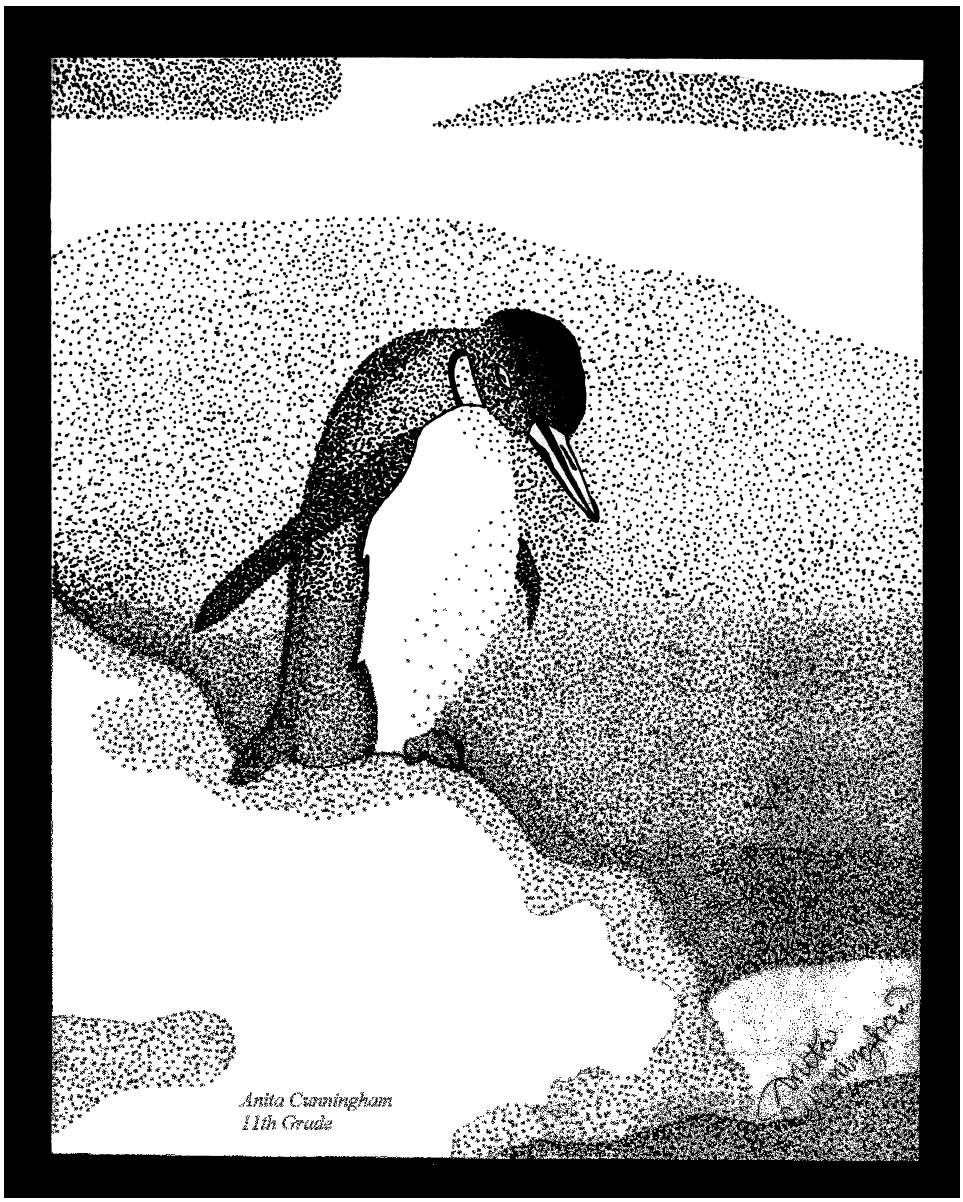
TEXAS REGISTER

Volume 32 Number 45 *November 9, 2007* *Pages 8061 - 8222*



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

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

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

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

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

a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(800) 226-7199
(512) 463-5561
FAX (512) 463-5569
http://www.sos.state.tx.us
register@sos.state.tx.us

IN THIS ISSUE

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

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 ATTORNEY GENERAL

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

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

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

Request for Opinions

RQ-0637-GA

Requestor:

The Honorable Mike Krusee

Chair, Committee on Transportation

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78768-2910

Re: Whether a foreign commercial motor vehicle registered in another state is required to register in Texas (RQ-0637-GA)

Briefs requested by November 26, 2007

RQ-0638-GA

Requestor:

The Honorable Don McLeroy, Chair

State Board of Education

William B. Travis Building

1701 North Congress Avenue

Austin, Texas 78701-1494

Re: Constitutionality of section 51.413, Natural Resources Code, which purports to authorize the School Land Board to transfer proceeds from the sale of land held within the Permanent School Funds to the Available School Fund (RQ-0638-GA)

Briefs requested by November 26, 2007

RQ-0639-GA

Requestor:

The Honorable Kip Averitt

Chair, Committee on Natural Resources

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Constitutionality of the use of a particular formula by which the Brazos River Authority proposes to sell real property surrounding Possum Kingdom Lake (RQ-0639-GA)

Briefs requested by November 26, 2007

RQ-0640-GA

Requestor:

The Honorable Dan W. Heard

Calhoun County Criminal District Attorney

211 South Ann Street

Port Lavaca, Texas 77979

Re: Authority of a county auditor to refuse payment to employees of a county hospital on the ground that such payment is unconstitutional (RQ-0640-GA)

Briefs requested by November 30, 2007

RQ-0641-GA

Requestor:

The Honorable James M. Kuboviak

Brazos County Attorney

Brazos County Courthouse

300 East 26th Street, Suite 325

Bryan, Texas 77803-5327

Re: Whether a county attorney is required to issue an identification card provided by Government Code, section 614.122 to unpaid investigators of the county attorney's office (RQ-0641-GA)

Briefs requested by December 3, 2007

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

TRD-200705256
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: October 31, 2007

♦ ♦ ♦

Opinion

Opinion No. GA-0577

The Honorable Mike Jackson

Chair, Committee on Nominations

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Assessment and collection of impact fees for land platted after June 20, 1987 (RQ-0587-GA)

S U M M A R Y

A municipality's assessment and collection of impact fees are not governed by Local Government Code section 395.016(b) when the municipality approves and imposes the impact fee dollar amounts after June 20, 1987.

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

TRD-200705258
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: October 31, 2007

♦ ♦ ♦

PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 26. POLITICAL AND LEGISLATIVE ADVERTISING

1 TAC §26.2

The Texas Ethics Commission proposes new §26.2, relating to the publication of a newsletter of a public officer of a political subdivision.

Under the proposed new §26.2, a determination as to whether a newsletter covered by §255.003 of the Election Code constitutes political advertising may be made only when the newsletter is viewed as a whole and in proper context. The rule would provide guidance without setting a comprehensive standard.

David A. Reisman, Executive Director, has determined that for each year of the first five years that the rule is in effect there will be no fiscal implication for the state and no fiscal implication for local government as a result of enforcing or administering the rule as proposed. Mr. Reisman has also determined that the rule will have no local employment impact.

Mr. Reisman has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be clarity in what is required by the law.

Mr. Reisman has also determined there will be no direct adverse effect on small businesses or micro-businesses because the rule does not apply to single businesses.

Mr. Reisman has further determined that there are no economic costs to persons required to comply with the rule.

The Texas Ethics Commission invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed rule. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free, (800) 325-8506.

The proposed new §26.2 is proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed new §26.2 affects §255.003 of the Election Code.

§26.2. Newsletter of Public Officer of a Political Subdivision.

For purposes of §255.003 of the Election Code, a newsletter of a public officer of a political subdivision is not political advertising if:

(1) It includes no more than two pictures of a public officer per page and if the total amount of area covered by the pictures is no more than 20 percent of the page on which the pictures appear;

(2) It includes no more than eight personally phrased references (such as the public officer's name, "I", "me", "the city council member") on a page that is 8 1/2" x 11" or larger, with a reasonable reduction in the number of such personally phrased references in pages smaller than 8 1/2" x 11"; and

(3) When viewed as a whole and in the proper context:

(A) is informational rather than self-promotional;

(B) does not advocate passage or defeat of a measure; and

(C) does not support or oppose a candidate for nomination or election to a public office or office of political party, a political party, or a public officer.

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 October 29, 2007.

TRD-200705184
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: December 9, 2007
For further information, please call: (512) 463-5800

♦ ♦ ♦

CHAPTER 34. REGULATION OF LOBBYISTS

The Texas Ethics Commission proposes the amendments to §34.11 and §34.43 and the repeal of §§34.19, 34.61, and 34.62. These rules relate to the reporting of joint lobby expenditures, lobby registration requirements, lobbyists representation of lobby clients, and lobby registration fees.

The proposed amendment to §34.11 reflects changes made by H.B. 2735, 80th Legislature, Regular Session. The new law provides that the lobbyist reports only the portion of the amount of the joint expenditure attributable to the lobbyist, including any amount made on behalf of the lobbyist by a person who is not a registered lobbyist.

The proposed amendment to §34.43 tracks the change made by H.B. 2489, 80th Legislature, Regular Session. The new law clarifies that compensation that a person is "entitled to receive under an agreement under which the person is retained or employed" counts toward the compensation threshold triggering the requirement to register as a lobbyist.

The proposed repeal of §34.19 reflects the change made by the legislature in 2005 when the statutory provision referenced in this rule (Government Code, §305.0011) was repealed.

The proposed repeal of §34.61 would repeal the rule relating to the lobby registration fee for exempt registrants. This rule is mirrored in Government Code, §305.0059(c)(1) and is therefore not necessary.

The proposed repeal of §34.62 would repeal the rule relating to the temporary increase in lobby registration fees. This rule is unnecessary because the rule expired in January 1, 2005.

