information is included in the appeal. The TEA will not contact the diploma program for additional materials.

- The appeal letter must be postmarked by the date determined by the TEA. Appeals postmarked after this date will not be considered.
- The appeal letter must be addressed to Dr. Shirley Neeley, Commissioner of Education and mailed to Job Corps Diploma Program Accountability Procedures; Division of School District Services; Texas Education Agency; 1701 N. Congress Ave.; Austin, TX; 78701-1494.

#### How an Appeal Is Processed and Decision Issued

1. The details of the appeal are entered into a database for tracking purposes.
2. TEA staff evaluates the request using TEA data sources to validate the information to the extent possible and all relevant data.
3. The Division of School District Services prepares and forwards a recommendation to the commissioner of education.
4. The commissioner of education makes the final decision.
5. The diploma program is notified in writing of the commissioner's decision and the reason for the decision.
6. The decision of the commissioner is final and is not subject to further review or appeal.
7. If an appeal is granted, the data upon which the appeal was based will not be modified. TEA reports that reflect accountability data, must report the data as they are submitted to the TEA. Accountability data are subject to review by the Office of the State Auditor.
8. The commissioner of education will respond in writing to each appeal. The letter from the commissioner serves as notification of the official rating for the diploma program.

#### Final Ratings

After the resolution of all appeals, the TEA will assign a final rating to the diploma program.

## On-site Investigations

Under Section 39.074 of the TEC, the commissioner may (1) direct the TEA to conduct on-site investigations at any time to answer any questions concerning a program, including special education, required by federal law or for which the program receives federal funds; and (2) raise or lower the performance rating as a result of the investigation. The manner in which the TEA will conduct the on-site investigation is described under Section 39.076 of the TEC and 19 TAC §97.1033. In conducting the on-site investigation, data other than the data reported through the data collection form may be reviewed by the TEA to determine compliance with applicable federal and state laws and rules. The diploma program is required to maintain at its program facility, the education records and data required in meeting TEA reporting requirements. The Job Corps diploma program must retain auditable individual student data and documentation for monitoring, etc.

## Required Improvement

Required Improvement compares prior-year performance to current-year performance. In order to conduct this comparison, All Students or any student group must meet the minimum size requirement for the prior year.

**Improvement Standards for the diploma program will be determined for 2007-2008 based on data submitted for 2005-2006 and 2006-2007.**

In order to move a Job Corps diploma program from an *Unacceptable* rating to an *Acceptable* rating, the diploma program must demonstrate required improvement within two school years.

Performance Indicator	Standard of Improvement Required
TAKS Measure	a standard of <u>_(TBD)_</u> % within two years
Diploma Program Completion Rate	a standard of <u>_(TBD)_</u> % within two years
Diploma Program Dropout Rate	a decline in the rate to be at <u>_(TBD)_</u> % within two years

In order to move a Job Corps diploma program from an *Unacceptable* rating to an *Acceptable* rating, the diploma program must meet the standards of improvement on all deficient performance indicators. If the improvement standard is met for every deficient measure, then the diploma program is assigned an *Acceptable* rating.

## Sanctions

Based on the nature of and severity of the problem(s) identified, the commissioner of education has the authority to take action under Chapter 39 of the TEC, including closure of the diploma program.

Sanctions may be applied as a result of:

- problems identified through the application of system safeguards;
- unacceptable performance for two consecutive years; or
- the findings of an on-site investigation authorized under Section 39.074 of the TEC.



# Appendix

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**TEXAS EDUCATION AGENCY**  
**Job Corps Diploma Program**  
**2006-2007 Data Collection Form for 2005-2006 Data Year**

*Please PRINT or TYPE:*

Job Corps Diploma Program Name	Job Corps Diploma Program Number
Job Corps Diploma Program Director's Name	Telephone Number
The following signature affirms that the undersigned has submitted all required data and has taken measures to verify the accuracy and the authenticity of the data being submitted for the Job Corps Diploma Program.	
Job Corps Diploma Program Director's Signature	Date

**Authority for Data Collection:** Texas Education Code, §18.006 - Job Corps Diploma Program.

**Planned Use of the Data:** For **2006-2007 Diploma Program Accountability Ratings** for the Job Corps Diploma Program issued by the Commissioner in compliance with Chapter 18 of the Texas Education Code.

**Instructions:** Complete **ONE** report for the Job Corps diploma program using **2005-2006 school year data**. Complete this form regardless of the diploma program enrollment size. Do not leave any boxes blank and do not write "not applicable." If there is no number to report in a box, enter "0" (zero) in that box. Do not attach any additional documents to this report. **See additional instructions below for each item.**

**Submission Timeline:** This completed and signed form must be **postmarked by December 20, 2006**. Mail form to:

**Texas Education Agency  
Associate Commissioner  
School District Services  
1701 N. Congress Avenue  
Austin, Texas 78701-1494**

Fax and email submissions are not accepted. Maintain a copy of this report and any supporting documentation for your records. Texas Education Agency (TEA) will send the Job Corps Diploma Program Director a written confirmation of receipt.

**Questions:** If there are any questions regarding the data submission, please call School District Services at (512) 463-8998. For submission corrections, please refer to the Correcting Data Submission section of the **Job Corps Diploma Program Accountability Procedures Manual**.

*Please note that information submitted to TEA is subject to release in accordance with Chapter 552 of the Texas Government Code (Texas Public Information Act), and includes the Family Educational Rights and Privacy Act (FERPA).*

GROUP	All Students	African American	Hispanic	White
<b>IMPORTANT:</b> In each column, the total of #2, #3, #4 and #5 should equal the total in #1. The number of African American, Hispanic, and White students on each row may not equal ALL STUDENTS on that row because ALL STUDENTS may include other ethnicities.				
1. <b>Total Students</b> who were <b>enrolled in the Job Corps diploma program</b> at any time between September 1, 2005, and August 31, 2006. If a student withdrew from the diploma program and later re-entered it, count the student only once.				
2. <b>Diploma Recipients:</b> Students in #1 who were <b>awarded a Job Corps diploma</b> at any time between September 1, 2005, and August 31, 2006 (Leaver Code 01). See <b>Leaver Code</b> Table on page 2.  Completing the diploma program means meeting all diploma program requirements and passing all portions of the exit-level TAKS.				

**continues**

GROUP	All Students	African American	Hispanic	White
<b>IMPORTANT:</b> In each column, the total of #2, #3, #4 and #5 should equal the total in #1. The number of African American, Hispanic, and White students on each row may not equal ALL STUDENTS on that row because ALL STUDENTS may include other ethnicities.				
3. <b>Still Enrolled:</b> Students in #1 who did not complete the diploma program (including did not pass the exit-level TAKS) and who are <b>still enrolled in the diploma program</b> on the first school day in September 2006 (no Leaver Code).  "Still enrolled" is defined as a student who was enrolled during the 2005-2006 school year (regardless of whether the student withdrew and re-enrolled) <u>and</u> is enrolled on the first school day in September 2006.				
4. <b>Leavers:</b> Students in #1 who did not complete the diploma program, were not enrolled in the diploma program on the first school day in September 2006, <u>and</u> were withdrawn under any of the following <i>Leaver Codes: 02, 03, 04, 05, 06, or 07</i> . A student with one of these six (6) leaver codes is not counted as a dropout for the diploma program accountability system.  Any student enrolled in the diploma program in the 2005-2006 school year is assigned only <u>one</u> leaver code on the "one-day" snapshot date: first school day in September 2006. Regardless of the number of times or reasons the student withdrew and re-enrolled in the diploma program, assign the student one leaver code and count the student only once.				
5. <b>Dropouts:</b> Students in #1 who did not complete the diploma program, were not enrolled on the first school day in September 2006, <u>and</u> were withdrawn under Leaver Code 08.				
6. <b>Total Students who participated in Job Corps Training Program</b> at any time between September 1, 2005, and August 31, 2006, <u>and</u> who entered the training program without a high school diploma, <u>and</u> who did not participate in the diploma program. If a student withdrew from the training program and later re-entered it, count the student only once.				

Leaver Code	Explanation of Reason
01 – Student completed Job Corps diploma requirements	Use for students who meet all diploma requirements (which includes passing the exit-level TAKS) at any time during the school year (September 1, 2005 - August 31, 2006).
02 – Student withdrew from Job Corps to enter an institution of higher education or technical institution	Student withdrew from the Job Corps diploma program and training program to enroll in an institution of higher education or a technical institution. Documentation of enrollment must indicate that the student is enrolled under a planned degree or certificate program for at least 3 semester hours or one class.
03 – Student received GED by August 31, 2006	Student received a GED certificate by August 31, 2006.
04 – Student withdrew from Job Corps to enroll in a public school in Texas	Student withdrew from the Job Corps diploma program and training program with the intent to enroll in a public school in Texas. Documentation must indicate that the student enrolled in a <u>public</u> school in Texas.
05 – Student withdrew from Job Corps to enroll in another Job Corps diploma program in Texas	Student withdrew from the Job Corps diploma program in order to enroll in another Job Corps diploma program. Documentation must indicate that the student enrolled in another Job Corps diploma program in Texas.
06 – Student withdrew from Job Corps to enroll in a private school in Texas	Student withdrew from the Job Corps diploma program and training program with the intent to enroll in a private school in Texas. Documentation must indicate that the student enrolled in a <u>private</u> school in Texas.
07 – Student died while enrolled in the diploma program	This code requires documentation of the student's death.
08 – Other	This code is used when the reason for student withdrawal is unknown or not listed in this chart, or when a student is withdrawn by the diploma program after a period of time because the student has quit participating in the diploma program and the reason is unknown. The diploma program must determine the number of days that will be implemented for these types of withdrawals, and provide written notice to each student upon enrollment in the diploma program that he/she will be withdrawn if he/she quits participating in the program for the specified number of days.

Figure: 28 TAC §5.501(h)

[OPTIONAL PROVISION]  
THIS NOTICE IS REQUIRED BY LAW. IT DOES NOT CONSTITUTE AN ADMISSION OF LIABILITY BY  
THE INSURANCE COMPANY.

#### **REQUIRED NOTICE TO INSURANCE CLAIMANTS FOR MOTOR VEHICLE REPAIRS**

By law, you have the right to select where your motor vehicle is repaired and the parts used for repairs. However, an insurance company is not required to pay more than a reasonable amount for such repairs and parts. Your statutory rights regarding motor vehicle repairs are explained in the copy of the Insurance Code §§1952.301 to 1952.307, printed on the reverse side of this notice or attached to this notice. If the costs of repairing your vehicle are to be paid under an insurance policy issued by us, the nature of the coverage is stated in more detail in the applicable policy. For detailed information regarding the insurance policy, contact:

**NAME OF INSURANCE COMPANY:**  
**MAILING ADDRESS:**  
**TELEPHONE:**  
**FAX:**  
**[OPTIONAL] E-MAIL or WEB ADDRESS:**

For questions about your statutory rights regarding motor vehicle repairs under the Insurance Code §§1952.301 to 1952.307, contact the Texas Department of Insurance. You may write to the Consumer Protection Division at P.O. Box 149091, Austin, TX 78714-9091, call 1-800-252-3439, fax 1-512-475-1771, e-mail [ConsumerProtection@tdi.state.tx.us](mailto:ConsumerProtection@tdi.state.tx.us), or visit the Department online at <http://www.tdi.state.tx.us>.

[DISPOSICIÓN OPCIONAL]  
LA LEY REQUIERE ESTE AVISO, PERO NO CONSTITUYE ADMISIÓN DE RESPONSABILIDAD CIVIL DE  
LA COMPAÑÍA ASEGURADORA.

#### **AVISO OBLIGATORIO A LOS QUE PRESENTAN RECLAMACIONES PARA REPARACIÓN DE VEHÍCULO DE MOTOR**

Por ley, usted tiene derecho a escoger donde desea que su vehículo sea reparado y las refacciones que se usen en la reparación. Sin embargo, la compañía aseguradora no está obligada a pagar más de la cantidad razonable por las reparaciones y refacciones. Sus derechos por estatuto concernientes a las reparaciones de vehículo de motor están descritos en la copia del Código de Seguros §§1952.301 a 1952.307, impreso al reverse de este aviso o adjunto a este aviso. Si el costo de reparar su vehículo debe ser pagado bajo una póliza de seguro que nosotros dimos, la naturaleza técnica de la cobertura es establecida en más detalle en la póliza aplicable. Para información detallada acerca de la póliza de seguro, contacte:

**NOMBRE DE LA COMPAÑÍA ASEGURADORA:**  
**DIRECCIÓN DE CORREOS:**  
**TELÉFONO:**  
**FAX:**  
**[OPCIONAL] DIRECCIÓN DE E-MAIL O INTERNET:**

Para preguntas sobre sus derechos por estatuto respecto a las reparaciones de vehículo de motor bajo el Código de Seguros §§1952.301 a 1952.307, comuníquese con el Departamento de Seguros de Texas (Texas Department of Insurance o TDI). Puede escribir a Consumer Protection Division al P. O. Box 149091, Austin, TX 78714-9091, llamar al 1-800-252-3439, enviar fax al 1-512-475-1771, e-mail a [ConsumerProtection@tdi.state.tx.us](mailto:ConsumerProtection@tdi.state.tx.us) o visitar el sitio electrónico de TDI por internet al <http://www.tdi.state.tx.us>.

# 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

### Texas Clean Air Act and Texas Water Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Clean Air Act and Texas Water Code. Before the State may settle a judicial enforcement action under the 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 Code.

Case Title and Court: Harris County, Texas and The State of Texas v. Lisa Neal d/b/a B&L Construction Co., Cause No. 2005-08432, in the 152nd Judicial District Court, Harris County, Texas.

Nature of Defendant's Operations: Defendant is in the construction business throughout Harris County. Defendant was cited for violations due to improper use of a trench burner on several separate occasions at several different locations.

Proposed Agreed Judgment: The Agreed Final Judgment and Injunction permanently enjoins Defendant to cease its burning of waste in the State of Texas, for all commercial purposes. Defendant has agreed to pay Plaintiffs \$14,400.00, consisting of \$11,400.00 in civil penalties to be divided equally between Harris County and the State of Texas, and \$3,000.00 in attorney's fees, with \$2,000.00 to be paid to Harris County and \$1,000.00 to be paid to the State of Texas, plus all court costs.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment and Permanent Injunction should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Lisa Sanders Richardson, Assistant Attorney General, Office of the Texas Attorney General, P. O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. 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-200605315  
Stacey Napier  
Deputy Attorney General  
Office of the Attorney General  
Filed: September 26, 2006



### Texas Health and Safety Code and Texas Water Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Health and Safety Code and Texas Water Code. Before the State may settle a judicial enforcement action under the Health and Safety 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 Code.