David A. Reisman, Executive Director, has determined that for each year of the first five years that the rules are in effect there will be no fiscal implication for the state and no fiscal implication for local government as a result of enforcing or administering the rules as proposed. Mr. Reisman has also determined that the rules will have no local employment impact.

Mr. Reisman has also determined that for each year of the first five years the rules are in effect, the anticipated public benefit will be clarity in what is required by the law.

Mr. Reisman has also determined there will be no direct adverse effect on small businesses or micro-businesses because the rules do not apply to single businesses.

Mr. Reisman has further determined that there are no economic costs to persons required to comply with the rules.

The Texas Ethics Commission invites comments on the proposed rules from any member of the public. A written statement should be mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rules may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed rules. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free, (800) 325-8506.

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §34.11

The proposed amendment to §34.11 is proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed amendment of §34.11 affects Chapter 305 of the Government Code.

§34.11. ~~[Attribution of Expenditure to More Than One Person;]~~ Reimbursement of Lobby Expenditure.

~~[(a)~~ ~~A lobby~~ expenditure ~~made on a person's behalf and with the person's consent or ratification is an expenditure by that person for purposes of registration and reporting under Government Code, Chapter 305, and this chapter.]~~

~~[(b)~~] Payment of reimbursement to a registrant is not included for purposes of calculation of the registration threshold under Government Code, §305.003(a)(1), and is not required to be reported if the registrant receiving the reimbursement reports the expenditure on a lobby activity report.

~~[(c) A registrant is not required to report a lobby expenditure attributable to more than one person if another registrant has reported the expenditure.]~~

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 October 29, 2007.

TRD-200705185
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: December 9, 2007
For further information, please call: (512) 463-5800

♦ ♦ ♦

1 TAC §34.19

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

The proposed repeal of §34.19 is proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed repeal of §34.19 affects Chapter 305 of the Government Code.

§34.19. Conflicts of Interest.

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

Filed with the Office of the Secretary of State on October 29, 2007.

TRD-200705187
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: December 9, 2007
For further information, please call: (512) 463-5800

♦ ♦ ♦

SUBCHAPTER B. REGISTRATION REQUIRED

1 TAC §34.43

The proposed amendment to §34.43 is proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed amendment of §34.43 affects Chapter 305 of the Government Code.

§34.43. Compensation and Reimbursement Threshold.

(a) A person must register under Government Code, §305.003(a)(2), if the person receives, or is entitled to receive under an agreement under which the person is retained or employed more than $1000 in a calendar quarter in compensation and reimbursement, not including reimbursement for the person's own travel, food, lodging, or membership dues, from one or more other persons to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action.

(b) For purposes of Government Code, §305.003(a)(2), and this chapter, a person is not required to register if no more than 5.0% of the person's compensated time during a calendar quarter is time spent engaging in lobby activity.

(c) For purposes of Government Code, §305.003(a)(2), and this chapter, a person shall make a reasonable allocation of compensation between compensation for lobby activity and compensation for other activities.

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 October 29, 2007.

TRD-200705186
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: December 9, 2007
For further information, please call: (512) 463-5800

♦ ♦ ♦

SUBCHAPTER C. COMPLETING THE REGISTRATION FORM

1 TAC §34.61, §34.62

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

The proposed repeal of §34.61 and §34.62 is proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed repeal of §34.61 and §34.62 affects Chapter 305 of the Government Code.

§34.61. Registration Fee.

§34.62. Temporary Increase in Registration Fees.

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 October 29, 2007.

TRD-200705188
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: December 9, 2007
For further information, please call: (512) 463-5800

♦ ♦ ♦

CHAPTER 50. LEGISLATIVE SALARIES AND PER DIEM

1 TAC §50.1

The Texas Ethics Commission proposes an amendment to §50.1, to set the legislative per diem as required by the Texas Constitution, Article III, §24a. This section sets the per diem for members of the legislature and the lieutenant governor at $151 for each day during the regular session and any special session.

David A. Reisman, Executive Director, has determined that for each odd numbered year of the first five years this rule is in effect there will be a fiscal implication of $305,760 for the state and no fiscal implication for local government as a result of enforcing or administering this rule. This amount may increase if any special sessions are called.

Mr. Reisman also has determined that for each year of the first five years this rule is in effect the public benefit expected as a result of adoption of the proposed rule is a determination, in compliance with the Texas Constitution, of the per diem entitled to be received by each member of the legislature and the lieutenant governor under the Texas Constitution, Article III, §24, and Article IV, §17, during the regular session and any special session.

Mr. Reisman has also determined there will be no direct adverse effect on small businesses or micro-businesses because the rule does not apply to single businesses.

Mr. Reisman has further determined that there are no economic costs to persons required to comply with the rule.

The Texas Ethics Commission invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed rule. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free, (800) 325-8506.

This amendment is proposed under the Texas Constitution, Article III, §24a, and the Government Code, Chapter 571, §571.062.

The amended section affects the Texas Constitution, Article III, §24, Article III, §24a, and Article IV, §17.

§50.1. Legislative Per Diem.

(a) The legislative per diem is $151 [~~$139~~]. The per diem is intended to be paid to each member of the legislature and the lieutenant governor for each day during the regular session and for each day during any special session in 2008 [~~2007~~].

(b) This rule shall be applied retroactively to ensure payment of the $151 [~~$139~~] per diem for 2008 [~~2007~~].

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 October 29, 2007.

TRD-200705189
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: December 9, 2007
For further information, please call: (512) 463-5800

♦ ♦ ♦

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES
SUBCHAPTER C. REIMBURSEMENT METHODOLOGY FOR NURSING FACILITIES

1 TAC §355.313

The Texas Health and Human Services Commission (HHSC) proposes to amend Title 1, Part 15, Chapter 355, Subchapter C, by adding new §355.313, relating to the reimbursement methodologies for rehabilitative and specialized services provided to Medicaid-eligible residents of a nursing facility.

Background and Justification

The Commission is updating the rates and the methodology for determining reimbursement rates paid for rehabilitative and specialized services provided in a nursing facility. Rehabilitative and specialized services are occupational, physical, and speech therapy services provided in a nursing facility. Currently, both program-related and reimbursement rules are included in the same Department of Aging and Disability Services (DADS) rule at Title 40 of the Texas Administrative Code, Part 1, Chapter 19, Subchapter N, §19.1306, Payment for Specialized and Rehabilitative Services. Because HHSC is the agency responsible for developing reimbursement rates for all Medicaid services, including rehabilitative and specialized services, rate language in §19.1306 will be repealed; and new rate language will be set out in the proposed new §355.313. DADS continues to be the agency responsible for the program-related rules for rehabilitative and specialized services.

Section-by-Section Summary

Proposed new §355.313 sets out the reimbursement methodology for rehabilitative and specialized services delivered to Medicaid-eligible clients in nursing facilities. Rehabilitative and specialized services may be provided either through outside entities or by the nursing facility itself through employees or contracted staff.

Proposed §355.313(a) describes the reimbursement methodology for nursing facility rehabilitative and specialized services delivered by therapists who are not employees of the nursing facility. Such fees are based on the Medicare national relative value units (RVUs) times the Texas Medicaid conversion factor. RVUs include three costs components (work for service, overhead for service, and malpractice for service). A conversion factor is a dollar amount by which the sum of the three cost component RVUs is multiplied in order to obtain a reimbursement fee for an individual service.

Proposed §355.313(b) describes the reimbursement methodology for nursing facility rehabilitative and specialized services delivered by therapists who are employees of the nursing facility. These services are reimbursed at a statewide flat rate, established by HHSC, per physical therapy, occupational therapy, or speech therapy service encounter.

Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that, during the first five-year period the proposed new rule is in effect, there will be a fiscal impact of $30,088.06 for state fiscal year (SFY) 2008 and $40,117.41 for SFY 2009 through SFY 2012. The proposed new rule will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

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

Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that, for each year of the first five years the proposed rule is in effect, the public will benefit from the adoption of the proposed new rule. The anticipated public benefit, as a result of enforcing the proposed new rule, will be to provide additional reimbursement to both nursing facilities and outside therapy providers to improve access to care for the Medicaid population residing in nursing facilities.

Regulatory Analysis

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

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted by mail to Eileen Kreh, Rate Analyst in the Rate Analysis Division, Texas Health and Human Services Commission, P.O. Box 85200, MC-H400, Austin, Texas 78708-5200; by fax (512) 491-1983 or by e-mail at Eileen.Kreh@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

The new rule is proposed under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed new rule affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.313. Reimbursement Methodology for Rehabilitative and Specialized Services.

(a) Providers, other than nursing facilities delivering Medicaid specialized and rehabilitative services, defined in 40 TAC §19.1306, (relating to Payment for Specialized and Rehabilitative Services), are reimbursed for physical therapy evaluations, occupational therapy evaluations, speech therapy evaluations, physical therapy sessions, occupational therapy sessions, and speech therapy sessions in accordance with statewide fees determined by the Texas Health and Human Services Commission (HHSC).

(1) The hourly fees for physical therapy and occupational therapy sessions are based on the current Medicare nonfacility Relative Value Units (RVUs) times the current Medicaid conversion factor times four since the Medicare RVUs for these sessions are based on 15-minute increments.

(2) The hourly fee for a speech therapy session is based on the current Medicare nonfacility RVU times the current Medicaid conversion factor times two since the Medicare RVUs for a speech therapy session is based on 30-minute increments.

(3) The fees for physical therapy evaluations, occupational therapy evaluations, and speech therapy evaluations are the same as the hourly fees for each type of therapy session, as provided in paragraphs (1) and (2) of this subsection.

(4) The fees for specialized and rehabilitative services delivered by providers other than nursing facilities are reviewed coincident with the biennium, with any fee adjustments made within available funds.

(b) Nursing facilities delivering Medicaid specialized and rehabilitative services are reimbursed for physical therapy evaluations, occupational therapy evaluations, speech therapy evaluations, physical therapy sessions, occupational therapy sessions, and speech therapy sessions in accordance with fees reviewed by HHSC. The fees for specialized and rehabilitative services delivered by nursing facilities are reviewed coincident with the biennium, with any fee adjustments made within available funds.

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 October 25, 2007.

TRD-200705147
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: December 9, 2007
For further information, please call: (512) 424-6900

♦ ♦ ♦

CHAPTER 355. REIMBURSEMENT RATES

The Texas Health and Human Services Commission (HHSC) proposes amendments to §355.503, concerning Reimbursement Methodology for the Community-Based Alternatives (CBA) Waiver Program and the Integrated Care Management-Home and Community Support Services and Assisted Living/Residential Care Programs; §355.505, concerning Reimbursement Methodology for the Community Living Assistance and Support Services (CLASS) Waiver Program; and §355.5902, concerning Reimbursement Methodology for Primary Home Care (PHC) Services.

Background and Justification

In June 1995, DHS (now the Texas Department of Aging and Disability Services (DADS)) implemented Personal Care III as a new CBA assisted living service. Personal Care III services are offered in a non-apartment setting and have a separate payment rate from other CBA assisted living services. Personal Care III providers must have a higher staffing ratio than other CBA assisted living services. From 1995 through November 2005 only one provider was enrolled to provide Personal Care III services, and HHSC based the payment rate for the service on the cost experience of this single provider. This provider no longer contracts to provide Personal Care III services due to the expansion of STAR+PLUS. In November 2005, DADS enrolled a new Personal Care III provider, and DADS expects additional providers will contract to provide this service over the next two years. With the expansion of this service beyond the original, single provider, it is no longer appropriate to base the rate for this service on the cost experience of the former, single provider of this service.

The proposed amendment adds subparagraph (D) to §355.503(d)(2) which sets out a reimbursement methodology for Personal Care III that: (1) models the direct care portion of the payment rate using program staffing requirements; and (2) ties the non-direct care portion of the rate to the non-attendant portion of the non-apartment assisted living rate for a provider that does not participate in receiving rate add-ons in the Attendant Compensation Rate Enhancement.

Currently, all CBA, CLASS, and PHC contracted providers are obligated to submit a single cost report per active contract to HHSC on an annual basis. These cost reports contain financial and statistical data related to the services delivered to DADS clients for a given reporting period. Legal entities with multiple contracts within a single program are required to submit a cost report for each contract. Because these programs are not facility-based, there are no contract-specific facility-based costs that require individual cost reporting.

Under the proposed amendments, contracted providers would submit a single cost report, by program, per legal entity for all of their contracts participating in the Attendant Compensation Rate Enhancement and one single cost report, by program, per legal entity for all of their contracts not participating in the Attendant Compensation Rate Enhancement. Thus, contracted providers with multiple contracts could report all financial and statistical data used for reimbursement analysis on, at most, two reports, regardless of the number of contracts that they operate.

These proposed rule amendments will reduce the administrative burden of meeting cost reporting requirements for providers because they will be required to submit fewer cost reports. The proposal will also reduce the number of cost reports that providers submit to HHSC, thereby reducing the amount of administrative

effort and expense used to process, audit, and analyze the cost reports.

Section-by-Section Summary

The proposed amendment to §355.503 adds subparagraph (D) to §355.503(d)(2) to specify the rate methodology for Personal Care III services.

The second amendment to §355.503 adds paragraph (3) to §355.503(f), the amendment to §355.505 amends subsection (c)(2), and the amendment to §355.5902 amends subsection (b)(1). These amendments will allow legal entities to submit a single cost report for their CBA, CLASS, and PHC contracts.

Fiscal Note

Gordon E. Taylor, Chief Financial Officer for DADS, has determined that, for the first five-year period the proposed amendment adding §355.503(d)(2)(D) is in effect, there are fiscal implications for state government as a result of enforcing or administering the section. There are no fiscal implications for local governments as a result of enforcing or administering the section.

The effect on state government for the first five-years the proposed amendment adding §355.503(d)(2)(D) is in effect is an estimated increase in cost of $5,754 in fiscal year (FY) 2008; $5,738 in FY 2009; $5,738 in FY 2010; $5,738 in FY 2011; and $5,754 in FY 2012.

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that, for the first five-year period the proposed amendments adding §355.503(f)(3) and amending §355.505(c)(2) and §355.5902(b)(1) are in effect, there are no fiscal implications for state government as a result of enforcing or administering the sections. There are no fiscal implications for local governments as a result of enforcing or administering the sections.

Small Business and Micro-business Impact Analysis

HHSC has determined that there will be no adverse economic effect on small or micro-businesses as a result of enforcing or administering the proposed amendments to §355.503(d)(2)(D). There are no additional requirements of providers to comply with this proposed change. The proposed change will result in a revised rate that more closely reflects the cost to provide Personal Care III services.

HHSC has determined that there will be no adverse economic effect on small or micro-businesses as a result of enforcing or administering the proposed amendments to §§355.503(f)(3), 355.505(c)(2), or 355.5902(b)(1). There are no addition requirements of providers to comply with these rules. The rules will reduce the administrative burden of meeting cost reporting requirements for providers because they will be required to submit fewer cost reports.

There is no anticipated economic cost to persons who are required to comply with the proposed amendments. There is no anticipated effect on local employment in geographic areas affected by the sections.

Public Benefit and Costs

Carolyn Pratt, Director of Rate Analysis, has determined that, during the first five-years the proposed amendments to §355.503(d)(2)(D) are in effect, the public benefit anticipated as a result of enforcing them is that CBA Personal Care III providers will be paid at an appropriate rate. This amendment will allow the state to determine an appropriate rate for Personal Care III services based on the modeled cost of providing Personal Care III services.

Ms. Pratt has also determined that, during the first five-years the proposed amendments to §§355.503(f)(3), 355.505(c)(2), and 355.5902(b)(1) are in effect, the public benefits anticipated as a result of enforcing the amendments include: (1) reduced number of cost reports completed by contracted providers in this program, and (2) reduced administrative burdens on HHSC staff.

Regulatory Analysis

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

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted by mail to Sarah Hambrick in the Rate Analysis Department, Health and Human Services Commission, P.O. Box 85200, Austin, Texas 78708-5200; by fax at (512) 491-1998; or by e-mail at Sarah.Hambrick@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

SUBCHAPTER E. COMMUNITY CARE FOR AGED AND DISABLED

1 TAC §355.503, §355.505

Statutory Authority

The amendments are proposed under the Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and the Human Resources Code §32.021 and the Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendments affect the Human Resources Code Chapter 32, and the Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.503. Reimbursement Methodology for the Community-Based Alternatives Waiver Program and the Integrated Care Management-Home and Community Support Services and Assisted Living/Residential Care Programs.

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

(d) Waiver reimbursement determination. Recommended reimbursements are determined in the following manner.

(1) (No change.)

(2) Per day reimbursement.

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

(D) The reimbursement for Personal Care III will be composed of two rate components, one for the direct care cost center and one for the non-direct care cost center.

(i) Direct care costs. The rate component for the direct care cost center will be determined by modeling the cost of the minimum required staffing for the Personal Care III setting, as specified by the Department of Aging and Disability Services, and using staff costs and other statistics from the most recently audited cost reports from providers delivering similar care.

(ii) Non-direct care costs. The rate component for the non-direct care cost center will be equal to the non-attendant portion of the non-apartment assisted living rate per day for non-participants in the Attendant Compensation Rate Enhancement. Providers receiving the Personal Care III rate are not eligible to participate in the Attendant Compensation Rate Enhancement and receive direct care add-on's to the Personal Care III rates.

(3) - (7) (No change.)

(e) (No change.)

(f) Reporting of cost.

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

(3) Number of cost reports to be submitted. Contracted providers are required to submit one cost report per legal entity if all contracts under the legal entity participate in the attendant compensation rate enhancement in accordance with §355.112 of this title (relating to Attendant Compensation Rate Enhancement). Contracted providers who operate both contracts that are participating in the attendant compensation rate enhancement program and contracts that are not participating in the attendant compensation rate enhancement program must file two separate cost reports per legal entity, one report for the contracts that are participating in the attendant compensation rate enhancement program and one cost report for the contracts that are not participating in the attendant compensation rate enhancement.

(4) [~~(3)~~] Reporting and verification of allowable cost.

(A) Providers are responsible for reporting only allowable costs on the cost report, except where cost report instructions indicate that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended reimbursements. HHSC excludes from reimbursement determination any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by providers; the purpose is to ensure that the database reflects costs and other information which are necessary for the provision of services, and are consistent with federal and state regulations.

(B) Individual cost reports may not be included in the database used for reimbursement determination if:

(i) there is reasonable doubt as to the accuracy or allowability of a significant part of the information reported; or

(ii) an auditor determines that reported costs are not verifiable.

(C) When material pertinent to proposed reimbursements is made available to the public, the material will include the number of cost reports eliminated from reimbursement determination for the reason stated in subparagraph (B)(i) of this paragraph.

(5) [~~(4)~~] Allowable and unallowable costs. Providers must follow the guidelines in determining whether a cost is allowable or unallowable as specified in §355.102 and §355.103 of this title (relating to General Principles of Allowable and Unallowable Costs, and Specifications for Allowable and Unallowable Costs), in addition to the following.

(A) Client room and board expenses are not allowable, except for those related to respite care.

(B) The actual cost of adaptive aids and home modifications are not allowable for cost reporting purposes. Allowable labor costs associated with acquiring adaptive aids and home modifications should be reported in the cost report. Any item purchased for participants in this program and reimbursed through a voucher payment system is unallowable for cost reporting purposes. Refer to §355.103(17)(K) of this title (relating to Specifications for Allowable and Unallowable Costs).