Case Title and Court: State of Texas v. T. Stan Holland, individually and d/b/a Acorn Mobile Home Park, and Javis Enterprises, Inc., Cause No. GV300400; in the 53rd Judicial District Court, Travis County, Texas.

Nature of Defendant's Operations: Defendants owned and operated a public water system and wastewater treatment system serving residents in Tarrant County, Texas. Defendants entered into an Agreed Order with the TCEQ which commanded the Defendants to operate within the applicable statutes and rules of the TCEQ. Later investigations of the Defendants' systems revealed that the Defendants had not complied with the rules and statutes and continued to operate the systems in violation of TCEQ rules. The lawsuit was brought to enforce the Agreed Order, and assess civil penalties against the Defendant. Since the inception of the lawsuit, the Defendants have sold the wastewater treatment system and the residents once connected to the public water system are now connected to the City of Azle, Texas for provision of drinking water services. The Defendant has agreed to this judgment.

Proposed Agreed Judgment: The Agreed Final Judgment assesses civil penalties against the Defendants. Defendant Javis Enterprises, Inc., agrees to pay Plaintiff a civil penalty in the amount of \$25,000.00, T. Stan Holland agrees to pay Plaintiff administrative and civil penalties in the amount of \$9,000.00, Public Health Service fees in the amount of \$400.52, as well as \$8,500.00 in attorney's fees, plus all court costs.

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 Lisa Sanders Richardson, Assistant Attorney General, Office of the Texas Attorney General, P. O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. 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-200605316  
Stacey Napier  
Deputy Attorney General  
Office of the Attorney General  
Filed: September 26, 2006



## Texas Building and Procurement Commission

### Request for Proposal

The Texas Building and Procurement Commission (TBPC), on behalf of the Department of Public Safety, announces the issuance of Request for Proposals (RFP) #303-7-10292. TBPC seeks a ten (10) year lease

of approximately 5,975 square feet of office space in Austin, Travis County, Texas.

The deadline for questions is October 5, 2006 and the deadline for proposals is October 17, 2006 at 3:00 P.M. The award date is November 1, 2006. 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 a 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 Myra Beer at (512) 463-5773. A copy of the RFP may be downloaded from the *Electronic State Business Daily* at [http://esbd.tbpc.state.tx.us/1380/bid\\_show.cfm?bidid=67324](http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=67324).

TRD-200605323

Ingrid K. Hansen

General Counsel

Texas Building and Procurement Commission

Filed: September 27, 2006

## 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 15, 2006, through September 21, 2006. 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 27, 2006. The public comment period for these projects will close at 5:00 p.m. on October 27, 2006.

#### FEDERAL AGENCY ACTIONS:

**Applicant: Boss Exploration and Production Company;** Location: The project is located in Corpus Christi Bay, with the beginning of the main channel located approximately 6 miles southeast of Ingleside, and the proposed basin located approximately 1 mile south of the Corpus Christi Ship Channel, in Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Ingleside, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Beginning of the main channel Easting: 679500; Northing: 3075950; end of main channel Easting: 681050; Northing: 3077800; and existing well site Easting: 681000; Northing: 3078050. Project Description: The applicant proposes to hydraulically dredge a main channel, an access channel including a channel flare, and a basin for an existing well located in State Tract (ST) 349 (Well # 6) in Corpus Christi Bay. The channels and basin would provide deep-water access to the existing well for a work-over rig and/or drilling rig. The purpose of working over the existing well is to determine whether the well is still viable to develop minerals and, if not, the work-over rig would plug and abandon the existing well. If the well is still viable, a drilling rig would re-enter the existing well. The proposed main channel would be 8,485 feet in length with an approximate top width of 150 feet, and a bottom

width of 80 feet. The proposed access channel would be approximately 2,300 feet in length, with the same top width and bottom width as the main channel. A section of each of the channels would be dredged to a bottom width of 400 feet to form a channel flare where the two channels meet. Approximately 500 feet of the main channel and 350 feet of the access channel would be dredged to this wider width to allow drilling rigs to make the turn from the main channel to the access channel. The proposed basin would measure 500 feet in length and be 240 feet in width. Approximately 31,583 cubic yards of material would be dredged from the proposed main channel. An additional 66,531 cubic yards of material would be dredged from the access channel and the basin. All dredged materials would be placed in an upland area of Pelican Island located to the immediate northeast of the existing well. Both the main channel and the access channel/basin would have finished depth of -11.1 feet mean high water. The main channel would be located in portions of State Tracts 412, 413, 397, and 349. The applicant's agent is preparing a seagrass survey of the project area that will be available at a later date. CCC Project No.: 06-0408-F1; Type of Application: U.S.A.C.E. permit application #24311 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

**Applicant: Neumin Production Company;** Location: The project is located in State Tract (ST) 39 of Lavaca Bay, south of Point Comfort, in Calhoun County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Point Comfort. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 740460; Northing: 3170718. Project Description: The applicant proposes to dredge (mechanically or hydraulically) a channel and work basin for access to the existing ST 39 Well No. 2 surface location. Probing shows the substrate to consist predominantly of sand and clay. For this reason, siltation should be minimal. The applicant also proposes to place the resulting dredged material (69,600 cubic yards) into one of four Corps of Engineers Dredge Material Placement Areas (DMPA's 16, 17, 18, or 19) in Lavaca Bay. The Texas Railroad Commission (RRC) has designated the ST 39 Well No. 2 surface location as potentially hazardous and in need of immediate attention; however, the ST 39 Well No. 2 surface location is no longer accessible due to decreased water depths in the vicinity of the surface location. No seagrass, oyster reefs, or other sensitive areas would be impacted by the proposed dredging. The purpose of the dredging is to access the existing surface location for work-over and either new drilling or plugging and abandonment of the well. CCC Project No.: 06-0419-F1; Type of Application: U.S.A.C.E. permit application #24272 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act.

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, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or [tammy.brooks@glo.state.tx.us](mailto: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-200605319

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office

Coastal Coordination Council

Filed: September 27, 2006

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## Comptroller of Public Accounts

### Certification of the Average Taxable Price of Gas and Oil

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined that the average taxable price of crude oil for reporting period September 2006, as required by Tax Code, §202.058, is \$67.30 per barrel for the three-month period beginning on June 1, 2006, and ending August 31, 2006. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of September 2006, from a qualified Low-Producing Oil Lease, is not eligible for exemption from the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined that the average taxable price of gas for reporting period September 2006, as required by Tax Code, §201.059, is \$5.63 per mcf for the three-month period beginning on June 1, 2006, and ending August 31, 2006. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of September 2006, from a qualified Low-Producing Well, is not eligible for exemption from the natural gas production tax imposed by Tax Code, Chapter 201.

Inquiries should be directed to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-200605230  
Timothy Mashburn  
General Counsel  
Comptroller of Public Accounts  
Filed: September 20, 2006

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### 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 175q (RFQ) related to these contract awards was published in the June 9, 2006, *Texas Register* (31 TexReg 4767).

The contractors will provide Professional Contract Auditing Services as authorized by Subchapter A, Chapter 111, Section 111.0045 of the Texas Tax Code as described in the Comptroller's RFQ.

The Comptroller announces that twenty five (25) contracts were awarded as of September 19, 2006 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. The term of the contract is September 15, 2006 through August 31, 2007.

A contract is awarded to Paul D. 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. The term of the contract is September 15, 2006 through August 31, 2007.

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. The term of the contract is September 18, 2006 through August 31, 2007.

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. The term of the contract is September 15, 2006 through August 31, 2007.

A contract is awarded to Casilda Julia Inniss d/b/a 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. The term of the contract is September 18, 2006 through August 31, 2007.

A contract is awarded to Homer Max Wiesen, CPA, 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. The term of the contract is September 18, 2006 through August 31, 2007.

A contract is awarded to Marina Roy Buenaventura, CPA, 4042 Cheena Drive, Houston, TX 77025-4702. 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. The term of the contract is September 15, 2006 through August 31, 2007.

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. The term of the contract is September 18, 2006 through August 31, 2007.

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. The term of the contract is September 18, 2006 through August 31, 2007.

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. The term of the contract is September 15, 2006 through August 31, 2007.

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. The term of the contract is September 18, 2006 through August 31, 2007.

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. The term of the contract is September 15, 2006 through August 31, 2007.



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. The term of the contract is September 18, 2006 through August 31, 2007.

A contract is awarded to David Rebeles d/b/a Rebeles Consulting, 945 McKinney Street, Suite 217, Houston, TX 77002. 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. The term of the contract is September 18, 2006 through August 31, 2007.

A contract is awarded to Demetrius T. Nolton, 200 Creekside Park Drive, Alpharetta, GA 30022. 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. The term of the contract is September 18, 2006 through August 31, 2007.

A contract is awarded to Elloine K. Andoh, 1607 St. Charles Street, Houston, TX 77003. 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. The term of the contract is September 15, 2006 through August 31, 2007.

A contract is awarded to Ashley & Williams International, LLC d/b/a Tax Advisors Group, 2898 Holly Hall, Houston, TX 77054. 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. The term of the contract is September 18, 2006 through August 31, 2007.

A contract is awarded to Shawn S. Smith d/b/a TaxSmith Consulting, 7603 Hollow Glen, Houston, TX 77072. 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. The term of the contract is September 18, 2006 through August 31, 2007.

A contract is awarded to Sonerka Mouton d/b/a Mouton Consulting, 3230 Eagle Ridge Way, Houston, TX 77084. 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. The term of the contract is September 18, 2006 through August 31, 2007.

A contract is awarded to State and Local Tax Group, LLC, 308 Cooper Drive, Hurst, TX 76053. 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. The term of the contract is September 18, 2006 through August 31, 2007.

A contract is awarded to T-COT, Inc., 4930 Holly Road, Suite 101, Corpus Christi, TX 78411. 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. The term of the contract is September 15, 2006 through August 31, 2007.

A contract is awarded to Juan M. Macias, Jr. d/b/a Macias Enterprises, 3606 Braeburn, 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. The term of the contract is September 19, 2006 through August 31, 2007.

A contract is awarded to Kim Hoi So d/b/a TXTAX Consulting, 3082 Holly Hall, Houston, TX 77054. 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. The term of the contract is September 19, 2006 through August 31, 2007.

A contract is awarded to Stites Pybus, LLC, 2925 Cuero Cove, Round Rock, TX 78681. 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. The term of the contract is September 19, 2006 through August 31, 2007.

A contract is awarded to Tsang Mei Kuen d/b/a TMK Consulting, 3182 Holly Hall, Houston, TX 77054. 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. The term of the contract is September 19, 2006 through August 31, 2007.

TRD-200605239

Pamela Smith

Deputy General Counsel, Contracts

Comptroller of Public Accounts

Filed: September 21, 2006



#### 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 175q (RFQ) related to these contract awards was published in the June 9, 2006, *Texas Register* (31 TexReg 4767-4768).

The contractors will provide Professional Contract Auditing Services as authorized by Subchapter A, Chapter 111, Section 111.0045 of the Texas Tax Code as described in the Comptroller's RFQ.

The Comptroller announces that two (2) additional contracts were awarded as of September 27, 2006 as follows:

A contract is awarded to Johnson, Horak & Hopkins, PC, 2656 South Loop West, Suit 100, Houston, TX 77054. 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. The term of the contract is September 21, 2006 through August 31, 2007.

A contract is awarded to Tamesha A. Jumper, 503 East Ufer, Fredericksberg, TX 78624. 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. The term of the contract is September 26, 2006 through August 31, 2007.

TRD-200605342

Pamela G. Smith  
Deputy General Counsel for Contracts  
Comptroller of Public Accounts  
Filed: September 27, 2006

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## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009 of the Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/02/06 - 10/08/06 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup>/credit thru \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/02/06 - 10/08/06 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005<sup>3</sup> for the period of 10/01/06 - 10/31/06 is 18% for Consumer/Agricultural/Commercial/credit thru \$250,000.

The monthly ceiling as prescribed by §303.005 for the period of 10/01/06 - 10/31/06 is 18% for Commercial over \$250,000.

<sup>1</sup>Credit for personal, family or household use.

<sup>2</sup>Credit for business, commercial, investment or other similar purpose.

<sup>3</sup>For variable rate commercial transactions only.

TRD-200605305

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: September 26, 2006

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## Texas Education Agency

### Request for Applications Concerning Open-Enrollment Charter Guidelines and Application

**Eligible Applicants.** The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-06-021 from eligible entities to operate open-enrollment charter schools. Eligible entities include public institutions of higher education, private or independent institutions of higher education, organizations exempt from taxation under the Internal Revenue Code of 1986 (26 United States Code, §501(c)(3)), or governmental entities. At least one member of the governing board of the group requesting the charter must attend one required applicant conference. Conferences are scheduled for Friday, October 27, 2006, and Friday, December 1, 2006, in Room 1-104, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701-1494. Failure to attend one of the conferences will disqualify an applicant from submitting an application for an open-enrollment charter.

**Description.** The purpose of an open-enrollment charter is to provide an alternative avenue for restructuring schools. An open-enrollment charter offers flexibility and choice for educators, parents, and students. An approved open-enrollment charter school may be located in a facility of a commercial or nonprofit entity or in a school district facility. If the open-enrollment charter school is to be located in a school district facility, it must be operated under the terms established by the board of trustees or governing body of the school district in an agreement governing the relationship between the charter school and the district.

An open-enrollment charter school will provide instruction to students at one or more elementary or secondary grade level(s) as provided by the charter. It is governed under the specifications of the charter and retains authority to operate for the term of the charter contingent on satisfactory student performance as defined by the state accountability system. An open-enrollment charter school does not have the authority to impose taxes.

An open-enrollment charter school is subject to federal laws and certain state laws governing public schools, including laws and rules relating to a criminal offense, requirements relating to the Public Education Information Management System, criminal history records, high school graduation, special education programs, bilingual education, prekindergarten programs, extracurricular activities, health and safety provisions, and public school accountability. As stated in the Texas Education Code (TEC), §12.156, in matters related to operation of an open-enrollment charter school, an open-enrollment charter school is immune from liability to the same extent as a school district, and its employees and volunteers are immune from liability to the same extent as school district employees and volunteers. A member of the governing body of an open-enrollment charter school or of a charter holder is immune from liability to the same extent as a school district trustee. An employee of an open-enrollment charter school who qualifies for membership in the Teacher Retirement System of Texas shall be covered under the system to the same extent a qualified employee of a school district is covered.