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

§355.505. Reimbursement Methodology for the Community Living Assistance and Support Services Waiver Program.

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

(c) Reporting of cost.

(1) (No change.)

(2) Number of cost reports to be submitted. Contracted providers are required to submit one cost report per legal entity if all contracts under the legal entity participate in the attendant compensation rate enhancement in accordance with §355.112 of this title (relating to Attendant Compensation Rate Enhancement). Contracted providers who operate both contracts that are participating in the attendant compensation rate enhancement program and contracts that are not participating in the attendant compensation rate enhancement program must file two separate cost reports per legal entity, one cost report for the contracts that are participating in the attendant compensation rate enhancement program and one cost report for the contracts that are not participating in the attendant compensation rate enhancement. All legal entities [~~contracted providers~~] must submit a cost report unless the number of days between the date the legal entity's first Texas Department of Aging and Disability Services (DADS) [~~Human Services (DHS)~~] client received services and the legal entity's [~~provider's~~] fiscal year end is 30 days or fewer.

(3) (No change.)

(d) - (k) (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 October 29, 2007.

TRD-200705172
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: December 9, 2007
For further information, please call: (512) 424-6900

♦ ♦ ♦

SUBCHAPTER G. TELEMEDICINE SERVICES AND OTHER COMMUNITY-BASED SERVICES

1 TAC §355.5902

Statutory Authority

The amendments are proposed under the Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and the Human Resources Code §32.021 and the Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendments affect the Human Resources Code Chapter 32, and the Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.5902. Reimbursement Methodology for Primary Home Care.

(a) (No change.)

(b) Cost reporting. Provider agencies must follow the cost-reporting guidelines as specified in §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods and Procedures).

(1) Number of cost reports to be submitted. Contracted providers are required to submit one cost report per legal entity if all contracts under the legal entity participate in the attendant compensation rate enhancement in accordance with §355.112 of this title (relating to Attendant Compensation Rate Enhancement). Contracted providers who operate both contracts that are participating in the attendant compensation rate enhancement program and contracts that are not participating in the attendant compensation rate enhancement program must file two separate cost reports per legal entity, one cost report for the contracts that are participating in the attendant compensation rate enhancement program and one cost report for the contracts that are not participating in the attendant compensation rate enhancement. All legal entities [~~provider agencies~~] must submit a cost report unless the number of days between the date the first Texas Department of Aging and Disability Services (DADS) [~~Human Services~~] client received services and the legal entity's [~~provider agency's~~] fiscal year end is 30 days or fewer. The legal entity [~~provider agency~~] may be excused from submitting a cost report if circumstances beyond the control of the legal entity [~~provider agency~~] make cost report completion impossible, such as the loss of records due to natural disasters or removal of records from the legal entity's [~~provider agency's~~] custody by any governmental entity. Requests to be excused from submitting a cost report must be received at the address specified in the letter mailed along with the cost report before the due date of the cost report.

(2) (No change.)

(c) - (g) (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 October 29, 2007.

TRD-200705173
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: December 9, 2007
For further information, please call: (512) 424-6900

♦ ♦ ♦

TITLE 16. ECONOMIC REGULATION

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 402. CHARITABLE BINGO ADMINISTRATIVE RULES

SUBCHAPTER E. BOOKS AND RECORDS

16 TAC §§402.500, 402.506, 402.511

The Texas Lottery Commission (Commission) proposes new Title 16, Part 9, Chapter 402, Subchapter E, §402.500 (relating to General Records Requirements), §402.506 (relating to Disbursement Records Requirements), and §402.511 (relating to Required Inventory Records).

The purpose of the proposed new rules is to set forth, in plain language, certain requirements for maintenance of records relating to general records, disbursement records, and inventory records in accordance with §2001.505(b) of the Bingo Enabling Act which requires licensees to keep records to substantiate each quarterly report.

Proposed new §402.500 addresses the length of time records must be maintained, the forms for records that may be used, and the requirement that licensees make records available upon request of the Commission. Although these requirements also appear in existing rules, the Commission is aware of no inconsistencies and is presently conducting a review to determine whether to readopt, readopt with amendments, or repeal each of the rules in 16 TAC Chapter 402 relating to Charitable Bingo Administrative Rules. This review is done pursuant to Texas Government Code §2001.039. The Commission will assess whether the reasons for adopting or readopting the rules in this chapter continue to exist and take appropriate action, including proposing amendments to eliminate any redundancy in requirements.

Proposed new §402.506 addresses the maintenance of records of bingo expenses, including invoices, itemized billing statements, or sales receipts that have detailed information about the items purchased or services provided. The rule also requires maintenance of records regarding the lease agreement between the lessor and the organization stating the amount of rent charged for the use of the bingo premises, the rent forgiveness letter, payroll records, federal and state payroll tax returns, deposits, and receipts, other federal, state, and local documentation which may include tax returns, 1099's, and property tax receipts, Commission loan approval letter for repayment of approved loans, documentation which records the allocation method for expenses that relate to more than one category of expense, bank statements, deposit slips and canceled checks, debit card transactions reports, and game schedules and pricing structure documents including the date(s) of any changes to these documents. The Commission believes that the requirements in the proposed new rule are consistent with existing Internal Revenue Service requirements for record-keeping by non-profit organizations. If the Commission receives information indicating an inconsistency for a particular type of non-profit organization, the need for the requirement will be reevaluated.

Proposed new §402.511 requires a licensed authorized organization to maintain a perpetual inventory of all disposable bingo cards and pull-tab bingo tickets. The perpetual inventory must account for all sold and unsold disposable bingo cards and pull-tab tickets as well as inventory items designated for destruction. The new rule also provides that the licensed authorized

organization is responsible for reimbursing its bingo account with non-bingo funds for gross receipts, prizes and prize fees associated with missing or unaccounted for disposable bingo cards and pull-tab bingo tickets. Additionally, the new rule requires the maintenance of the Disposable Card Sales Summary and Pull-Tab Sales Summary. Although these requirements also appear in existing rules, the Commission is aware of no inconsistencies and is presently conducting a review to determine whether to readopt, readopt with amendments, or repeal each of the rules in 16 TAC Chapter 402 relating to Charitable Bingo Administrative Rules. This review is done pursuant to Texas Government Code §2001.039. The Commission will assess whether the reasons for adopting or readopting the rules in this chapter continue to exist and take appropriate action, including proposing amendments to eliminate any redundancy in requirements.

Kathy Pyka, Controller, has determined that for each year of the first five years the proposed new rules will be in effect, there will be no significant fiscal impact for state or local governments as a result of the new rule. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the new rule as proposed.

Philip D. Sanderson, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed new rules will be in effect, the public benefit anticipated is providing to licensees specific information about what minimum documentation the organization is required to maintain in order to substantiate the information reported on the organization's quarterly report as required by the Bingo Enabling Act. An organization's maintenance of proper records is important because those records document the activities of the licensee's bingo operations and help the organization secure and protect its revenue generating assets. Proper record keeping also helps ensure the objectives of charitable bingo are being accomplished.

The Commission requests comments on the proposed new rules from any interested person. Comments on the proposed new rules may be submitted to Sandra Joseph, Assistant General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at www.txlottery.org. The Commission will hold a public hearing on this proposal at 10:00 a.m. on November 13, 2007, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposal in order to be considered.

The new rules are proposed under Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The proposed new rules implement Occupations Code, Chapter 2001.

§402.500. General Records Requirements.

(a) Licensees must maintain all information and records relating to bingo for four years.

(b) Unless otherwise prescribed by the Commission, a licensee may design and use its own forms for records as long as they contain the information required by the Bingo Enabling Act and the Charitable Bingo Administrative Rules.

(c) Licensees must make available all information and records relating to bingo upon request of the Commission.

§402.506. Disbursement Records Requirements.

(a) The licensee is required to maintain records to substantiate bingo expenses. Bank statements and cancelled checks alone are not adequate to substantiate bingo expenses.

(b) The records listed below are acceptable records that must be maintained to substantiate bingo expenses:

(1) Invoices, itemized billing statements, or sales receipts that have detailed information about the items purchased or services provided. Invoices or other appropriate supporting documents must contain at least the following details:

(A) The name, address, and phone number of the person or entity selling the goods or providing the service;

(B) a complete description of goods or services purchased;

(C) the amount of each product sold or service provided;

(D) the price of each unit;

(E) the total dollar amount billed; and

(F) the date of the transaction.

(2) Written lease agreement between the lessor and the organization stating the amount of rent charged for the use of bingo premises. If there is no written agreement, the organization must support the rental payments with an invoice from the lessor stating location, rental dates, and rental amounts by occasion.

(3) Rent forgiveness letter signed by the commercial lessor stating the amount of any rent amount permanently reduced or forgiven.

(4) Payroll records that include a listing for each employee showing:

(A) position(s) worked;

(B) date and occasion number worked (if more than one occasion held on a single day);

(C) total number of hours worked per occasion (if paid hourly);

(D) rate and criteria (hourly, per occasion, etc.);

(E) gross wages;

(F) all taxes and payroll deduction amounts; and

(G) net payroll amount.

(5) Federal and state payroll tax returns, deposits, and receipts.

(6) Other federal, state, and local documentation which may include tax returns, 1099's and property tax receipts.

(7) Commission loan approval letter for repayment of approved loans.

(8) Documentation which records the allocation method for expenses that relate to more than one category of expense.

(9) Bank statements, deposit slips and canceled checks.

(10) Debit card transactions reports.

(11) Game schedules and pricing structure documents including the date(s) of any changes to these documents.

§402.511. Required Inventory Records.

(a) A licensed authorized organization must maintain a perpetual inventory of all disposable bingo cards and pull-tab bingo tickets.