**Dates of Project.** Application receipt deadline for review is February 22, 2007. The completed application must be received by the TEA Document Control Center, Room 6-108, 1701 North Congress Avenue, Austin, Texas 78701-1494, on or before 5:00 p.m. (Central Time) on the deadline date.

**Project Amount.** TEC, §12.106(a), states that a charter holder is entitled to receive funding for the open-enrollment charter school under Chapter 42 as if the school were a school district without a tier one local share for purposes of §42.253 and without any local revenue for purposes of §42.302. In determining funding for an open-enrollment charter school, adjustments under §§42.102 - 42.105 and the district enrichment tax rate under §42.302 are based on the average adjustment and average district enrichment tax rate for the state. TEC, §12.106(b), states that an open-enrollment charter school is entitled to funds that are available to school districts from the agency or the commissioner in the form of grants or other discretionary funding unless the statute authorizing the funding explicitly provides that open-enrollment charter schools are not entitled to the funding. An open-enrollment charter school may not charge tuition. An open-enrollment charter school must prohibit discrimination in admission policy on the basis of sex; national origin; ethnicity; religion; disability; academic, artistic, or athletic ability; or the district the child would otherwise attend. However, a charter school that specializes in the performing arts may require a student to demonstrate artistic ability and may require an applicant to audition. The charter may provide for the exclusion of a student who has a documented history of a criminal offense, a juvenile court adjudication, or a discipline problem under TEC, Chapter 37, Subchapter A.

**Selection Criteria.** A complete description of selection criteria is included in the RFA.

The State Board of Education (SBOE) may approve open-enrollment charter schools as provided in TEC, §12.101 and §12.152. There are currently 205 charters approved under §12.101 and two charters approved under §12.152. There is a cap of 215 charters approved under TEC, §12.101, and no cap on the number of charters approved under TEC, §12.152.

The SBOE may approve applicants to ensure representation of urban, suburban, and rural communities; various instructional settings; innovative programs; diverse student populations and geographic regions; and various eligible entities. The SBOE will consider Statements of Impact from any school district whose enrollment is likely to be affected by the open-enrollment charter school. The SBOE may also consider the history of the sponsoring entity and the credentials and background of its board members.

**Requesting the Application.** An application must be submitted under SBOE guidelines to be considered. A complete copy of the publication *Open-Enrollment Charter Guidelines and Application* (RFA #701-06-021), which includes an application and procedures, may be obtained by writing the Division of Charter Schools, Room 5-107, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701-1494; by calling (512) 463-9575; or on the TEA website at <http://www.tea.state.tx.us/charter/rfas/rfascharter.htm>.

**Further Information.** For clarifying information about the open-enrollment charter school application, contact Mary Perry, Division of Charter Schools, Texas Education Agency, at (512) 463-9575 or [mary.perry@tea.state.tx.us](mailto:mary.perry@tea.state.tx.us).

TRD-200605322

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: September 27, 2006



### Request for Applications Concerning the Texas Science, Technology, Engineering, and Math Centers (Texas STEM Centers) - East Texas Grant

**Eligible Applicants.** The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-07-001 from eligible partnerships for the Texas Science, Technology, Engineering, and Math Centers (Texas STEM Centers) - East Texas Grant. An eligible partnership shall include (1) an engineering, mathematics, or science department of an institution of higher education (IHE); (2) a high-need local educational agency (LEA); (3) a national, state, or local corporation or business; (4) a state or local nonprofit organization working with workforce and/or education support; and (5) a local informal STEM institution (e.g., museums, zoos, science clubs, etc.). An eligible partnership may include additional partners such as engineering, mathematics, science, or teacher training departments of IHEs; additional LEAs, open-enrollment charter schools, public or private elementary or secondary schools, or a consortium of such schools; businesses; nonprofit or for-profit organizations of demonstrated effectiveness in improving the quality of mathematics and science teachers; regional education service centers (ESCs); and members of the Texas Regional Collaborative for Excellence in Science and/or Math. The partnership must serve students in at least one region in ESC Regions 2 through 8. The fiscal agent (i.e., applicant) must be either the IHE (on behalf of the mathematics, science, or engineering department); the high-need LEA; an ESC; or a nonprofit organization. A high-need LEA is defined as a public school district or open-enrollment charter school at which a minimum of 40 percent of students participate in the free or reduced-price lunch program.

**Description.** The purpose of this program is to support Texas STEM Academies and other middle and high schools interested in improving their science and mathematics programs by designing and implementing innovative professional development programs, including institutes and summer workshops or institutes and follow-up training,

that incorporate reliable teaching methods and curricula based on scientific research. The program is also intended to create strategic partnerships among businesses, higher education entities, and school districts to support the effective implementation of the Texas STEM Initiative. Texas STEM Centers will ensure that national best practices are used in Texas and will identify and document best practices at a local and state level as well. As programs prove effective, the centers will lead in disseminating programs to teachers, schools, and district leadership across Texas. The Texas STEM Centers - East Texas Grant will establish additional centers to target the eastern portion of Texas currently not served by the existing five Texas STEM Centers.

**Dates of Project.** Implementation of the Texas STEM Centers - East Texas Grant will begin during the 2006-2007 school year. Applicants should plan for a starting date of no earlier than April 1, 2007, and an ending date of no later than August 31, 2008.

**Project Amount.** A total of approximately \$2.5 million is available for funding approximately two Texas STEM Centers to serve one or more regions in ESC Regions 2 through 8. Each project will receive a maximum of \$1.25 million. The funding will be available in two phases. For the Planning Phase, each project may receive an award amount of approximately \$500,000. Upon approval of the project's Implementation Proposal, an additional amount of approximately \$750,000 will be made available. This project is funded 100 percent from Title II, Part B federal funds.

**Selection Criteria.** Applications will be selected based on the independent 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 and that are most advantageous to the project.

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 #701-07-001 may be obtained by writing the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing [dcc@tea.state.tx.us](mailto: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 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), Tuesday, January 16, 2007, to be considered for funding.

TRD-200605321

Cristina De La Fuente-Valadez  
Director, Policy Coordination  
Texas Education Agency  
Filed: September 27, 2006



## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that, before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 6, 2006**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 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 6, 2006**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: BP Dancing Bear, Ltd. dba Dancing Bear Ranch; DOCKET NUMBER: 2006-0809-EAQ-E; IDENTIFIER: Regulated Entity Reference Number (RN) RN104945837; LOCATION: Medina County, Texas; TYPE OF FACILITY: single family subdivision construction site; RULE VIOLATED: 30 Texas Administrative Code (TAC) §213.23(a)(1), by failing to obtain approval of an Edwards Aquifer Contributing Zone Plan prior to the beginning of construction; PENALTY: \$30,400; ENFORCEMENT COORDINATOR: Ruben Soto, (512) 239-4571; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096

(2) COMPANY: Community Water Supply Corporation; DOCKET NUMBER: 2006-1181-PWS-E; IDENTIFIER: RN101238863; LOCATION: Tarrant County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and Texas Health & Safety Code (THSC), §341.0315(c), by failing to comply with the maximum contaminant level (MCL) for total trihalomethanes (TTHM); PENALTY: \$730; ENFORCEMENT COORDINATOR:

Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800

(3) COMPANY: Desi Services, Inc. dba Dixie Cleaners; DOCKET NUMBER: 2006-0843-DCL-E; IDENTIFIER: RN104028345; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the Facility's registration by completing and submitting the required registration form; PENALTY: \$711; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800

(4) COMPANY: Musheer Qureshi dba Esteem Cleaners; DOCKET NUMBER: 2006-0825-DCL-E; IDENTIFIER: RN104968086; LOCATION: Garland, Dallas County, Texas; TYPE OF FACILITY: drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; PENALTY: \$948; ENFORCEMENT COORDINATOR: Deana Holland, (512) 239-2504; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800

(5) COMPANY: Fresh, Inc. dba Prince Cleaners; DOCKET NUMBER: 2006-0840-DCL-E; IDENTIFIER: RN103953576; LOCATION: Flower Mound, Denton County, Texas; TYPE OF FACILITY: drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the Facility's registration by completing and submitting the required registration; PENALTY: \$948; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800

(6) COMPANY: Larry Hassell dba Hassell Cleaners; DOCKET NUMBER: 2006-0847-DCL-E; IDENTIFIER: RN104428107; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the Facility's registration by completing and submitting the required registration; PENALTY: \$948; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800

(7) COMPANY: Hoa Bui Enterprises, Inc. dba Mpress Cleaners; DOCKET NUMBER: 2006-0869-DCL-E; IDENTIFIER: RN104131461; LOCATION: Hurst, Tarrant County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the Facility's registration by completing and submitting the required registration form; PENALTY: \$948; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800

(8) COMPANY: City of Keller; DOCKET NUMBER: 2006-0946-WQ-E; IDENTIFIER: RN101242824; LOCATION: Keller, Tarrant County, Texas; TYPE OF FACILITY: public water supply distribution line; RULE VIOLATED: the Code, §26.121(a)(1), by failing to prevent an unauthorized discharge of chlorinated water; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800

(9) COMPANY: KNRK, Inc. dba RK Cleaners; DOCKET NUMBER: 2006-0765-DCL-E; IDENTIFIER: RN104066097; LOCATION: McKinney, Collin County, Texas; TYPE OF FACILITY: drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew its registration by completing and submitting the required registration form; PENALTY: \$711; ENFORCEMENT COORDINATOR: Cari-Michel LaCaille, (512) 239-1387; REGIONAL

OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800

(10) COMPANY: Overseas Enterprises USA, Inc. dba Gateway Travel Plaza; DOCKET NUMBER: 2006-0609-PST-E; IDENTIFIER: RN101743730; LOCATION: Vidor, Orange County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.242(3)(A) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system (VRS) in proper operating condition and free of defects that would impair the effectiveness of the system; 30 TAC §334.8(c)(4)(A)(vii), (c)(5)(A)(i), and (c)(5)(B)(ii), by failing to timely renew a previously issued TCEQ delivery certificate by submitting a properly completed underground storage tank (UST) registration and self-certification form and by failing to make available to a common carrier a valid, current TCEQ delivery certificate; 30 TAC §334.50(b)(2) and (b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to monitor the piping associated with the UST system in a manner designed to detect releases and by failing to test the line leak detectors; and 30 TAC §334.10(b), by failing to maintain all UST records and make available for inspection; PENALTY: \$35,182; ENFORCEMENT COORDINATOR: Deana Holland, (512) 239-2504; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838

(11) COMPANY: Chun Lee dba Quorum Cleaners; DOCKET NUMBER: 2006-0763-DCL-E; IDENTIFIER: RN103956967; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew its registration by completing and submitting the required registration form; PENALTY: \$711; ENFORCEMENT COORDINATOR: Cari-Michel LaCaille, (512) 239-1387; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800

(12) COMPANY: S & A Lee Corporation dba Metrocrest Cleaners; DOCKET NUMBER: 2006-0786-DCL-E; IDENTIFIER: RN100763945; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew its registration by completing and submitting the required registration form; PENALTY: \$948; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800

(13) COMPANY: Weldon W. Alders dba Settlers Crossing; DOCKET NUMBER: 2006-1046-MLM-E; IDENTIFIER: RN102672938; LOCATION: Montgomery County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(C)(ii) and (iii) and THSC, §341.0315(c), by failing to meet the minimum water system capacity requirements by not providing a total storage capacity of 200 gallons per connection and two gallons per minute (gpm) per connection; and 30 TAC §291.93(3) and the Code, §13.139(d), by failing to submit to the executive director a planning report; PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Amy Martin, (512) 239-2540; REGIONAL OFFICE: 5425 Polk Avenue, Houston, Texas 77023-1486, (713) 767-3500

(14) COMPANY: Textech Environmental, Inc. and Ronnie Bowyer; DOCKET NUMBER: 2006-0503-MWD-E; IDENTIFIER: RN104927835; LOCATION: Burleson, Johnson County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: the Code, §26.121(a), by failing to prevent an unauthorized discharge of waste; PENALTY: \$10,000; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800

(15) COMPANY: Westin Services, L.L.C.; DOCKET NUMBER: 2006-0988-SLG-E; IDENTIFIER: RN104959457; LOCATION: Hardin and Tyler Counties, Texas; TYPE OF FACILITY: sludge transportation; RULE VIOLATED: 30 TAC §312.142(a), by failing to obtain a sludge transporter registration; PENALTY: \$600; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838

TRD-200605307  
Mary R. Risner  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: September 25, 2006

◆ ◆ ◆  
**Notice of Application and Preliminary Decision for a  
Municipal Solid Waste Permit**

For the Period of September 25, 2006

APPLICATION. Liquid Environmental Solutions of Texas, L.P., 1821 East Sugarcane Drive, Weslaco, Hidalgo County, Texas 78596, a liquid waste management company has applied to the Texas Commission on Environmental Quality (TCEQ) for a municipal solid waste Type V-GG facility permit to authorize the processing of municipal solid waste grease trap waste, grit trap waste, and septage at the proposed facility. The facility is proposed to be located at 1821 East Sugarcane Drive, Weslaco, in Hidalgo County, Texas. The TCEQ received this application on December 29, 2005.

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Directors preliminary decision, and draft permit are available for viewing and copying at City of Weslaco Public Library, 525 S. Kansas Ave., Weslaco, Texas.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting about this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ holds a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the Executive Directors decision. A person who may be affected by the proposed facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in a state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name; address, phone; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the

facility in a way not common to the general public; and the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the groups representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected members location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the groups purpose. Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

**EXECUTIVE DIRECTOR ACTION.** The Executive Director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the Executive Director will not issue final approval of the permit and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. **MAILING LIST.** If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below. All written public comments and requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 within 30 days from the date of newspaper publication of this notice.

**INFORMATION.** If you need more information about this permit application or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. Si desea información en Español, puede llamar al 1-800-687-4040. General information about the TCEQ can be found at our web site at [www.TCEQ.state.tx.us](http://www.TCEQ.state.tx.us). Further information may also be obtained from Liquid Environmental Solutions of Texas, L.P., at the address stated above or by calling Mr. Patrick Reilly at (469) 461-6000.