(b) The perpetual inventory must account for all sold and unsold disposable bingo cards and pull-tab bingo tickets, as well as inventory items designated for destruction.

(c) The licensed authorized organization is responsible for reimbursing its bingo account with non-bingo funds for gross receipts, prizes and prize fees associated with missing or unaccounted for disposable bingo cards and pull-tab bingo tickets.

(d) The following inventory records are required to be maintained:

(1) Disposable Card Sales Summary--a record that contains the perpetual inventory of disposable bingo paper purchased. Each serial number must be recorded on a separate sheet. The summary must include the following:

(A) organization's name and taxpayer number;

(B) distributor's name and taxpayer number;

(C) invoice date and number;

(D) serial and series number (For UPS pad, use the top sheet for obtaining color, serial and series numbers.);

(E) number of faces (ON) and number of sheets (UP);

(F) number of sheets or packs in package;

(G) color of the paper and border (For UPS pad, use the top sheet for obtaining color, serial and series numbers.);

(H) number of sheets or packs remaining after each occasion;

(I) occasion date(s) paper used;

(J) number of sheets or packs issued per occasion;

(K) number of sheets or packs returned per occasion;

(L) number of sheets or packs missing or damaged by date;

(M) number of sheets or packs sold per occasion;

(N) selling price per occasion;

(O) total gross sales per occasion;

(P) cumulative number of sheets or packs sold; and

(Q) initials of person entering the information per occasion.

(2) Pull Tab Sales Summary--a record that contains the perpetual inventory of pull-tabs tickets, including event tickets, purchased. The summary must include the following:

(A) organization's name and taxpayer number;

(B) distributor's name, taxpayer number, and address;

(C) invoice number;

(D) purchase date;

(E) form number;

(F) serial number;

(G) selling price;

(H) total prize payout per deal;

(H) number of tabs per deal;

(I) occasion date(s) pull-tab tickets sold;

(J) number of pull-tab ticket sold per occasion;

(K) number of pull-tab tickets remaining after the occasion;

(L) total gross sales per occasion; and

(M) total prizes paid per occasion.

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 October 26, 2007.

TRD-200705155
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: December 9, 2007
For further information, please call: (512) 344-5012

♦ ♦ ♦

TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

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

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

19 TAC §4.28, §4.30

The Texas Higher Education Coordinating Board proposes amendments to §4.28 and §4.30, concerning the Texas core curriculum. Specifically, two changes are proposed. First, the staff has received a number of questions during the past year regarding appropriate courses to fulfill the Mathematics Component Area requirement. The change specifies that the first college-level mathematics course, including but not limited to introductory statistics, logic, college algebra, or any more advanced math course for which the student is qualified upon enrollment, should be allowed to fulfill the component area requirement. Second, the Coordinating Board is charged to specify a reporting period for the submission of institutional reports regarding the effectiveness of the core curriculum at the institution. The Southern Association of Colleges and Schools (SACS) has recently increased its interest in and attention to this portion of the undergraduate curriculum as part of its revisions to the accreditation reaffirmation process, and requires essentially the same information that has been required in these institutional reports to the Board. The Coordinating Board's reporting period should be changed so that it can be aligned with that of SACS in order to eliminate unnecessary duplication of reporting requirements.

Dr. Joseph Stafford, Assistant Commissioner for Academic Affairs and Research has determined that for each year of the first five years the sections are in effect the fiscal implications to state or local government as a result of this rule change would be that there would be minimal cost saving to each college and university because the reporting period alignment with that already required as part of the SACS accreditation reaffirmation process would allow institutions to use similar reports for both purposes.

Dr. Stafford has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section would be in ensuring that unnecessary duplication of efforts for reporting to the Coordinating Board as well as to SACS is reduced. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Joe Stafford, Assistant Commissioner for Academic Affairs and Research, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or joe.stafford@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under Texas Education Code, §61.827, which authorized the Coordinating Board to adopt rules to implement the provisions of the subchapter, including those in Texas Education Code, §61.822(a), requiring the Coordinating Board to adopt a statement of the content, component areas, and objectives of the core curriculum, and in Texas Education Code, §61.824 regarding the evaluation of the institution's core curriculum and reporting of the evaluations to the Board.

The amendments will contribute to the ongoing implementation of the provisions of Texas Education Code §61.822(a) and §61.824.

§4.28. Core Curriculum.

(a) (No change.)

(b) Component Areas. Each institution's core curriculum must be designed to satisfy the exemplary educational objectives specified for the component areas of the "Core Curriculum: Assumptions and Defining Characteristics" adopted by the Board; all lower-division courses included in the core curriculum must be consistent with the "Texas Common Course Numbering System," and must be consistent with the framework identified in Charts I and II of this subsection. Chart I specifies the minimum number of semester credit hours required in each of five major component areas that a core curriculum must include (with sub-areas noted in parentheses). Chart II specifies options available to institutions for the remaining 6 - 12 semester credit hours.

Figure: 19 TAC §4.28(b)

(c) - (k) (No change.)

§4.30. Criteria for Evaluation of Core Curricula.

(a) Each public institution of higher education shall review and evaluate its core curriculum every ten [~~five~~] years on the schedule that accords with the institution's accreditation reaffirmation self-study report to the Southern Association of Colleges and Schools or its successor, and report the results of that evaluation to the Board. The evaluation should include:

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

(b) (No change.)

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

Filed with the Office of the Secretary of State on October 29, 2007.

TRD-200705182
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: January 24, 2008
For further information, please call: (512) 427-6114

♦ ♦ ♦

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 102. EDUCATIONAL PROGRAMS SUBCHAPTER FF. COMMISSIONER'S RULES CONCERNING EDUCATOR AWARD PROGRAMS

19 TAC §102.1073

The Texas Education Agency (TEA) proposes new §102.1073, concerning district awards for teacher excellence. The proposed new section would implement the requirements of the Texas Education Code (TEC), Chapter 21, Subchapter O, as added by House Bill 1, 79th Texas Legislature, Third Called Session, 2006, that requires the commissioner by rule to establish procedures and adopt guidelines for the administration of awards for the student achievement program.

House Bill 1, 79th Texas Legislature, Third Called Session, added the TEC, Chapter 21, Subchapter O, establishing a teacher incentive program that provides funding to districts interested in developing local incentive programs. The legislation requires that the commissioner establish the grant award program and adopt rules for developing local awards plans and the awarding of funds.

Proposed new 19 TAC §102.1073 would implement the TEC, Chapter 21, Subchapter O, by establishing the District Awards for Teacher Excellence (DATE) program. The new rule proposes provisions that would: (1) establish the purpose of the DATE program and requirement that interested schools districts develop local awards plans in order to be considered for funding; (2) define applicable words and terms; (3) provide details relating to district eligibility, application, and notification; (4) specify requirements for development of local awards plans; (5) set forth conditions of operation, including specifications for districts to create and submit to the TEA measurable and objective performance measures; (6) address how the amount of grant awards would be determined, including the use of matching funds; and (7) stipulate the manner in which award payments are to be allocated, including required percentage distributions, to classroom teachers and other eligible campus employees.

To the extent practicable, the campus shall pay a classroom teacher an incentive payment in an amount of not less than $3,000 per teacher, unless otherwise determined by the local school board. Minimum awards must be no less than $1,000 per teacher.

In addition, the subchapter name would be changed from "Commissioner's Rules Concerning Governor's Educator Excellence Award Programs" to "Commissioner's Rules Concerning Educator Award Programs" to accurately reflect the various types of award programs addressed in commissioner's rule.

The proposed new rule would provide guidelines and procedures for school districts and open-enrollment charter schools to follow in order to apply for the DATE program. Grantees must agree to submit all information, application materials, and reports required by the TEA.

Local school districts would be required to maintain documentation of the following: (1) approval by a majority of classroom teachers assigned to a campus selected to participate if the program is not implemented districtwide; (2) minutes of stakeholder meetings with selected campuses to share goals, purpose of award plan, and final award plan; (3) information regarding public viewing of the district award plan and the public comment period for teacher input; (4) the voting records for the district award plan by the district-level decision-making committee and the local school board of trustees or directors; and (5) records specifying distribution of final awards and stipends according to the district award plan.

Barbara Knaggs, acting senior advisor for education initiatives, has determined that for the first five-year period the new section is in effect there will be no additional fiscal implications for state government as a result of enforcing or administering the new section. The proposed new rule would allow the TEA to award grants from funds appropriated for the DATE program beginning with the 2008-2009 school year (fiscal year 2009). The grant amount appropriated to the TEA for fiscal year 2009 for the DATE program is $147.5 million. Funding for future years is contingent on appropriations made by the legislature for this purpose. There will be fiscal implications for local government. For fiscal year 2009, the grant requires a local match (cash or in-kind) of 15%. The cost to local school districts in fiscal year 2009 would be $22 million, which is 15% of the $147.5 million grant.

Ms. Knaggs 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 would be the positive impact the program would have on classroom teaching by rewarding classroom teachers and other school personnel for success in improving student performance. The public would realize the benefit of increasingly improved education for the school children of Texas, which would thereby prepare them for success and create an improved and more highly educated and prepared workforce. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the new section.

The public comment period on the proposal begins November 9, 2007, and ends December 9, 2007. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. All requests for a public hearing on the proposed new section submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The new section is proposed under the Texas Education Code, §21.702, which requires the commissioner of education by rule to establish an educator excellence awards program under which school districts, in accordance with local awards plans approved by the commissioner, receive program grants from the agency for the purpose of providing awards to district employees, and §21.707, which requires the commissioner of education to adopt rules necessary to administer the Educator Excellence Awards Program.

The new section implements the Texas Education Code, §21.702 and §21.707.

§102.1073. District Awards for Teacher Excellence.

(a) Establishment of program.