TRD-200605337  
LaDonna Castañuela  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: September 27, 2006



#### Notice of District Petition

Notice Mailed September 21, 2006

TCEQ Internal Control No. 08232006-D05; Terrabrook Cinco Ranch Southwest, L.P. (Petitioner) filed a petition for creation of Cinco Southwest Municipal Utility District No. 4 (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, Residential Funding Corporation, 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 306.7 acres located in Fort Bend 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. 2006-121, effective February 14, 2006, the City of Houston, Texas, gave its consent to the creation of the proposed District. According to the petition, the Petitioners have 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 \$29,975,000.

#### INFORMATION SECTION

To view the complete issued notices, view the notices on our web site at [www.tceq.state.tx.us/comm\\_exec/cc/pub\\_notice.html](http://www.tceq.state.tx.us/comm_exec/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on 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 (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](http://www.tceq.state.tx.us).

TRD-200605339  
LaDonna Castañuela  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: September 27, 2006



#### Notice of Opportunity to Comment on Default Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations, the proposed penalty, and the proposed technical requirements necessary to bring the entity back into compliance and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 6, 2006**. The commission will consider any written comments received; and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 6, 2006**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Alfred Howard Smith; DOCKET NUMBER: 2005-1220-LII-E; TCEQ ID NUMBER: RN103259586; LOCATION: 5300 and 5304 Maple Court, Flower Mound, Denton County, Texas; TYPE OF FACILITY: landscape irrigation systems; RULES VIOLATED: 30 TAC §30.5(a) and (b) and §344.4, Texas Water Code (TWC), §37.003, and Texas Occupations Code, §1903.251, by failing to obtain an irrigation license prior to advertising or representing to the public to be a holder of an Irrigator license, and by failing to obtain an Irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing irrigation systems at the sites; 30 TAC §344.58(b), by using or attempting to use the license of someone else who is a licensed Irrigator; PENALTY: \$1,750; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Continental Land Owners Association, Inc.; DOCKET NUMBER: 2005-0301-PWS-E; TCEQ ID NUMBERS: 1012576 and RN101217354; LOCATION: between Atascocita Road and Farm-to-Market Road 1960, near Houston, Harris County, Texas; TYPE OF FACILITY: public water supply system; RULES VIOLATED: 30 TAC §290.109(c)(2) and Texas Health and Safety Code (THSC), §341.033(d), by failing to collect and submit routine monthly water samples from the facility for bacteriological analysis for the months of February - December 2004; 30 TAC §290.109(g) and §290.122(c), by failing to provide public notice related to the failure to sample in February - December 2004; 30 TAC §290.46(d)(2)(A) and §290.110(b)(4), by failing to maintain a minimum residual disinfectant

concentration of 0.2 milligrams per liter (mg/L) free chlorine within the distribution system; 30 TAC §290.46(m), by failing to ensure the good working condition and general appearance of the facility and its equipment; 30 TAC §290.41(c)(3)(O), by failing to protect the well site with an intruder-resistant fence; 30 TAC §290.46(t), by failing to post a legible facility ownership sign at the well site; 30 TAC §290.46(v), by failing to install all water system electrical wiring in compliance with a local or national electrical code; and 30 TAC §290.51 and TWC, §5.702, by failing to pay Public Health Service fees for Fiscal Years 2004 and 2005; PENALTY: \$5,038; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Intercontinental Water Supply Corporation; DOCKET NUMBER: 2006-0098-PWS-E; TCEQ ID NUMBER: RN102698651; LOCATION: 13935 Smith Road, Humble, Harris County, Texas; TYPE OF FACILITY: residential community public water supply facility; RULES VIOLATED: 30 TAC §290.45(b)(1)(E)(i) and THSC, §341.0315(c), by failing to provide a minimum well production capacity of at least 1.0 gallon per minute (gpm) per connection; 30 TAC §290.46(u), by failing to plug abandoned wells and by failing to test non-deteriorated wells; 30 TAC §290.46(f)(3)(D)(ii), by failing to retain for at least five years records documenting the results of pressure maintenance facility inspections; and 30 TAC §291.93(3)(A) and TWC, §13.139(d), by failing to submit to the Executive Director, not later than the 90th day after the date on which it reached 85% of its capacity, a planning report that included details on how the retail public utility would provide the expected service to the remaining areas within the boundaries of its certificated area; PENALTY: \$1,733; STAFF ATTORNEY: Shana Horton, Litigation Division, MC 175, (512) 239-1088; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Jopa Sports & Entertainment, Inc.; DOCKET NUMBER: 2005-1826-PWS-E; TCEQ ID NUMBER: RN101272391; LOCATION: 17951 I-45 South, Conroe, Montgomery County, Texas; TYPE OF FACILITY: public water supply system; RULES VIOLATED: 30 TAC §290.109(2)(A)(i) and THSC, §341.033(d), by failing to collect routine bacteriological samples for the months of April - September and November and December of 2004, and February and July of 2005; and 30 TAC §290.122(c)(2)(B), by failing to notify persons served by the facility of its failure to collect routine bacteriological samples; PENALTY: \$3,875; STAFF ATTORNEY: Shana Horton, Litigation Division, MC 175, (512) 239-1088; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: Kent F. Baltzell dba Oak Hill Acres Mobile Home Subdivision; DOCKET NUMBER: 2005-1861-PWS-E; TCEQ ID NUMBER: RN101223865; LOCATION: 29042 Blueberry Drive, Boerne, Bexar County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(ii) and §290.122(c)(2)(A), by failing to collect and submit routine bacteriological samples once per month and by failing to provide public notice of the failure to comply for the months of April, October, November, and December 2003, and January, March, April, May, October, and December 2004; PENALTY: \$4,375; STAFF ATTORNEY: Robert Mosley, Litigation Division, MC 175, (512) 239-0627; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(6) COMPANY: Kingwood Petroleum, LLC dba Country Boy Food Store 4; DOCKET NUMBER: 2006-0136-PST-E; TCEQ ID NUMBER: RN102961323; LOCATION: 5000 East Main Street,



Nacogdoches, Nacogdoches County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks (USTs); 30 TAC §334.50(b)(1)(A) and (b)(2)(A)(i)(III), and TWC, §26.3475(a) and (c)(1), by failing to monitor USTs for releases at a frequency of at least once every month, not to exceed 35 days between each monitoring, and by failing to test the line leak detectors once per year for performance and operational reliability; 30 TAC §334.38(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as a motor fuel; 30 TAC §334.7(d)(3) and §334.8(c)(4)(B) and (c)(5)(B)(ii), by failing to notify the commission within 30 days from the date of the occurrence of any change or addition to the UST system and by failing to renew a delivery certificate by submitting a complete UST registration and self-certification form in a timely manner for issuance of a delivery certificate; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the facility's USTs; 30 TAC §334.49(a) and TWC, §26.3475(d), by failing to provide corrosion protection for the UST system at the facility; and 30 TAC §334.22(a) and TWC, §5.702, by failing to pay outstanding UST late fees for TCEQ Account No. 0062525U for the Fiscal Years 2004 and 2005; PENALTY: \$23,500; STAFF ATTORNEY: Robert Mosley, Litigation Division, MC 175, (512) 239-0627; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(7) COMPANY: Marcario Gonzalez, Jr.; DOCKET NUMBER: 2006-0254-MSW-E; TCEQ ID NUMBER: RN104441860; LOCATION: 23419 Brazos Estate Drive, Hempstead, Waller County, Texas; TYPE OF FACILITY: real property that contains unauthorized disposal; RULES VIOLATED: 30 TAC §330.5(c), by failing to dispose of municipal solid waste at an authorized facility; PENALTY: \$5,250; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: Tommy Hooton; DOCKET NUMBER: 2006-0416-MSW-E; TCEQ ID NUMBER: RN104703129; LOCATION: 4000 Block County Road 902, approximately 0.4 miles east of County Road 101, west of Cleburne and north of State Highway 171, Johnson County, Texas; TYPE OF FACILITY: unauthorized municipal solid waste operation on real property; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the disposal of municipal solid waste at the site; PENALTY: \$3,150; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200605309

Mary Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: September 26, 2006



#### Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on

the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that, before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 6, 2006**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 6, 2006**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Bert Dickens dba Vista Ranch Water System; DOCKET NUMBER: 2001-1562-PWS-E; TCEQ ID NUMBER: RN101220911; LOCATION: 6115 Vista Ranch Road, Smithville, Bastrop County, Texas; TYPE OF FACILITY: water supply company; RULES VIOLATED: 30 TAC §290.41(c)(3)(A), by failing to submit well completion data; 30 TAC §290.43(e), by failing to provide a lock for the gate on the fence around the ground storage tank and an intruder resistant fence around the pressure tank; 30 TAC §290.41(c)(3)(O), by failing to provide an intruder resistant fence around the well; 30 TAC §290.41(c)(3)(N), by failing to install a meter at each well site; 30 TAC §290.41(c)(3)(P), by failing to provide an all-weather-access road to Well Nos. 1 and 2; 30 TAC §290.41(c)(3)(K), by failing to seal wellheads and pump bases and provide screened well casing vents; 30 TAC §290.44(h)(1)(A), and Texas Health and Safety Code (THSC), §341.033, by failing to install backflow prevention devices where an actual or potential contamination hazard exists; 30 TAC §290.46(d)(2)(A), by failing to maintain a free chlorine residual of 0.2 milligrams per liter (mg/L); 30 TAC §290.46(f)(2), by failing to make the water system's operating records accessible during the investigation; 30 TAC §290.42(e)(2), by failing to disinfect water before storage; 30 TAC §290.42(j), by failing to use a treatment chemical which conforms to American National Standards Institute/National Sanitation Foundation; 30 TAC §290.46(n)(2), by failing to make available an accurate, up-to-date map of the distribution system; 30 TAC §290.46(t), by failing to provide a system ownership sign; 30 TAC §290.46(r), by failing to maintain a minimum water pressure of 35 pounds per square inch; 30 TAC §290.42(e)(5), by failing to house the hypochlorination solution containers in a secure enclosure; 30 TAC §290.43(c)(3), by failing to provide the ground storage tank with a properly constructed overflow; 30 TAC §290.43(c)(4), by failing to provide the ground storage tank with a liquid level indicator; 30 TAC §290.43(c)(6), by failing to ensure the storage tank is tight against leakage; 30 TAC §290.44(c), by failing to install required size transmission lines; 30 TAC §290.44(a)(4), by failing



to locate water lines a minimum of 24 inches below ground surface; 30 TAC §290.41(c)(3)(K), by failing to maintain a proper screen on the well head vent; 30 TAC §290.46(d)(2)(A), by failing to maintain a free chlorine residual disinfectant concentration of at least 0.2 mg/L continuously throughout the distribution system; and 30 TAC §290.121(a), by failing to have available during the investigation, a site monitoring plan for chemical and bacteriological monitoring; PENALTY: \$15,188; STAFF ATTORNEY: Mark Curnutt, Litigation Division, MC 175, (512) 239-0624; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(2) COMPANY: Federal Bureau of Prisons; DOCKET NUMBER: 2005-2030-AIR-E; TCEQ ID NUMBER: RN100811066; LOCATION: 8500 Doniphan, Anthony, El Paso County, Texas; TYPE OF FACILITY: station that dispenses gasoline for Bureau of Prisons vehicles; RULES VIOLATED: 30 TAC §114.100(a) and THSC, §382.082(b), by failing to meet the minimum oxygen content requirement of 2.7% by weight for gasoline supplied for use as a motor vehicle fuel; PENALTY: \$840; STAFF ATTORNEY: Robert Mosley, Litigation Division, MC 175, (512) 239-0627; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(3) COMPANY: Good Brothers, Inc. dba Zoom In 5; DOCKET NUMBER: 2005-0570-PST-E; TCEQ ID NUMBER: RN102343399; LOCATION: 1201 Country Club Lane, Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks (USTs); PENALTY: \$4,200; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: KC Materials, Inc.; DOCKET NUMBER: 2004-1073-WQ-E; TCEQ ID NUMBER: RN104373931; LOCATION: 24711 North Cranes Mill Road, Canyon Lake, Comal County, Texas; TYPE OF FACILITY: retail water distribution system; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(a), by failing to obtain authorization to discharge storm water associated with industrial activity to the waters in the state through an individual permit, the Multi-Sector General Permit (MSGP) TXR050000 issued under the Texas Pollutant Discharge Elimination System or by qualifying for the Conditional No Exposure Certification for Exclusion under 40 CFR §122.26(g); PENALTY: \$6,000; STAFF ATTORNEY: Justin Lannen, Litigation Division, MC R-4, (817) 588-5927; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: Mardoche Abdelhak dba Trailer City Water Co.; DOCKET NUMBER: 2004-0237-PWS-E; TCEQ ID NUMBERS: 0150131 and RN101652048; LOCATION: 4555 Plumnear Road, San Antonio, Bexar County, Texas; TYPE OF FACILITY: retail water distribution system providing water to the public; RULES VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to provide a sanitary control easement for well No. 1; 30 TAC §290.46(e), by failing to have the facility under the supervision of a person holding a valid Class D or higher operator's license; and 30 TAC §290.51(b) and Texas Water Code (TWC), §5.702, by failing to pay Public Health Service fees (as recorded in account number 90150131); PENALTY: \$578; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512)

239-6500; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(6) COMPANY: Marvin's Chevron Service Center, Inc. dba Marvin's Chevron; DOCKET NUMBER: 2005-0043-PST-E; TCEQ ID NUMBER: 31786 and RN101794097; LOCATION: 4450 Kostoryz Road, Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: \$3,150; STAFF ATTORNEY: Alfred Oloko, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(7) COMPANY: Scott Hewitt dba Scott Hewitt Broiler Farm; DOCKET NUMBER: 2004-0459-AIR-E; TCEQ ID NUMBER: RN102289592; LOCATION: Locust Road, approximately 1.2 miles north of the intersection of Locust Road and Farm-to-Market Road 404, Gilmer, Upshur County, Texas; TYPE OF FACILITY: broiler and chicken production business; RULES VIOLATED: 30 TAC §101.4, and THSC, §382.085(a) and (b), by failing to control odors from the site which resulted in nuisance conditions of air pollution; PENALTY: \$6,500; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(8) COMPANY: South Texas Chlorine, Inc.; DOCKET NUMBER: 2004-0142-MLM-E; TCEQ ID NUMBERS: CD-0085-I, TXR05H669 and RN100943044; LOCATION: 8600 East Harrison, Harlingen, Cameron County, Texas; TYPE OF FACILITY: chemical repackaging plant; RULES VIOLATED: 30 TAC §116.115(c), THSC, §382.085(b), and New Source Review (NSR) Permit No. 21286, Special Condition No. 25, by failing to maintain the maximum allowed bleach production limit of 120 batches per year; 30 TAC §116.115(c), THSC, §382.085(b), and NSR Permit No. 21286, Special Condition Nos. 26(A), (D), (F), (G), and (H), by failing to meet the following record keeping requirements: (1) records of the railcar unloading operations and (2) records of the results of the required fugitive monitoring and maintenance program; 30 TAC §281.25(a)(4), §335.4, Multi Sector General Permit (MSGP) No. TXR05H669, Part III, Section A(3)(a) and (b), and TWC, §26.121, by failing to identify and obtain a permit for non-storm water discharge; 30 TAC §281.25(a)(4), and MSGP No. TXR05H669, Part III, Section A(4)(a), (b), and (c), by failing to include the following items in the Storm Water Pollution Prevention Plan (SWP3): (1) the inventory of exposed materials; (2) narrative description of all activities that could contribute pollutants to the storm water; and (3) two outfall locations on the site map; 30 TAC §281.25(a)(4), and MSGP No. TXR05H669, Part III, Section A(5)(b), (f), and (h), by failing to include a detailed description in the SWP3 of the following: (1) spill prevention and response measures where spills could contribute pollutants to storm water discharges; (2) an established training program for all employees responsible for implementing or maintaining the activities of the SWP3; and (3) of the nine required elements of Section A(5) 3 were not found; and 30 TAC §335.62 and 40 CFR §262.11, by failing to complete a hazardous waste determination of the two water waste streams generated as result of the washing of compressed gas cylinders and the one ton containers in the scrubber tanks; PENALTY: \$5,100; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(9) COMPANY: W&W Fiberglass Tank Company; DOCKET NUMBER: 2004-1427-AIR-E; TCEQ ID NUMBER: RN102004314; LOCATION: 207 South Price Road, Pampa, Gray County, Texas; TYPE OF FACILITY: fiberglass tank manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c), TCEQ Permit No. 47294, and THSC, §382.085(b), by failing to submit deviation reports no later than 30 days after the end of each reporting period; THSC, §370.008 and TWC, §5.702, by failing to pay past due Toxic Chemical Release fees; PENALTY: \$12,495; STAFF ATTORNEY: Shannon Strong, Litigation Division, MC 175, (512) 239-0972; REGIONAL OFFICE: Amarillo Regional Office, 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(10) COMPANY: Yari Enterprises, Inc. dba Git N Go; DOCKET NUMBER: 2004-0445-PST-E; TCEQ ID NUMBER: RN102245263; LOCATION: 302 South 17th Street, West Columbia, Brazoria County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.48(c) and §334.50(d)(1)(B)(ii), by failing to conduct manual or automatic inventory control for all USTs at the facility and by failing to conduct inventory control reconciliation on a monthly basis; 30 TAC §334.50(b)(1)(A), (b)(2)(A)(i)(III), and (b)(2)(A)(ii)(I), and TWC, §26.3475(a) and (c)(1), by failing to test line leak detectors and product piping at least once per year for performance and operational reliability, and by failing to monitor tanks (release detection) for releases at a frequency of at least once every month; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to conduct the annual and triennial Stage II Testing to verify proper operation of the Stage II equipment; and 30 TAC §334.22(a), by failing to pay outstanding UST fees for TCEQ Financial Administration Account Number 0059929U; PENALTY: \$17,100; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200605308

Mary Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: September 26, 2006



#### Notice of Opportunity to Comment on Shutdown/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Orders (S/DOs). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back

into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 6, 2006**. The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

Copies of each of the proposed S/DO are available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 6, 2006**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone numbers; however, comments on the S/DOs shall be submitted to the commission in **writing**.

(1) COMPANY: ECO Himal Incorporated dba Denton Food Mart; DOCKET NUMBER: 2005-1832-PST-E; TCEQ ID NUMBER: RN101447076; LOCATION: 4101 Denton Highway, Haltom City, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.51(b)(2)(C) and Texas Water Code (TWC), §26.3475(c)(2), by failing to equip each underground storage tank (UST) with a valve or other device designed to automatically shut off the flow of regulated substances into the tank when the liquid level in the tank reaches a preset level no higher than the 95% capacity level for the tank; 30 TAC §334.50(b)(1)(A), (b)(2)(A)(i)(III) and (d)(1)(B)(ii) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once per month, failed to test the line leak detector at least once per year for performance and operational reliability and failed to conduct reconciliation of detailed inventory control records at least once a month, sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow through for the month plus 130 gallons; PENALTY: \$3,570; STAFF ATTORNEY: Robert Mosley, Litigation Division, MC 175, (512) 239-0627; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Imtiaz Pirani dba Step N Go; DOCKET NUMBER: 2005-1691-PST-E; TCEQ ID NUMBER: RN102788445; LOCATION: 3202 Pasadena Freeway, Pasadena, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.246(1), (3), (4), (5), (6), and (7)(A) and §115.226(1), and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain all required Stage II records at the Station and make them available for review upon request by a TCEQ representative; 30 TAC §115.242(3) and (3)(B), and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition and free of defects; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to have proper release detection for the UST system; 30 TAC §334.10(b), by failing to maintain all UST records at the Station and make them available

to commission personnel upon request; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs; 30 TAC §334.22(a) and TWC, §5.702, by failing to pay UST fees for Fiscal Year 2006 for TCEQ Financial Assurance Account No. 0061211U and associated late fees for Fiscal Years 2005 and 2006; PENALTY: \$9,775; STAFF ATTORNEY: Deanna Sigman, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200605310

Mary Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: September 26, 2006



## Notice of Water Rights Application

Notices issued September 21, 2006 through September 26, 2006

APPLICATION NO. 12019; Bluegreen Communities of Texas, L.P., 2000 E. Lamar Blvd., Suite 290, Arlington, Texas 76006, Applicant, has applied for a Temporary Water Use Permit to use the bed and banks of an existing reservoir on an unnamed tributary of Stanley Creek, Trinity River Basin to convey groundwater for subsequent diversion and use of 960 acre-feet of groundwater within a period of three (3) years for agricultural (irrigation) purposes in Grayson County. Notice of this application was issued on September 8, 2006 to the 155 downstream water right holders of record and stated the comment period would end 30 days after the date of newspaper publication of the notice. Although, this application does not require newspaper publication pursuant to 30 TAC 295.161(b); and therefore, this notice is being mailed to the 155 downstream water right holders of record and establishes a 30 day comment period as defined below. The application was received on February 10, 2006, and additional information and fees were received on April 17, April 20, May 12, May 22, June 12, and August 9, 2006. The application was declared administratively complete and filed with the Office of the Chief Clerk on April 24, 2006. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk at the address provided in the information section below by October 23, 2006.

APPLICATION NO. 5716A; Magellan Terminals Holdings, L.P., Applicant, One Williams Center, P.O. Box 22186, Tulsa, Oklahoma 74141-2186, has applied for an amendment to Water Use Permit No. 5716 to add an additional diversion point on the Houston Ship Channel and to increase the maximum combined diversion rate to 37.210 cfs (16,700 gpm). The application was received on March 29, 2006. Additional information and fees were received on April 30 and August 9, 2006. The application was declared administratively complete and accepted for filing on August 18, 2006. 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. 12025; North Dallas Lawn Care and Landscape, Inc., A Texas Corporation, dba North Dallas Plant Sales, 10190 Forest Lane, Dallas, Texas, 75243, applicant, has applied for a Water Use Permit to maintain a dam and reservoir on Dixon Branch, Trinity River Basin, and divert and use not to exceed 41 acre-feet of water per year from the reservoir for agricultural (irrigation) purposes in Dallas County. The application was received on March 6, 2006. Additional information and fees were received on June 20, 2006. The application

was declared administratively complete and filed with the Office of the Chief Clerk on July 7, 2006. Written public comments and requests for a public meeting should be received in the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 12-5322E; Applicant, Chocolate Bayou Water Company (CBWC), P.O. Box 550, Alvin, Texas 77512-0550, has applied for an amendment to Certificate of Adjudication No. 12-5322 to add a diversion point upstream of the existing diversion point on the Brazos River and to clarify the place of use by including Galveston County as a portion of the owner's service area, thereby requesting an exempt interbasin transfer to the San Jacinto-Brazos Coastal Basin. The amendment application was received on June 12, 2006. Additional information was received on August 1 and August 8, 2006. The application was determined to be administratively complete and filed with the Office of the Chief Clerk on August 24, 2006. 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 16, 2006.

## INFORMATION SECTION

To view the complete issued notices, view the notices on our web site at [www.tceq.state.tx.us/comm\\_exec/cc/pub\\_notice.html](http://www.tceq.state.tx.us/comm_exec/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us). Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200605340

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 27, 2006



## Notice of Water Quality Applications

The following notices were issued during the period of September 21, 2006.

The following require the applicants to publish notice in the newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

BATESVILLE WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. 14394-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 184,000 gallons per day. The facility is located 4,225 feet southwest of the intersection of U.S. Highway 57 and State Highway 117 in Batesville in Zavala County, Texas.

CITY OF CENTER has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014720001, to authorize the discharge of decant from a water treatment plant at a daily average flow not to exceed 96,000 gallons per day. The facility is located north of Lake Center, approximately three miles south-southeast of the intersection of State Highway 96 and State Highway Spur 500 in Shelby County, Texas.

COLLIN PARK MARINA, INC. has applied for a renewal of TPDES Permit No. 12051-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility is located approximately 2.7 miles southeast of the intersection of Farm-to-Market Road 1378 and Farm-to-Market Road 2514, on the southwest side of Lavon Lake in Collin Park in Collin County, Texas.

DALLAS COUNTY PARK CITIES MUNICIPAL UTILITY DISTRICT has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014699001, to authorize the discharge of treated water treatment plant filter backwash water at a daily average flow not to exceed 720,000 gallons per day. The facility is located approximately 1,500 feet northwest of the intersection of Harry Hines Boulevard and Burbank Drive (the easterly extension of Regal Row) in Dallas County, Texas.

LAND ADVISORS, LTD. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014719001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility will be located approximately 4,096 feet north and 300 feet west of the State Highway Spur S 557 exit ramp gore from eastbound U.S. Highway 80 in Kaufman County, Texas.

NORTH FOREST MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. 10905-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility is located at 16230 Ella Boulevard (formally Medberry Road), approximately 1.4 miles southwest of the intersection of Interstate Highway 45 and Farm-to-Market Road 1960-West in Harris County, Texas.

CITY OF PORT NECHES has applied for a renewal of TPDES Permit No. 10477-001, which authorizes the discharge of filter backwash water from a water treatment plant at a daily average flow not to exceed 48,000 gallons per day. TCEQ received this application on May 05, 2006. The facility is located approximately 1.25 miles northwest of the intersection of Farm-to-Market Road 366 and State Highway Loop 136 in Jefferson County, Texas.

UNITED STATES DEPARTMENT OF THE AIR FORCE AND PETRUS ENVIRONMENTAL SERVICES, INC. has applied for

a renewal of TPDES Permit No. 12512-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 14,400 gallons per day. The facility is located approximately 8 miles north of the Town of Sandusky, on the southern shoreline of Lake Texoma in Grayson County, Texas.

CITY OF WEST TAWAKONI has applied for a renewal of TPDES Permit No. 14344-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility is located near the west shore of Lake Tawakoni approximately 1.5 miles south of Farm-to-Market Road 35 and 7 miles east of the City of Quinlan in Hunt County, Texas.

WESTWOOD SHORES MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. 11300-001, 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 one (1) mile north of Farm-to-Market Road 356 and three (3) miles east of the City of Trinity in Trinity County, Texas.

CITY OF WHITEWRIGHT has applied for a renewal of TPDES Permit No. WQ0010644001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 627,000 gallons per day. The facility is located approximately one block west of the intersection of Farm-to-Market Road 898 and the MK&T Railroad, north of the City of Whitewright in Grayson County, Texas.

WISE SERVICE COMPANY - WATER has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014708001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day. The facility will be located approximately 3.75 miles north northwest of the intersection of U.S. Highway 380 and Farm-to-Market Road 730 and approximately 1.4 miles east of the intersection of U.S. Highway 287 and County Road 2175 in Wise County, Texas.

WOODMERE DEVELOPMENT CO., L.P. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014697001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility will be located approximately 2,600 feet north of Highway 80 and approximately 2,000 feet west of the San Jacinto River in Harris County, Texas.

#### INFORMATION SECTION

To view the complete issued notices, view the notices on our web site at [www.tceq.state.tx.us/comm\\_exec/cc/pub\\_notice.html](http://www.tceq.state.tx.us/comm_exec/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at [www.TCEQ.state.tx.us](http://www.TCEQ.state.tx.us). Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200605338

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 27, 2006



#### Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Qual-

ity on September 26, 2006, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Hussain Ali; SOAH Docket No. 582-06-0243; TCEQ Docket No. 2004-1868-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Hussain Ali on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguia, Office of the Chief Clerk, (512) 239-3300.

TRD-200605341

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 27, 2006

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## Department of State Health Services

### Notice of Emergency Cease and Desist Order on Shawn A. Fyke, D.C., dba Lone Star Spine Associates

Notice is hereby given that the Department of State Health Services ordered Shawn A. Fyke, D.C., dba Lone Star Spine Associates (registrant R30565-000) of Waco to cease and desist using the Raytheon x-ray unit for certain procedures until the entrance exposure radiation levels are within regulatory limits.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200605317

Cathy Campbell

General Counsel

Department of State Health Services

Filed: September 26, 2006

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### Notice of Proposed Administrative Renewal of the Radioactive Material License of ConocoPhillips Company

Notice is hereby given by the Department of State Health Services (department) that it proposes to grant an administrative renewal pursuant to 25 Texas Administrative Code (TAC), §289.260(h) for a two-year period of Radioactive Material License Number L01634 issued to ConocoPhillips Company for a facility located in Karnes County, Texas, near Falls City, Texas.

The department has determined that the licensee has paid its license renewal fee, has a satisfactory compliance history and otherwise complies with the requirements of 25 TAC, §289.260(h).

This notice affords the opportunity for a public hearing upon written request by a person affected within 30 days of the date of publication of this notice as required by Texas Health and Safety Code, §401.264, and as set out in 25 TAC, §289.205(d). A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to a county,

in which the radioactive material is or will be located; or (b) doing business or has a legal interest in land in the county or adjacent county.