(1) In accordance with the Texas Education Code (TEC), §21.702, the District Awards for Teacher Excellence (DATE) is established as an annual grant program under which a school district may receive a program grant from the Texas Education Agency (TEA) for the purpose of providing awards to classroom teachers and district employees in the manner provided by the TEC, §21.705. Provisions regarding implementation of the program are described in this section.

(2) Funds from this program will be distributed to each selected school district or open-enrollment charter school that submitted an approved local awards plan developed in accordance with the TEC, §21.704, and subsection (e) of this section.

(b) Definitions.

(1) Classroom teacher--As defined in the TEC, §5.001(2).

(2) Contingency plan--An outline of alternative strategies to redistribute a school district's remaining grant funds after the school district's approved local awards plan has been implemented.

(3) Districtwide--Every campus within the school district.

(4) Local awards plan--A plan developed by a school district in accordance with the TEC, §21.704, and subsection (e) of this section that sets forth procedures for the school district's use of DATE grant funds.

(5) Meaningful, objective performance measures--Quantifiable measures that have a standardized definition and are measured and reported in the same way for every campus/school district and in the same way from year to year. The measures must also be generally viewed as measures of student/institutional excellence and equity.

(6) Part I funds--Grant funds used to award classroom teachers who positively impact student academic improvement, growth, and/or achievement.

(7) Part II funds--Grant funds used on awards and stipends for classroom teachers, staff, principals, and other activities to improve student achievement, recruitment, and retention.

(8) School district--For the purpose of this section, the definition of school district includes an open-enrollment charter school.

(9) Selected campus--A campus identified by a school district to receive grant funds when the district awards program is not implemented districtwide.

(10) Target campus--A selected campus identified by a school district to receive grant funds when the district awards program is not implemented districtwide. A target campus must meet criteria specified in program requirements established by the commissioner of education that designate a campus as having low or underperforming student academic achievement and low student academic improvement rates. Additional criteria may take into account difficulty in finding and retaining qualified and effective teachers relative to the state or district averages. Criteria used for selection of a target campus must

relate directly to the goals and performance measures of the local awards plan.

(c) District eligibility.

(1) A school district is eligible to apply for grant funds for the DATE program if the school district:

(A) completes and submits a Notice of Intent to Apply to the TEA by a date established by the commissioner;

(B) complies with all assurances in the Notice of Intent to Apply and grant application;

(C) develops a local awards plan for the district;

(D) participates in the required technical assistance activities established by the commissioner;

(E) agrees to participate for no less than two consecutive grant cycles;

(F) agrees to complete required activities during a planning year and during implementation year(s) on a timeline set forth in the program requirements established by the commissioner; and

(G) complies with any other activities set forth in the program requirements.

(2) An eligible school district must submit an application in a form prescribed by the commissioner.

(A) Each eligible applicant must meet all deadlines, requirements, and assurances specified in the application.

(B) The commissioner may waive any eligibility requirements specified in this subsection. All waiver requests must be submitted, along with a completed application, to the TEA and meet the requirements of the TEC, §7.056.

(d) Notification. The TEA will notify each applicant in writing of its selection or non-selection to receive a grant under the DATE program.

(e) Local awards plan.

(1) In accordance with the TEC, §21.704, a school district that intends to participate in the DATE program and that meets the requirements specified in the TEC, Chapter 21, Subchapter O, and this section is required to submit a local awards plan to the TEA for approval. The TEA may only approve a local awards plan that meets the program requirements specified in the TEC, §21.702, and this section.

(2) A local awards plan must:

(A) be developed by the district-level planning and/or decision-making committee established under the TEC, Chapter 11, Subchapter F;

(B) be submitted with evidence of significant teacher involvement demonstrated by providing the campus majority vote count for selected campuses and an assurance from the school district superintendent in the completed application;

(C) define criteria that will be used to identify which teachers, of those eligible, will receive awards. The criteria must be quantifiable and applicable to established meaningful, objective performance measures. The majority of these criteria must address student academic improvement, growth, and/or achievement;

(D) establish meaningful, objective performance measures, as defined in subsection (b)(5) of this section, for the school district and the selected campuses. At least one measure must relate to student academic improvement, growth, and/or achievement;

(E) identify campus participation districtwide or for selected campuses, as defined in subsection (b) of this section. If the school district identifies selected campuses then:

(i) a majority of classroom teachers assigned to a campus that is selected by the district-level planning and/or decision-making committee to participate in the program must approve participation to be included in the local awards plan; and

(ii) more than half of the selected campuses must be target campuses, as defined in subsection (b) of this section;

(F) establish teacher eligibility requirements that are consistent for no less than two consecutive grant cycles;

(G) define criteria that will be used to identify which teachers, of those eligible, will receive awards. The criteria must be quantifiable and applicable to the established meaningful, objective performance measures. The majority of these criteria must address student academic improvement, growth, and/or achievement;

(H) make information available to the public on the methodology used to determine award amounts and timelines for the duration of a school district's participation in the grant program; and

(I) include a contingency plan designed to redistribute any remaining, unawarded Part I and Part II program funds, in accordance with the percentage distributions specified in the TEC, §21.705, and subsection (h) of this section.

(3) The local school board must approve the local awards plan, changes to the local awards plan, and the grant application prior to submission to the TEA. A school district must act pursuant to its local school board policy for submitting a local awards plan and grant application to the TEA.

(4) A decision by a local school board to approve and submit its local awards plan and grant application may not be appealed to the commissioner.

(5) A school district may renew its local awards plan for three consecutive school years without resubmitting a full grant application to the TEA.

(6) A school district may amend, with TEA approval, its local awards plan in accordance with subsections (g) and (h) of this section for each school year the school district receives a program grant.

(f) Conditions of operation.

(1) A school district must identify performance measures in the application for the success of the local awards plan. The performance measures:

(A) must directly relate to the school district goals and criteria for selecting targeted campuses;

(B) must include measures of student academic improvement, growth, and/or achievement;

(C) may relate to improved teacher attrition, migration, and quality;

(D) must include targets for school district performance and specifically for target campuses, if the district program is not districtwide;

(E) must be met within two years from the start of a school district's first implementation year; and

(F) must be in accordance with program guidelines established by the commissioner.

(2) A school district may not reduce the number of previously established performance measures at any time during the school district's participation in the DATE grant.

(3) A school district may not remove a performance measure from the local awards plan earlier than two grant cycles from the time the performance measure was established for the purposes of the grant.

(4) Each performance measure must be set at a level that reflects improvement from current performance for the school district and among target campuses.

(5) If a school district fails to meet performance measures, the school district must submit a plan to the TEA for approval by the commissioner addressing how the district will modify its local awards plan to meet performance measures. The commissioner may require the school district to participate in required technical assistance in modifying its local awards plan.

(6) If a school district fails to meet performance measures or other TEA requirements, the commissioner may disqualify a school district from receiving a grant award from the DATE program the subsequent grant year.

(7) A school district shall demonstrate and provide information to the TEA, in the application, on the following:

(A) a strategic plan for decreasing dependence on the state funds to assure long-term sustainability of the program after the DATE grant funds expire;

(B) an ongoing process for evaluating the local awards plan and activities to be performed under the DATE grant, including measurement of progress toward the approved goals and measurable objectives to help improve program performance and support sustainability; and

(C) efforts to identify additional cash and in-kind contributions to support and sustain the activities of the local awards plan.

(g) Amount of grant awards.

(1) In accordance with the TEC, §21.703, each school district with a TEA-approved local awards plan is entitled to a grant award in an amount determined by the commissioner.

(2) In accordance with the TEC, §21.703(a)(2)(B), an award determination will be based on the average daily attendance (ADA) of participating districts in relation to the total number of eligible and applying districts.

(3) Award amounts may vary from one year to the next.

(4) A school district must provide matching funds in an amount to be established by the commissioner. Matching funds must be used to supplement or support activities identified in the district grant application and local awards plan. The commissioner may disqualify a school district from current and future grant awards for the DATE program and recover allocated grant funds if a school district fails to allocate or provide matching funds. A decision to disqualify a school district or recover funds is final and may not be appealed.

(h) Award payments to classroom teachers.

(1) A school district must distribute a specified percentage of its program grant award to eligible classroom teachers districtwide or on selected campuses who meet the local awards plan criteria in accordance with the TEC, §21.705, and this section. Each grant award must be spent in two parts.

(A) Part I funds must make up at least 60 percent of the total grant allocation and be used to award classroom teachers who meet the local awards plan criteria. Awards under this subsection:

(i) may be used only for classroom teachers that positively impact student academic improvement and/or growth; and

(ii) must be distributed in accordance with the local awards plan developed in accordance with subsection (e) of this section.

(B) Part II funds must make up the remaining amount of the funds, a maximum of 40 percent of the total grant allocation. In accordance with the TEC, §21.705, Part II funds can be used for other allowable activities as identified in program requirements.

(2) A school district may choose to exclude a teacher from receiving an award who has transferred or retired or who works part-time on a selected campus. In such an instance, the local awards plan must reflect the district policies with regard to such a teacher at the program start date. A decision to exclude certain teachers from receiving an award may not be appealed to the commissioner.

(3) Annual award amounts must be equal to or greater than $3,000, unless otherwise determined by the local school board. Minimum awards must be no less than $1,000 per teacher. A local school board decision on award amounts per teacher is final and may not be appealed to the commissioner.

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 October 29, 2007.

TRD-200705201
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: December 9, 2007
For further information, please call: (512) 475-1497

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 213. PRACTICE AND PROCEDURE

22 TAC §213.12

The Texas Board of Nursing (BON) proposes an amendment to 22 TAC §213.12, Witness Fees and Expenses, relating to Practice and Procedure. The proposed amendment to §213.12 is to allow a witness who has been subpoenaed by the Board or a party to a proceeding of the Board's to receive adequate reimbursement for their expenses and efforts. Unless the Board designates otherwise, under the Texas Government Code, §2001.103, a witness is allowed only $10 dollars a day compensation and $.10 per mile reimbursement.