A person affected may request a hearing by writing Mr. Richard A. Ratliff, P.E., Radiation Program Officer, Division for Regulatory Services, 1100 West 49th Street, Austin, Texas 78756-3189. Any request for a hearing must contain the name and address of the person who considers himself affected by this action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated. Should no request for a public hearing be timely filed, the proposed issuance of the license will be final.

A public hearing, if requested, shall be conducted in accordance with the provisions of Texas Health and Safety Code, Chapter 401, the Administrative Procedure Act (Chapter 2001, Texas Government Code), the formal hearing procedures of the department (25 TAC, §1.21 et seq.), and the procedures of the State Office of Administrative Hearings (1 TAC, Chapter 155).

A copy of the proposed license and information regarding the license renewal is available for public inspection and copying, by appointment, at the office of the Radiation Safety Licensing Branch, Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, 8:00 a.m. to 5:00 p.m. Monday - Friday (except holidays). Information relative to inspection and copying the documents may be obtained by contacting Chrissie Toungate, Custodian of Records, Radiation Safety Licensing Branch.

TRD-200605320

Cathy Campbell

General Counsel

Department of State Health Services

Filed: September 27, 2006

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## Texas Health and Human Services Commission

### Notice of Hearing on Proposed Nursing Facility Payment Rates for State Veterans Homes

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on October 19, 2006, to receive public comment on proposed payment rates for the state-owned veterans nursing facilities. These nursing facilities are in the nursing facility program operated by Texas Department of Aging and Disabilities. These payment rates are proposed to be effective September 1, 2006.

The public hearing will be held on October 19, 2006, at 10:00 a.m. in the Permian Basin Room of Building H, Braker Center at 11209 Metric Boulevard, Austin, Texas 78758-4021. The hearing will be held in compliance with Title 1 of the Texas Administrative Code (TAC), §355.105(g), which requires public hearings on proposed payment rates.

Written comments regarding the proposed payment rates may be submitted in lieu of testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Irene Cantu, HHSC Rate Analysis, MC H-400, 1100 West 49th Street, Austin, Texas 78756-3101. Express mail can be sent, or written comments can be hand delivered, to Ms. Cantu, HHSC Rate Analysis, MC H-400, Braker Center Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021. Alternatively, written comments may be sent to Ms. Cantu via facsimile at (512) 491-1998 or by e-mail at irene.cantu@hhsc.state.tx.us. Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed payment rates by contacting Ms. Cantu by telephone at (512)

491-1358 or by facsimile, e-mail, or U.S. mail. Briefing packages also will be available at the hearing.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Ms. Cantu by October 6, 2006, so that appropriate arrangements can be made.

**Proposal.** As the single state agency for the state Medicaid program, HHSC proposes the following per day payment rates for the state-owned veterans nursing facilities effective September 1, 2006: Big Spring, \$133.00; Bonham, \$133.00; Floresville, \$133.00; Temple, \$133.00; McAllen, \$133.00; and El Paso, \$133.00. The proposed rates for each nursing facility are based upon the state veterans home semi-private basic daily rate in effect on the first day of the rate period in accordance with 1 TAC §355.311(d). These rates will be reconciled retrospectively based on actual costs in accordance with 1 TAC §355.311(j).

**Methodology and justification.** The proposed rates were determined in accordance with the rate reimbursement setting methodology at 1 TAC §355.311, Medicaid Reimbursement Rates for State Veterans Homes.

TRD-200605329

Wendy Pellow

Assistant General Counsel

Texas Health and Human Services Commission

Filed: September 27, 2006



## Houston-Galveston Area Council

### Request for Proposals

On Monday September 25, 2006, the Houston-Galveston Area Council will issue a Request for Proposals for Hurricane Katrina and Rita Services. We are soliciting projects that provide social services or health care to hurricane-affected individuals who live in the 13-county Houston-Galveston area. Prospective bidders may download a proposal package at <http://h-gac.com> beginning at 12:00 noon Central Daylight Time on September 25th. H-GAC will also fill telephone, mail or email requests for hard copies of the proposal package at that time. H-GAC will hold two bidder's conferences. One will be on Monday, October 9, 2006 at 9:00 a.m. in the Houston-Galveston Area Council's Conference Room A, 3555 Timmons, second floor, Houston, Texas 77027. The second bidder's conference will take place October 10, 2006 at 1:30 p.m. at the Liberty County Court Annex Building, 2103 Cos Street, Liberty, Texas 77575. Submit completed proposals to H-GAC by 12:00 noon on Wednesday, October 25, 2006. We will not accept late proposals, and we will not make exceptions. Direct questions about getting a proposal package to Carol Kimmick at (713) 627-3200 or [ckimmick@h-gac.com](mailto:ckimmick@h-gac.com).

TRD-200605311

Jack Steele

Executive Director

Houston-Galveston Area Council

Filed: September 26, 2006



## Texas Department of Housing and Community Affairs

### Request for Proposals for Tax Credit Counsel

**SUMMARY.** The Texas Department of Housing and Community Affairs (TDHCA), through its Legal Services Division, is issuing a Request for Proposals (RFP) for outside counsel in connection with TDHCA's administration of its low income housing tax credit matters.

**DEADLINE FOR SUBMISSION.** The deadline for submission in response to the Request for Proposals is 4:00 p.m., Central Daylight Saving Time, Friday, November 3, 2006. No proposal received after the deadline will be considered.

TDHCA reserves the right to accept or reject any (or all) proposals submitted. The information contained in this proposal request is intended to serve only as a general description of the services desired by TDHCA, and TDHCA intends to use responses as a basis for further negotiation of specific project details with offerors. This request does not commit TDHCA to pay for any costs incurred prior to the execution of a contract and is subject to availability of funds. Issuance of this request for proposals in no way obligates TDHCA to award a contract or to pay any costs incurred in the preparation of a response.

Law firms interested in submitting a proposal should contact Mr. Kevin Hamby, General Counsel, at (512) 475-3948, 221 East 11th. Street, Austin, TX 78701 or visit our website at [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us), for a complete copy of the RFP. Communication with any member of the board, the executive director, or TDHCA staff other than Mr. Hamby, concerning any matter related to this request for proposals is grounds for immediate disqualification.

TRD-200605314

Michael G. Gerber

Executive Director

Texas Department of Housing and Community Affairs

Filed: September 26, 2006



## Texas Department of Insurance

### Company Licensing

Application for admission to the State of Texas by AMERICAN CONTINENTAL INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Brentwood, Tennessee.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200605327

Gene C. Jarmon

Chief Clerk and General Counsel

Texas Department of Insurance

Filed: September 27, 2006



### Notice of Open Meeting

The Commissioner of Insurance (Commissioner) will hold an open meeting under Docket No. 2660 at 10:00 a.m. on October 25, 2006, in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, to consider a petition from the Texas Windstorm Insurance Association (Association) to suspend the rate change limitation of Texas Insurance Code Article 21.49 Section (h)(9) which provides that a rate established and authorized by the Commissioner for the Association may not reflect an average rate change that is more than 10 percent higher or lower than the rate for commercial or 10 percent higher or lower than the rate for noncommercial windstorm and hail insurance in effect on the date the filing is made. The Commissioner may suspend the requirement of Article 21.49 Section (h)(9) upon a finding that a catastrophe loss or series of occurrences resulting in losses in the catastrophe area justify a need to assure rate adequacy

in the catastrophe area and also justify a need to assure availability of insurance outside the catastrophe area.

On August 14, 2006, the Association submitted manual rate filings with rate indications for residential risks at least 20% higher than the rates in effect on that date and for commercial risks at least 22% higher than the rates in effect on that date. The Association has requested that the Commissioner consider the suspension of the rate limitation with regards to the August 14, 2006 manual rate filings. Copies of the Association petition for suspension of the requirement of Article 21.49 Section (h)(9) are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, TX 78701 during regular business hours. For further information or to request copies of the petition, please contact Sylvia Gutierrez at (512) 463-6327 (refer to Reference No. P-0906-19).

Written comments on the petition may be submitted to the Office of the Chief Clerk, Texas Department of Insurance, P.O. Box 149104, MC 113-2A, Austin, TX 78714-9104 prior to the hearing on October 25, 2006. An additional copy of the comments must be submitted to Philip O. Presley, Chief Actuary, P.O. Box 149104, MC 105-5F, Austin, TX 78714-9104. Interested persons may also present written and/or oral comments related to the filing at the open meeting.

This notification is made pursuant to the Insurance Code Article 21.49, which exempts the proceeding from Chapter 40 of the Insurance Code and Chapter 2001 of the Government Code.

TRD-200605306  
Gene C. Jarmon  
Chief Clerk and General Counsel  
Texas Department of Insurance  
Filed: September 26, 2006



## Texas Lottery Commission

### Instant Game Number 739 "Bonus Riches"

#### 1.0 Name and Style of Game.

A. The name of Instant Game No. 739 is "BONUS RICHES". The play style is "key number match with multiplier".

#### 1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 739 shall be \$10.00 per ticket.

#### 1.2 Definitions in Instant Game No. 739.

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 instant 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, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, MONEYBAG SYMBOL, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$250, \$500, \$1,000, \$10,000, \$25,000, \$100,000, and \$250,000.

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. 739 - 1.2D

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
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
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
<b>MONEYBAG SYMBOL</b>	<b>WINX10</b>
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$



\$15.00	FIFTEEN
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$250	TWO FTY
\$500	FIV HUND
\$1,000	ONE THOU
\$10,000	TEN THOU
\$25,000	25 THOU
\$100,000	HUN THOU
\$250,000	TFY 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 val-

idation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 739 - 1.2E

CODE	PRIZE
TEN	\$10.00
FTN	\$15.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, 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 \$10.00, \$15.00, or \$20.00.

H. Mid-Tier Prize - A prize of \$50.00, \$100, \$250, or \$500.

I. High-Tier Prize - A prize of \$1,000, \$10,000, or \$250,000.

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 (739), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 050 within each pack. The format will be: 739-0000001-001.

L. Pack - A pack of "BONUS RICHES" Instant Game tickets contains 50 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 050 will be exposed on one side of the pack and ticket 001 on the other side.

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 "BONUS RICHES" Instant Game No. 739 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 "BONUS RICHES" Instant Game is determined once the latex on the ticket is scratched off to expose 43 (forty-three) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to the WINNING NUMBER play symbol, the player wins the prize shown for that number. If a player reveals a "moneybag" play symbol, the player wins 10 TIMES the prize shown for that symbol. 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:

- Exactly 43 (forty-three) Play Symbols must appear under the latex overprint on the front portion of the ticket;
- 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;
- Each of the Play Symbols must be present in its entirety and be fully legible;
- Each of the Play Symbols must be printed in black ink except for dual image games;
- The ticket shall be intact;
- 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 43 (forty-three) 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 43 (forty-three) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 43 (forty-three) 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.

C. Non-winning prize symbols will never be the same as the winning prize symbol(s).

D. No prize amount in a non-winning spot will correspond with the YOUR NUMBER play symbol (i.e., 5 and \$5).

E. No ticket will contain 4 or more matching non-winning prize symbols.

F. No duplicate WINNING NUMBERS play symbols.

G. The "moneybag" (win x 10) symbol will only appear on intended winning tickets as dictated by the prize structure.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "BONUS RICHES" Instant Game prize of \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$250, or \$500, 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 \$50.00, \$100, \$250, or \$500 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 Section 2.3.C of these Game Procedures.

B. To claim a "BONUS RICHES" Instant Game prize of \$1,000, \$10,000, or \$250,000, 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 "BONUS RICHES" 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 of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Office of the Attorney General;
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 Resources 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 "BONUS RICHES" 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 "BONUS RICHES" 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 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 3,000,000 tickets in the Instant Game No. 739. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 739 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$10	600,000	5.00
\$15	180,000	16.67
\$20	150,000	20.00
\$50	60,000	50.00
\$100	21,000	142.86
\$250	6,250	480.00
\$500	2,375	1,263.16
\$1,000	32	93,750.00
\$10,000	6	500,000.00
\$250,000	5	600,000.00

\*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 2.94. 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 Commission.

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. 739 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. 739, 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-200605336  
Kimberly Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: September 27, 2006

## North Central Texas Council of Governments

### Contractor Proposal Request

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

The North Central Texas Council of Governments (NCTCOG) is requesting written proposals from consultant firms to conduct a Joint Land Use Study (JLUS). This is a Land Use Compatibility Study to focus on encroachment and land use issues surrounding the Naval Air Station Joint Reserve Base (NAS JRB) in Fort Worth, Texas. The JLUS is a standard Department of Defense study designed to bring together multiple jurisdictions to promote compatible land development in proximity to the military installation through land development recommendations related to zoning, subdivision regulations, and building code. The goal of the JLUS is to identify actions that can be taken jointly by the community and installation to promote compatible development and address current and future encroachment concerns.

### Due Date

Proposals must be received no later than 5:00 p.m. Central Daylight Time on Friday, November 3, 2006, to Mike Sims, Senior Program Manager, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 or P.O. Box 5888, Arlington, Texas 76005-5888. For copies of the Request for Proposals, contact Therese Bergeon at (817) 695-9267.

### Contract Award Procedures

The firm or individual selected to perform these activities will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

### Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code, §§2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that, in regard to any contract entered into pursuant to this advertise-

ment, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-200605318  
R. Michael Eastland  
Executive Director  
North Central Texas Council of Governments  
Filed: September 27, 2006

## Texas Department of Public Safety

### Hazard Mitigation Grant Program (HMGP) DR-1658

On August 15, 2006, the President declared major disaster DR-1658, as a result of the El Paso flooding. The disaster DR-1658 declaration makes the Hazard Mitigation Grant Program (HMGP) available statewide. The State will give priority to applications from the declared area.

The State has established the following deadline. Notices of Interest (NOIs) for HMGP project grants must be submitted/postmarked by Friday October 13, 2006.

The standard *Notice of Interest and Hazard Mitigation Team Report* form is to be used. The NOI form, as well as instructions for completing the form (Mitigation Job Aid #1) are available for download from hazard mitigation documents off the Division of Emergency Management (DEM) web-site at <http://www.txdps.state.tx.us/dem/pages/downloadableforms.htm#mitigation>. After processing your submissions we will provide your point-of-contact with additional guidance and establish a deadline for return of completed applications, approximately 30 days later.

Please refer e-mail NOI forms and questions to the:

HMGP Project Officer

Hildy Soper

(512) 424-2454

e-mail: [hildy.soper@txdps.state.tx.us](mailto:hildy.soper@txdps.state.tx.us)

If mailing or faxing in NOIs, send to:

Texas Department of Public Safety

Division of Emergency Management

P.O. Box 4087

FAX# (512) 424-5647

TRD-200605233

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Filed: September 20, 2006

## Public Utility Commission of Texas

### Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on September 20, 2006, for a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Application of Time Warner Cable for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 33225 before the Public Utility Commission of Texas.

Applicant intends to expand its service area footprint to include all unincorporated areas (excluding federal properties) in Archer, Atascosa, Bee, Brooks, Calhoun, Cameron, Chambers, Clay, Colorado, Dewitt, Dimmit, Dona Ana, Duval, El Paso, Frio, Gonzales, Hardin, Hidalgo, Jefferson, Jim Hogg, Jim Wells, Kerr, La Salle, Lavaca, Live Oak, Maverick, Nueces, Orange, Refugio, San Patricio, Starr, Uvalde, Val Verde, Webb, Wichita, Willacy, Zapata, and Zavala Counties.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 33225.

TRD-200605246  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: September 21, 2006



#### Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on September 20, 2006, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Clearview Electric, Incorporated for Retail Electric Provider (REP) certification, Docket Number 33226 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire State of Texas.

Persons wishing 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 13, 2006. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 33226.

TRD-200605247  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: September 21, 2006



#### Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on September 20, 2006, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Current Power and Light for Retail Electric Provider (REP) Certification, Docket Number 33227 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire State of Texas.

Persons wishing 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 13, 2006. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 33227.

TRD-200605248  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: September 21, 2006



#### Notice of Application for Amendment to Certificate of Operating Authority

On September 21, 2006, ETS Telephone Company, Incorporated filed an application with the Public Utility Commission of Texas (commission) to amend its certificate of operating authority (COA) granted in COA Certificate Number 50001. Applicant intends to reflect a change in ownership/control wherein Boston Ventures Limited Partnership VII will acquire control of En-Touch Systems, Incorporated, the parent company of ETS Telephone Company, Incorporated.

The Application: Application of ETS Telephone Company, Incorporated for an Amendment to a Certificate of Operating Authority, Docket Number 33233.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than October 13, 2006. 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 33233.

TRD-200605262  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: September 22, 2006



#### Notice of Application for Amendment to Certificated Service Area Boundary

Notice is given to the public of an application filed on September 22, 2006 with the Public Utility Commission of Texas, for an amendment to a certificated service area boundary in Williamson County, Texas.

Docket Title and Number: Application of AT&T Texas to Amend Certificate of Convenience and Necessity for a Service Area Boundary Between the Round Rock Zone of the Austin Metropolitan Exchange of AT&T Texas and the Georgetown Exchange of Verizon. Docket Number 33249.

The Application: The minor boundary amendment is being filed to amend the common serving area boundary between the Round Rock Zone (Austin Metropolitan Exchange) of AT&T Texas and the George-

town Exchange of Verizon Southwest (Verizon). Verizon has provided a letter of concurrence for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by October 13, 2006, 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 33249.

TRD-200605335  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: September 27, 2006



#### Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On September 21, 2006, DSLnet Communications, LLC filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60253. Applicant intends to reflect a change in ownership/control wherein MDS Acquisition, Incorporated will acquire control of DSLnet Communications, LLC.

The Application: Application of DSLnet Communications, LLC for an Amendment to a Service Provider Certificate of Operating Authority, Docket Number 33234.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than October 13, 2006. 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 33234.

TRD-200605261  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: September 22, 2006



#### Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on September 20, 2006, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Syniverse Technologies, Incorporated for a Service Provider Certificate of Operating Authority, Docket Number 33224 before the Public Utility Commission of Texas.

Applicant intends to provide facilities-based signaling and resale of private line/private network telecommunications services.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326,

Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than October 11, 2006. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 33224.

TRD-200605245  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: September 21, 2006



#### Notice of Application to Amend Certificated Service Area Boundaries in Cameron County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on September 19, 2006, for an amendment to certificated service area boundaries within Cameron County, Texas.

Docket Style and Number: Application of the Brownsville Public Utilities Board (BPUB) for an Amendment to a Certificate of Convenience and Necessity for Service Area Boundaries within Cameron County (Circle K Store). Docket Number 33217.

The Application: The application encompasses an area of land which is singly certificated to American Electric Power Company (AEP), formerly known as Central Power & Light (CP&L), and is within the corporate limits of the City of Brownsville. BPUB received a letter request from Mary E. Sullivan requesting BPUB to provide electric utility service to a new Circle K Store that will be located at the southwest corner of U.S. Expressway 77 and FM 1732 (Anacua Street). The estimated cost to BPUB to provide service to this proposed area is \$9,400.00. If the application is granted the area would be dually certificated for electric service.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas no later than October 13, 2006, 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 33217.

TRD-200605331  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: September 27, 2006



#### Notice of Application to Amend Certificated Service Area Boundaries in Dallam County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on September 21, 2006, for an amendment to certificated service area boundaries within Dallam County, Texas.

Docket Style and Number: Application of Southwestern Public Service Company (An Xcel Energy Company) to Amend a Certificate of Convenience and Necessity for an Electric Service Area Exception within Dallam County. Docket Number 33232.

The Application: Southwestern Public Service Company, an Xcel Energy Company, (SPS) filed an application for a service area exception

to amend certificated service area boundaries within Dallam County, Texas. SPS seeks to provide service to a specific customer located within the certificated service area of Rita Blanca Electric Cooperative, Incorporated (RBEC). Mr. Will Allen is requesting service for five irrigation wells totaling 1,500 horsepower.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than October 13, 2006, 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 33232.

TRD-200605332  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: September 27, 2006



### Notice of Application to Amend Certificated Service Area Boundaries in Denton County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on September 19, 2006, for an amendment to certificated service area boundaries within Denton County, Texas.

Docket Style and Number: Application of CoServ Electric and City of Sanger to Amend Certificate of Convenience and Necessity for Service Area Boundaries within Denton County. Docket Number 33208.

The Application: CoServe seeks to amend its service area boundaries to provide service to all the residential lots in the Sable Creek Subdivision. CoServe currently provides service in the first phase of the Sable Creek Subdivision and the developer has requested that CoServe serve the remaining residential lots in the next phase of development. CoServe has facilities in place and can extend those facilities at less cost than the City of Sanger. The City of Sanger is in full agreement with the territory amendment.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than October 13, 2006 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 33208.

TRD-200605330  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: September 27, 2006



### Notice of Application to Amend Certificated Service Area Boundaries in Hartley County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on September 22, 2006, for an amendment to certificated service area boundaries within Hartley County, Texas.

Docket Style and Number: Application of Southwestern Public Service Company (An Xcel Energy Company) to Amend a Certificate of Con-

venience and Necessity for an Electric Service Area Exception within Hartley County. Docket Number 33247.

The Application: Southwestern Public Service Company, an Xcel Energy Company, (SPS) filed an application for a service area exception to amend certificated service area boundaries within Hartley County, Texas. SPS seeks to provide service to a specific customer located within the certificated service area of Rita Blanca Electric Cooperative, Incorporated (RBEC). Dare Investments is requesting three-phase electric service for a dairy and five irrigation wells totaling 1000 horsepower.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than October 13, 2006, 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 33247.

TRD-200605333  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: September 27, 2006



### Notice of Application to Amend Certificated Service Area Boundaries in Moore County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on September 22, 2006, for an amendment to certificated service area boundaries within Moore County, Texas.

Docket Style and Number: Application of Southwestern Public Service Company (an Xcel Energy Company) to Amend a Certificate of Convenience and Necessity for an Electric Service Area Exception within Moore County. Docket Number 33248.

The Application: Southwestern Public Service Company an Xcel Energy Company (SPS) filed an application for a service area exception to amend certificated service area boundaries within Moore County, Texas. SPS seeks to provide service to a specific customer located within the certificated service area of Rita Blanca Electric Cooperative, Incorporated (RBEC). BP North American Gas is requesting service for an 80 horsepower gas compressor.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than October 13, 2006, 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 33248.

TRD-200605334  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: September 27, 2006



### Notice of Application to Relinquish Retail Electric Provider Certification

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on September 21, 2006, to relinquish retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Cinergy Retail Power, LP to Relinquish its Retail Electric Provider (REP) Certification, Docket Number 33231 before the Public Utility Commission of Texas.

Persons wishing 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 13, 2006. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 33231.

TRD-200605263  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: September 22, 2006



#### 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 19, 2006, 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 October 2, 2006.

Docket Title and Number: Application of CenturyTel of Port Aransas, Incorporated for Approval of LRIC Study for ISDN-PRI Service Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 33216.

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 33216. 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 33216.

TRD-200605244  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: September 21, 2006



#### 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 22, 2006, 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 October 2, 2006.

Docket Title and Number: Application of Texas Windstream, Incorporated for Approval of LRIC Study for New Residential Custom Calling

Bundles Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 33246.

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 33246. 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 at 1-800-735-2989. All comments should reference Docket Number 33246.

TRD-200605324  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: September 27, 2006



#### 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 25, 2006, 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 October 5, 2006.

Docket Title and Number: Application of United Telephone Company of Texas, Incorporated, doing business as Embarq, for Approval of LRIC Study to Introduce Call Forward Additional Paths Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 33256.

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 33256. 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 at 1-800-735-2989. All comments should reference Docket Number 33256.

TRD-200605325  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: September 27, 2006



#### 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 25, 2006, 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 October 5, 2006.

Docket Title and Number: Application of Central Telephone Company of Texas, doing business as Embarq, for Approval of LRIC Study to Introduce Call Forward Additional Paths Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 33257.



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 33257. 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 at 1-800-735-2989. All comments should reference Docket Number 33257.

TRD-200605326

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: September 27, 2006

## Texas Residential Construction Commission

### Notice of Applications for Designation as a "Texas Star Builder"

The commission adopted rules regarding the procedures for designation as a "Texas Star Builder" at 10 TAC §303.300. The rules were adopted pursuant to §416.011, Property Code (Act effective Sept. 1, 2003), which provides that the commission shall establish rules and procedures through which a builder can be designated as a "Texas Star Builder." The commission rules for application for designation can be found on the commission's website at [www.trcc.state.tx.us](http://www.trcc.state.tx.us).

10 TAC §303.300(i)(2) requires the commission to publish in the *Texas Register* notice of the application of each person seeking to become designated as a "Texas Star Builder" registered under this subchapter. The commission will accept public comment on each application for twenty-one (21) days after the date of publication of the notice. Information provided in response to this notice will be utilized in evaluating the applicants for approval. The Texas Star Builder designation requires that a builder or remodeler demonstrate that its education, experience and commitment to professionalism sets the builder or remodeler apart from its peers and offers some assurance to its customers that its quality of service and construction will be above average.

Pursuant to 10 TAC §303.300(i)(2) the commission hereby notices the application(s) for designation as a "Texas Star Builder" of:

Estate Craft Homes, 932 W. Dallas, Suite B, Conroe, TX 77304; TRCC builder registration certificate #9665; and the registered agent is Casey Butaud.

Hawkins-Welwood Homes, L.P., 17480 N. Dallas Parkway, Suite 217, Dallas, TX 75287; TRCC builder registration certificate #8477, the registered agents are John Hawkins, Steven Burke and Larry Aulenbach; the individual submitted for qualification in the program, in addition to Mr. Burke, is Kirk Hashbarger.

Terra Homes Corp., 900 Las Brisas Dr., Mission, TX 78574; TRCC builder registration certificate #3151; and the registered agent is Edward Anthony de la Tejera.

Texas Heritage Custom Homes, Inc., 2693 N. Hwy 77, Suite 1104, Waxahachie, TX 75165; TRCC builder registration certificate #7308; the registered agent is Laurie Whitlock; and the individual submitted for qualification in the program is Lance Whitlock.

Interested persons may send signed written comments regarding this application to Susan K. Durso, General Counsel, The Texas Residential Construction Commission, P.O. Box 13144, Austin, TX 78711-3144. Comments regarding this application will be accepted for twenty-one

days following the date of publication of this notice in the *Texas Register*. Thereafter, the comments will not be considered as timely filed.

TRD-200605283

Susan K. Durso

General Counsel

Texas Residential Construction Commission

Filed: September 22, 2006

## Texas Department of Transportation

### 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>. Under Citizen, click on Hearings and Meetings, 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-200605231

Bob Jackson

General Counsel

Texas Department of Transportation

Filed: September 20, 2006

## Texas A&M University, Board of Regents

### Public Notice Issued September 23, 2006 (Announcement of Finalist for the Position of Director of the Texas Transportation Institute)

Pursuant to Section 552.123, Texas Government Code, the following candidate is the finalist for the position of Director of the Texas Transportation Institute. Upon the expiration of twenty-one days, final action is to be taken by the Board of Regents of The Texas A&M University System.

Dennis L. Christiansen

TRD-200605287

Vickie Burt Spillers

Executive Secretary to the Board of Regents

Texas A&M University, Board of Regents

Filed: September 25, 2006

## Texas Water Development Board

### Request for Qualifications for Financial Advisor and/or Investment Advisor Texas Water Development Board/Texas Water Resources Finance Authority

#### I. STATEMENT OF PURPOSE

The Texas Water Development Board and the Texas Water Resources Finance Authority (TWDB/TWRFA), pursuant to Texas Government Code §1201.027 and §2256.003, issue this Request for Qualifications (RFQ) for consulting services. The purpose is to retain a firm or firms to act as TWDB/TWRFA's Financial Advisor and/or Investment Advisor on: (1) all items of financing for TWDB/TWRFA's loan programs, including the issuance of general obligation and revenue bonds; and/or

for (2) investment advisory services, including all money management activities.

This RFQ is issued for the purpose of selecting a firm or firms for these consulting services from January 1, 2007, to August 31, 2008, as described herein. The initial contract(s) will be negotiated for one (1) year and eight (8) months. The current Financial Advisor contract with First Southwest Company, Inc. (FSW) will expire on December 31, 2006. The current contract with FSW provides for debt issuance advisory assistance only.

The TWDB/TWRFA retains the right to terminate the contract(s) for any reason and at any time upon the payment of then-earned fees and expenses with a thirty (30) day written notice.

It is the policy of TWDB/TWRFA to make a good faith effort to include participation by Historically Underutilized Business (HUB) certified firms. HUB certified firms are defined as for-profit business entities that are certified as a HUB by the Texas Building and Procurement Commission.