Katherine Thomas, Executive Director, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of implementing the proposed amendment except the agency will incur any additional expenses for witness fees.

Ms. Thomas has also determined that for each year of the first five years the proposal is in effect the public benefit will be that witnesses subpoenaed by the Board will be more adequately and fairly compensated for any expenses they may incur. There will be no additional cost to small businesses or affected individuals as a result of the proposed amendment.

Written comments on the proposal may be submitted to Joy Sparks, Assistant General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701; by email to *joy.sparks@bon.state.tx.us;* or by facsimile to (512) 305-8101.

The amendment is proposed pursuant to the authority of Texas Occupations Code §301.151 and §301.152 which authorizes the BON to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

Texas Occupations Code, §301.465, Subpoenas; Request for Information is affected by this proposed amendment.

§213.12. Witness Fees and Expenses.

A witness who is not a party to the proceeding and who is subpoenaed to appear at a deposition or hearing or to produce books, papers, or other objects, shall be entitled to receive reimbursement for expenses incurred in complying with the subpoena as set by the legislature in the APA, Texas Government Code Annotated §2001.103. In addition, a subpoenaed witness is entitled to thirty dollars ($30) for each day or part of a day that the person is necessarily present, and 48.5 cents for each mile for going to and returning from the place of the hearing or deposition if the place is more than 25 miles from the person's place of residence, and the person uses the person's personally owned or leased motor vehicle for the travel.

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 October 29, 2007.

TRD-200705200
Katherine Thomas
Executive Director
Texas Board of Nursing
Earliest possible date of adoption: December 9, 2007
For further information, please call: (512) 305-6823

♦ ♦ ♦

CHAPTER 214. VOCATIONAL NURSING EDUCATION

22 TAC §§214.2 - 214.4, 214.6, 214.12

The Texas Board of Nursing (BON) proposes amendments to 22 Texas Administrative Code §214.2 (Definitions), §214.3 (Program Development, Expansion and Closure), §214.4 (Approval), §214.6 (Administration and Organization), and §214.12 (Records and Reports) relating to Vocational Nursing Education. The Sunset Advisory Commission Report to the 80th Legislature, May 2007, Recommendations, Change in Statute and Management Action, made recommendations, and House Bill (HB) 2426 (Board's Sunset Bill), implemented those recommendations, resulting in changes to Chapter 301 of the Texas Occupations Code (Nursing Practice Act). Amendments to §301.157(a) - (d) resulted in proposed amendments to 22 TAC Chapter 214 as follows: §214.2 (Definitions)--clarifying previous terminology and adding new terminology used throughout the rule; §214.3 (Program Development, Expansion and Closure)--clarifying requirements relating to limiting the role of the Board to approving nursing educational programs leading to initial licensure, the authority of the Board to approve nursing educational programs approved by other state boards of nursing; and streamlining the Board's initial approval process for nursing educational programs; §214.4 (Approval)--clarifying requirements relating to the selection of national nursing accrediting agencies by the Board; limiting the role of the Board to approving nursing educational programs leading to initial licensure, and increasing the Board's approval of nursing educational programs for longer than one year; §214.6 (Administration and Organization)--clarifying requirements relating to limiting the role of the Board to approving nursing educational programs leading to initial licensure; and §214.12 (Records and Reports)--ensuring consistency in the requirements for the proposed amendments in §214.4. Additional non-substantive changes were made throughout these sections for the purposes of clarifying the intent of the rule and correcting spelling/grammatical errors.

When a final delineation of responsibilities is completed, a Texas BON approval process to establish a new nursing educational program will be developed by Board staff for both new vocational nursing educational programs and new professional nursing educational programs. Board staff anticipate that in addition to eliminating duplicative approval steps among the Texas BON, TWC, and THECB, the Texas BON new program approval process will be designed to: reduce the amount of required written information that the applicant must provide; allow the applicant to complete standardized tables for providing required data; and allow the applicant to submit copies of documentation required in the TWC or THECB approval process in order to meet certain requirements in the Texas BON approval process. Once the new program approval process is approved, new Texas BON education guidelines will be developed and made available to the public on the Texas BON web site.

Amendments to rules pertaining to Professional Nursing Education 22 TAC Chapter 215 are being proposed concurrently with these proposed amendments.

Katherine Thomas, executive director, has determined that for the first five-year period the proposed amendments are adopted there will be no fiscal implications for state or local government as a result of implementing the proposed amendments.

Katherine Thomas, executive director, has determined that for each year of the first five years the proposal is adopted, the public benefit will be that the amendments will eliminate duplicative approval steps among the BON, Texas Workforce Commission (TWC), and the Texas Higher Education Coordinating Board (THECB) for nursing educational programs and will implement the statutory changes passed by the legislature. There will be no additional cost to small businesses or affected individuals as a result of these proposed amendments.

Written comments on the proposal may be submitted to Joy Sparks, Assistant General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701; by email to *joy.sparks@bon.state.tx.us;* or by facsimile to (512) 305-8101.

The proposed amendments are pursuant to the authority of Texas Occupations Code §301.151 and §301.152 which authorizes the BON to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

This proposal will affect Texas Occupations Code §301.157.

§214.2. Definitions.

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

(1) Affidavit of Graduation--an official Board form containing an approved nursing educational [~~education~~] program's curriculum components and hours, a statement attesting to an applicant's qualifications for vocational nurse licensure in Texas, the official school seal and the signature of the nursing program director/coordinator.

(2) (No change.)

~~[(3) Annual Report--a document required by the Board to be submitted at a specified time by the nursing education program director or coordinator. This document serves as verification of the program's adherence to Chapter 214, Vocational Nursing Education.]~~

(3) [~~(4)~~] Approved vocational nursing educational [~~education~~] program--a vocational nursing educational [~~education~~] program approved by the [~~Board of Nurse Examiners for the State of~~] Texas Board of Nursing.

(4) [~~(5)~~] Assistant Program Coordinator--a registered nurse faculty member in the vocational nursing educational [~~education~~] program who is designated to assist with program management when the director or coordinator assumes responsibilities other than the program.

(5) [~~(6)~~] Board--the [~~Board of Nurse Examiners for the State of~~] Texas Board of Nursing composed of members appointed by the Governor for the State of Texas.

(6) [~~(7)~~] Class Hours--those hours allocated to didactic instruction and testing in each subject.

(7) [~~(8)~~] Clinical Conferences--scheduled presentations and discussions of aspects of client care experiences.

(8) [~~(9)~~] Clinical Learning Experiences--faculty planned and guided learning activities designed to assist students to meet stated program and course outcomes and to safely apply knowledge and skills when providing nursing care to clients across the life span as appropriate to the role expectations of the graduates. These experiences occur in nursing skills and computer laboratories; in simulated clinical settings; in a variety of affiliating agencies or clinical practice settings including, but not limited to: acute care facilities, extended care facilities, clients' residences, and community agencies; and in associated clinical conferences.

(9) [~~(10)~~] Clinical Practice Hours--hours spent in actual client care assignments, simulated laboratory experiences, observations, clinical conferences and clinical instruction.

(10) [~~(11)~~] Clinical Preceptor--a licensed nurse who meets the minimum requirements in §214.10(l)(5) of this chapter (related to Management of Clinical Learning Experiences and Resources), not paid as a faculty member by the controlling agency, and who directly supervises clinical learning experiences for no more than two students. A clinical preceptor facilitates student learning in a manner prescribed by a signed written agreement between the educational institution, preceptor, and affiliating agency (as applicable).

(11) Compliance Audit--a document required by the Board to be submitted at a specified time by the nursing educational program director or coordinator that serves as verification of the program's adherence to chapter 214, Vocational Nursing Education.

(12) - (13) (No change.)

(14) Controlling Agency--institution that has direct authority and administrative responsibility for the operation of a board approved nursing educational [~~education~~] program.

(15) - (18) (No change.)

(19) Director or Coordinator--denotes the nurse directly in charge chosen by the controlling agency, approved by the Board, and who is administratively responsible for the nursing educational [~~education~~] program.

(20) Examination Year--the period beginning January 1 and ending December 31 used for the purposes of determining programs' NCLEX-PN™ examination pass rates.

(21) Faculty member--an individual employed to teach in the vocational nursing educational [~~education~~] program who meets the requirements as stated in §214.7 of this chapter (relating to Faculty Qualifications and Faculty Organization).

(22) Faculty waiver--a waiver granted a director or coordinator of a vocational nursing educational program and submitted to the Board on a notarized notification form, or by the Board, as specified in §214.7(c)(2)(C) of this chapter, to an individual who is currently licensed as an LVN or RN, or has a privilege to practice, as appropriate, in Texas and who is approved to be employed as a faculty member for a specified period of time.

(23) - (27) (No change.)

(28) Pass rate--the percentage of first-time candidates within one examination year who pass the National Council Licensure Examination for Vocational Nurses (NCLEX-PN™).

(29) (No change.)

(30) Program of Study--the courses and learning experiences that constitute the requirements for completion of a vocational nursing educational [~~education~~] program.

(31) - (34) (No change.)

(35) Staff--Employees of the Texas Board of Nursing [~~Nurse Examiners~~].

(36) (No change.)

(37) Survey Visit--an on-site visit to a vocational nursing educational [~~education~~] program by a Board representative. The purpose of the visit is to evaluate the program of learning by gathering data to determine whether the program is meeting the Board's requirements as specified in §§214.2 - 214.13 of this chapter.

(38) (No change.)

(39) Texas Higher Education Coordinating Board (THECB)--a state agency created by the Legislature to provide coordination for the Texas higher education system, institutions, and governing boards, through the efficient and effective utilization and concentration of all available resources and the elimination of costly duplication in program offerings, faculties, and physical plants (Texas Education Code, Title 3, Subtitle B, Chapter 61).