## II. FORM OF SUBMISSION

All proposals should be hand-delivered **or** mailed to:

**Nancy Banks Marsteller**

**Development Fund Manager**

**Texas Water Development Board**

**1700 North Congress Avenue, Room 516-C**

**Austin, Texas 78701**

Contact with Board Members regarding this RFQ is expressly prohibited and will result in disqualification of your proposal. Any questions or comments may be directed to the above name and address or by calling (512) 475-2091.

All proposals must be in a sealed envelope and clearly marked in the lower left corner: "Proposal for Financial Advisor and/or Investment Advisor." All proposals must be received by **12:00 noon (CDT), Thursday, October 12, 2006**, and eight (8) copies of the proposal must be presented. The proposal should indicate the name and phone number of the principal contact for your firm.

**All proposals must specify whether they are for Financial Advisor, Investment Advisor, or both services.**

Please respond to all questions of **Sections VI and/or VII--Proposal Submission**, in the order presented. Initiate each response by restating the question. Start each respective answer on a new page and please limit the total number of written pages (exclusive of printed promotional material or reports) to forty (40) pages, if submitting a proposal for both services. Those proposals that do not follow this format may be disqualified.

No oral interviews are expected to be conducted relative to the selection. Staff anticipates recommending a firm or firms to serve as Financial Advisor and/or Investment Advisor at the TWDB/TWRFA meetings regularly scheduled for Tuesday, November 14, 2006.

## III. TERMS AND CONDITIONS:

\*The TWDB/TWRFA reserves the right to reject any or all proposals and/or to award the contract to an alternate firm if any selected firm does not execute a contract within thirty (30) days after the award.

\*The TWDB/TWRFA reserves the right to request clarification of information submitted and to request additional information, if necessary.

\*Both the TWDB/TWRFA and the Financial Advisor and/or Investment Advisor shall have the right to terminate the contract by specifying

the date of termination in a written notice to the other party at least thirty (30) working days before the termination date. In this event, the firm shall be entitled to just and equitable compensation for any satisfactory work completed.

\*Any agreement(s) or contract(s) resulting from the acceptance of a proposal shall be in a form either supplied by **or** approved by the TWDB/TWRFA and shall contain, as a minimum, applicable provisions of the RFQ. The TWDB/TWRFA reserves the right to reject any agreement that does not conform to the RFQ and requirements for agreements and contracts.

\*The firm or firms shall not assign any interest in the contract(s) and shall not transfer any interest in the same without prior written consent of the TWDB/TWRFA. Acquisition of a firm by another firm is considered a transfer. Change of control, sale of a firm, or any change in the key personnel specified in the RFQ and contract will subject the contract to review and possible termination with a thirty (30) day written notice.

\*No reports, information or data given to or prepared by any firm under contract shall be made available by the firm to any individual or organization without the prior verbal or written approval of designated employees of the TWDB/TWRFA.

\*Any and all data provided by the TWDB/TWRFA during the RFQ or under a contract is the property of the TWDB/TWRFA and shall be returned to the TWDB/TWRFA upon request.

\*Specific analytical software developed at the request and expense of the TWDB/TWRFA is the property of the TWDB/TWRFA and upon request shall be returned to the TWDB/TWRFA.

## IV. SCOPE OF SERVICES TO BE PROVIDED--FINANCIAL ADVISOR

The Financial Advisor is responsible for all duties and services necessary or advisable to facilitate the issuance of bonds and other obligations, including but not limited to:

Working with TWDB/TWRFA staff on:

\*devising and recommending a plan of financing for bonds to be issued, which plan shall include a maturity schedule and other terms and conditions, as will result in the most advantageous terms, consistent with a minimum effective interest rate, including determining the timing of the offering and the sizing of each bond issue;

\*participating in document preparation and assisting bond counsel in the coordination of the offering, including preparing such information, as necessary, for the rating agencies and upon approval, assisting in the presentation to such agencies; assisting in maintaining on-going relationships with the credit rating agencies;

\*participating in Preliminary Official Statement and Official Statement preparation;

\*advise concerning the need for credit enhancement and assisting in the negotiations regarding such;

\*assisting in closing details and post-closing duties, including the development of closing memorandum;

\*advising the staff of new developments in the municipal bond industry;

\*soliciting bids for printing of bond offering documents, ratings, and other related services when necessary;

\*monitoring and assisting in the negotiation of all fees and expenses incurred in connection with the issuance of the bonds;

\*monitoring and advising on refunding opportunities, debt defeasance, and other financial products that would help lower the cost of borrowing money; and

\*assist in all other matters necessary or incidental to the issuance and administration of debt obligations as directed by the Development Fund Manager or Executive Administrator.

## **V. SCOPE OF SERVICES TO BE PROVIDED--INVESTMENT ADVISOR**

The Investment Advisor will assist TWDB/TWRFA staff with the following daily investment duties:

\*assist in developing and implementing investment strategies which will enhance the TWDB/TWRFA portfolio performance within the parameters of the established investment rules (The rules in 31 Texas Administrative Code, Chapter 365, are available upon request from the board, or may be found at the Secretary of State's internet address: <http://www.sos.state.tx.us/tac/>; then sequentially select, "TAC Viewer," "Title 31," "Part 10," and "Chapter 365.") and the Public Funds Investment Act (Chapter 2256, Texas Government Code), cash flow needs, and guidelines provided by the TWDB/TWRFA;

\*provide investment services which may include some or all of the following:

Execute investment trades

Market analysis and research

Assistance with selection of financial institutions (banks, brokers, etc.)

Review and feedback on the investment policy

Staff and Board member training

Investment strategy implementation; and

\*provide detailed quarterly reports to the TWDB/TWRFA for their review of portfolio performance and strategy refinement.

*Custodial services will not be a part of the services required under this RFQ.*

## **VI. PROPOSAL SUBMISSION--FINANCIAL ADVISOR**

### **A. QUALIFICATIONS**

1. Provide a brief description of the firm, including general experience and history in public finance, number of offices, location and number of professionals and employees in each office, description of specialty practice areas and firm philosophy. Indicate which office(s) will be responsible for day-to-day contact and describe structure of firm ownership (e.g., publicly held corporation, partnership, etc.) and any parents, affiliates, or subsidiaries of the firm.

2. List the firm's experience since January 2004 as a Financial Advisor of general obligation and revenue bond issues for pooled municipal obligations.

3. Describe the firm's experience since January 2004 as a Financial Advisor of issues of political subdivision bonds for water and wastewater projects.

4. Please select **one transaction from #2** above, and **one transaction from #3** above that you feel best demonstrates your firm's financial advisory capabilities and describe in detail the financial issues involved in each transaction and your firm's approach and the outcome to the analysis. (Please limit discussion to one page for each selected transaction.)

5. Describe your firm's technology capabilities and how it ties into your strategic financial planning for the TWDB/TWRFA.

6. Describe the steps your firm would take as Financial Advisor to ensure the pricing process on negotiated sales and the bidding process on competitive sales render the lowest true interest cost.

7. Provide resumes of the key staff to be assigned to work with the TWDB/TWRFA including their areas of expertise and years of Financial Advisor experience. List the office location and telephone number for all of these individuals. Indicate who will be attending all TWDB/TWRFA meetings, document sessions, bond pricings, and will be responsible for day-to-day coordination.

### **B. CONFLICT OF INTEREST/REFERENCES**

8. Respondents are requested to include an affirmative statement that the retention of your firm as Financial Advisor will not result in any conflict of interest with the TWDB/TWRFA. This would include, but is not limited to, any conflicts arising from relationships (both direct and indirect). Should a conflict of interest potentially exist, the prospective Financial Advisor must specify the party with which such conflict may exist, the nature of the potential conflict, and any resolution proposed.

9. Please provide names, addresses and phone numbers of at least two references.

### **C. BUSINESS PRACTICES**

10. Please describe your firm's previous experience and involvement working with HUB certified firms (if your firm is not HUB certified) or as a HUB certified firm, in a co-financial advisor relationship. Please describe your firm's approach to working with co-financial advisors, including level of effort and division of duties.

11. Please describe efforts made by your firm to encourage and develop the participation of minorities and women in your firm's provision of financial advisory services. Complete the grid describing workforce composition attached as **Exhibit A**.

### **D. PROPOSED FEES--FINANCIAL ADVISOR**

12. Provide a base fee schedule for new bond issues taking into consideration the tasks identified in **Section IV** expressed as a rate per \$1,000 par amount of bonds issued.

Indicate any additional services your firm provides and related fees if they are **not** included in the base fee.

The base fee schedule is related to the following par amount level of bonds:

**Table A**

<b>Final Par Amount of Bonds</b>	<b>General Obligation</b>	<b>Revenue</b>	<b>Refundings</b>
\$ 1,000,000 - \$ 50,000,000			
\$ 50,001,000 - \$100,000,000			
\$100,001,000 - \$200,000,000			
Greater than \$200,001,000			

13. Also, provide an hourly rate structure on all staff assigned to work with the TWDB/TWRFA for any additional work or special projects as requested and not related to the normal issuance of bonds.

**The TWDB/TWRFA reserves the right to negotiate any fees submitted prior to award of the contract.**

It is understood the following expenses will be reimbursed by the TWDB/TWRFA separate from the selection of either the per bond or hourly fee rates listed above:

\*Printing and mailing the Preliminary Official Statement/Official Statement;

\*Rating Agency fees;

\*Travel expenses **outside** of the State of Texas with prior approval (routine travel within the state necessary to service the account, and/or attend TWDB/TWRFA meetings will not be approved); and

\*Any item of expense approved by the TWDB/TWRFA incurred on its behalf.

**VII. PROPOSAL SUBMISSION--INVESTMENT ADVISOR**

**A. ORGANIZATION**

1. Provide a brief description of the firm. Describe any other business affiliation (e.g., subsidiaries, joint ventures, "soft-dollar" arrangement with brokers/dealers, financial institutions, or financial intermediaries that could affect (or could have the appearance of affecting) the TWDB/TWRFA investment performance or the services to be furnished to the TWDB/TWRFA.

2. Identify the types of accounts primarily serviced by your firm.

3. Describe the firm's research capabilities and resources.

4. Describe in detail any SEC or regulatory censure or litigation involving the business your firm conducts with investors, both at the present time or within the past three (3) years.

**B. PERSONNEL**

5. Identify the key investment professionals who would be directly involved in providing services to the TWDB/TWRFA. Include three (3) references of governmental entities, together with names and telephone numbers for which the individuals have recently performed investment services.

6. What efforts does the firm make to keep its investment professionals informed of developments relevant to investment managers?

**C. ASSETS UNDER MANAGEMENT**

7. Summarize the firm's institutional fixed income management asset totals for the latest reporting period.

8. List the firm's five (5) largest (or most representative) clients and any others whose requirements might be similar to those of the

TWDB/TWRFA. Describe the relations with these clients and the services provided.

**D. INVESTMENT MANAGEMENT APPROACH AND DISCIPLINE**

9. Describe how your firm organizes its investment management process. Explain your approach to enhancing the performance of the TWDB/TWRFA portfolio, while ensuring safety, providing necessary liquidity, and staying within the parameters of the TWDB/TWRFA Investment rules (The rules in 31 Texas Administrative Code, Chapter 365, are available upon request from the board, or may be found at the Secretary of State's internet address: <http://www.sos.state.tx.us/tac/>; then sequentially select, "TAC Viewer," "Title 31," "Part 10," and "Chapter 365.").

10. Describe the training and investment advisory services that would be provided to TWDB/TWRFA staff and the Board Members. Outline your expectations regarding the day-to-day relationship between your firm and the TWDB/TWRFA staff.

**E. PERFORMANCE REPORTS**

11. How often would representatives from your firm meet with the TWDB/TWRFA staff to review portfolio performance and investment strategies? Who would normally attend these meetings for your firm? Describe the frequency and format of the reports you would provide to the TWDB/TWRFA and attach examples of your investment reports.

**F. PROPOSED FEES--INVESTMENT ADVISOR**

12. Provide your fee schedule and explain the methodology for pricing the services to be provided to this account. What additional costs, if any, would be required in order to implement your recommendations?

**VIII. BASIS OF AWARD AND COST INCURRED IN RESPONDING**

The TWDB/TWRFA will make its selection based on demonstrated competence, experience, knowledge and qualifications, as well as the reasonableness of the proposed fees.

Firms responding are encouraged to maintain a Texas office staffed with personnel who are responsible for providing Financial Advisory and/or Investment Advisory services to the TWDB/TWRFA. All things being equal, the TWDB/TWRFA will give first consideration to firms whose principal place of business is located in Texas.

All costs directly or indirectly related to preparation of a response to this RFQ or any oral presentation required to supplement and/or clarify the RFQ which may be required shall be the sole responsibility of, and shall be borne by, your firm.

**Exhibit A**

The Texas Water Development Board/Texas Water Resources Finance Authority will not participate in any programs, nor will it conduct business, with any entity that is found to knowingly discriminate against persons on the basis of race, color, gender, age, national origin, and religion, physical or mental disability. Please use this form to provide us with a breakdown of your company's workforce.

Total number of employees: \_\_\_\_\_

As of: \_\_\_\_\_.

**Males**

	Year	White	Black	Hispanic	Asian	Disabled	Other
Executives/Professionals	2006						
	2005						

	Year	White	Black	Hispanic	Asian	Disabled	Other
Analyst/Quantitative/Technical	2006						
	2005						

	Year	White	Black	Hispanic	Asian	Disabled	Other
Clerical/Support Staff	2006						
	2005						

	Year	White	Black	Hispanic	Asian	Disabled	Other
Totals	2006						
Percentage	2006						
Totals	2005						
Percentage	2005						

**Females**

	Year	White	Black	Hispanic	Asian	Disabled	Other
Executives/Professionals	2006						
	2005						

	Year	White	Black	Hispanic	Asian	Disabled	Other
Analyst/Quantitative/Technical	2006						
	2005						

	Year	White	Black	Hispanic	Asian	Disabled	Other
Clerical/Support Staff	2006						
	2005						

	Year	White	Black	Hispanic	Asian	Disabled	Other
Totals	2006						
Percentage	2006						
Totals	2005						
Percentage	2005						

Do you have an Equal Opportunity/Affirmative Action Plan?      Yes      No

What percentage of your firm is minority owned? \_\_\_\_\_ \*

What percentage of your firm is women owned? \_\_\_\_\_ \*

\*If your firm is a State of Texas-Building and Procurement Commission (TBPC) certified HUB, please submit a photocopy of your current certification.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

TRD-200605240  
Wendall Corrigan Braniff  
General Counsel  
Texas Water Development Board  
Filed: September 21, 2006



### 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 and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (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).