(40) Texas Workforce Commission (TWC)--the state agency charged with overseeing and providing workforce development services to employers and job seekers of Texas (Texas Labor Code, Title 4, Subtitle B, Chapter 301).

(41) [~~(39)~~] Vocational Nursing Educational [~~Education~~] Program--a unit or entity within an educational setting which provides a program of study preparing graduates who are competent to practice safely and who are eligible to take the NCLEX-PN™ examination. Types of programs:

(A) Extension program--a site other than the program's main location where the program of study is provided, duplicating the current curriculum and teaching resources.

(B) MEEP--Multiple Entry Exit Program that offers mobility options for students.

(C) New program--a newly created program of study in which the curriculum, teaching resources, or program hours required to complete the program differs from that of the main location.

§214.3. Program Development, Expansion and Closure.

(a) New programs.

(1) Proposal to establish a new vocational nursing educational [~~education~~] program.

(A) An educational unit in nursing within the structure of a school, including a college, university, or proprietary school (career school or college), or a hospital is eligible to submit a proposal to establish a vocational nursing educational [~~education~~] program. Specialized institutions such as nursing homes, tuberculosis hospitals, and others do not qualify as controlling agencies, but may participate with a program as an affiliating health care facility. [~~The process to establish a new vocational nursing education program shall be initiated with the Board office one year prior to the anticipated start of the program.~~]

(B) The new vocational nursing educational program must be approved/licensed by the appropriate Texas agency, i.e. THECB, TWC, before approval can be granted by the Texas Board of Nursing for the program to be implemented.

(i) The approval process conducted by THECB or TWC must precede the approval process conducted by the Board.

(ii) The proposal to establish a new vocational nursing educational program may be submitted to the Board at the same time that an application is submitted to THECB or TWC, but the proposal cannot be approved by the Board until such time as the proposed program is approved by THECB or TWC.

(C) The process to establish a new vocational nursing educational program shall be initiated with the Board office one year prior to the anticipated start of the program.

(D) [~~(B)~~] The proposal shall be completed under the direction/consultation of a registered nurse who meets the Board-approved qualifications for a program director according to §214.6 of this chapter.

(E) [~~(C)~~] Sufficient nursing faculty, with appropriate expertise, shall be in place for development of the curriculum component of the program.

(F) [~~(D)~~] The proposal shall include information outlined in Board guidelines.

(G) [~~(E)~~] After the proposal is submitted and reviewed, a preliminary survey visit shall be conducted by Board staff prior to presentation to the Board.

(H) [~~(F)~~] The proposal shall be considered by the Board following a public hearing at a regularly scheduled meeting of the Board. The Board may approve the proposal and grant initial approval to the new program, may defer action on the proposal, or may deny further consideration of the proposal.

(I) [~~(G)~~] The program shall not admit students until the Board approves the proposal and grants initial approval.

(J) [~~(H)~~] Prior to presentation of the proposal to the Board, evidence of approval from the appropriate regulatory/funding agencies shall be provided.

(K) [~~(I)~~] After the proposal is approved, an initial approval fee shall be assessed per §223.1 (related to Fees).

(L) [~~(J)~~] A proposal without action for one calendar year shall be inactivated.

(M) If the Board denies further consideration of a proposal, the educational unit in nursing within the structure of a school, including a college, university, or proprietary school (career school or college), or a hospital must wait a minimum of twelve calendar months from the date of the denial before submitting a new proposal to establish a vocational nursing educational program.

(2) Survey visits shall be conducted, as necessary, by staff until full approval status is granted.

(b) Extension Program.

(1) Only vocational nursing educational [~~education~~] programs which have full approval status are eligible to initiate an extension program.

(2) An approved vocational nursing educational [~~education~~] program desiring to begin an extension program which duplicates current curriculum and teaching resources shall:

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

(C) Provide documentation of notification or approval from the controlling agency, THECB, TWC and/or other regulatory/funding agencies, as applicable [~~appropriate~~], at least four (4) months prior to implementation, as appropriate.

(3) (No change.)

(4) Extension programs of vocational nursing educational [~~education~~] programs which have been closed may be reactivated by submitting notification of reactivation to the Board at least four (4) months prior to reactivation, using the Board guidelines for initiating an extension program.

(5) (No change.)

(c) (No change.)

(d) Closure of a Program. A program shall notify the Board office in writing of their intent to close the program. [~~The controlling agency shall be responsible for graduating enrolled students or ensuring the satisfactory transfer of those students into another program. The controlling agency shall provide for permanent storage of student records. A program is deemed closed when the program has not enrolled students for a period of two years since the last graduating class or student enrollment has not occurred for a two-year period. Board-ordered enrollment suspensions may be an exception.~~]

(1) The controlling agency shall be responsible for graduating enrolled students or ensuring the satisfactory transfer of those students into another program.

(2) The controlling agency shall provide for permanent storage of student records.

(3) A program is deemed closed when the program has not enrolled students for a period of two years since the last graduating class or student enrollment has not occurred for a two-year period. Board-ordered enrollment suspensions may be an exception.

(e) Approval of a Nursing Educational Program Outside Texas' Jurisdiction to Conduct Clinical Learning Experiences in Texas.

(1) The nursing educational program outside Texas' jurisdiction seeking approval to conduct clinical learning experiences in Texas should initiate the process with the Texas Board of Nursing two to three months prior to the anticipated start of the clinical learning experiences in Texas.

(2) A written request and the required supporting documentation shall be submitted to the Board office following Board guidelines.

(3) Evidence that the program has been approved/licensed by the appropriate Texas agency, i.e., THECB, TWC, to conduct business in the State of Texas must be obtained before approval can be granted by the Texas Board of Nursing for the program to conduct clinical learning experiences in Texas.

§214.4. Approval.

(a) The progressive designation of approval status is not implied by the order of the following listing. Approval status is based upon each program's performance and demonstrated compliance to the Board's requirements and response to the Board's recommendations. Change from one status to another is based on NCLEX-PN™ examination pass rates, compliance audits [~~annual reports~~], survey visits, and other factors listed under §214.4(b) of this chapter. Types of approval include:

(1) Initial Approval.[~~--Initial approval is written authorization by the Board for a new program to admit students and is granted if the program meets the requirements and addresses the recommendations issued by the Board. Initial approval begins with the date of the first student enrollment. The program shall not enroll more than one class per year while on initial approval. Change from initial approval status to full approval status cannot occur until the licensing examination result of the first graduating class is evaluated by the Board.~~]

(A) Initial approval is written authorization by the Board for a new program to admit students, is granted if the program meets the requirements and addresses the recommendations issued by the Board, and begins with the date of the first student enrollment.

(B) The program shall not enroll more than one class per year while on initial approval.

(C) Change from initial approval status to full approval status cannot occur until the program has met requirements and responded to all recommendations issued by the Board and the licensing examination result of the first graduating class is evaluated by the Board.

(2) Full Approval.

(A) Full Approval is granted by the Board to a vocational nursing educational [~~education~~] program that is in compliance with all requirements and has responded to all recommendations.

(B) Only programs with Full approval status may initiate extension programs, grant faculty waivers, and petition for faculty waivers.

(3) [~~(B)~~] Full Approval with Warning is issued by the Board to a vocational nursing educational [~~education~~] program that is not meeting legal and educational requirements. [~~The program issued a warning, is provided a list of the deficiencies and given a specified time in which to correct the deficiencies.~~]

(A) A program issued a warning will receive written notification from the Board of the warning.

(B) The program is given a list of the deficiencies and a specified time in which to correct the deficiencies.

(4) [~~(3)~~] Conditional Approval.[~~--~~]Conditional approval is issued by the Board for a specified time to provide the program opportunity to correct deficiencies.

(A) The program shall not admit students while on conditional status.

(B) The Board may establish specific criteria to be met in order for the program's conditional approval status to be changed.

(C) Depending upon the degree to which the Board's legal and educational requirements are met, the Board may change the approval status to full approval or full approval with warning, or may withdraw approval.

(5) [~~(4)~~] Withdrawal of Approval.[~~--~~]The Board may withdraw approval from a program which fails to meet legal and educational requirements within the specified time. The program shall be removed from the list of Board approved vocational nursing educational [~~education~~] programs.

(b) Factors Jeopardizing Program Approval Status--Approval may be changed or withdrawn for any of the following reasons:

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

(6) failure to comply with Board requirements or [~~and~~] to respond to Board recommendations within the specified time;

(7) - (10) (No change.)

(c) Ongoing Approval Procedures [~~procedures~~]. Approval status is determined biennially [~~annually~~] by the Board on the basis of the program's compliance audit [~~annual report~~], NCLEX-PN™ examination pass rate, and other pertinent data.

(1) Compliance Audit [~~Review of annual report~~]. Each approved vocational nursing educational [~~education~~] program shall submit a biennial audit [~~an annual report~~] regarding its compliance with the Board's legal and educational requirements.

(2) [~~Pass rate of graduates on~~] NCLEX-PN™ Pass Rates [~~examination~~].

(A) Eighty percent (80%) of first-time candidates who complete the program of study are required to achieve a passing score on the NCLEX-PN™ examination.

(B) When the passing score of first-time candidates who complete the vocational nursing educational [~~education~~] program is less than 80% on the NCLEX-PN™ examination during the examination year, the nursing program shall submit a self-study report that evaluates factors which contributed to the graduates' performance on the NCLEX-PN™ examination and a description of the corrective measures to be implemented. The report shall follow Board guidelines.

(C) (No change.)

(D) A program shall be placed on conditional approval status if, within one examination year from the date the warning is issued, the performance of first- time candidates fails to be at least 80% on the NCLEX-PN™ examination, or the faculty fail to implement appropriate corrective measures.

(E) Approval [~~status~~] may be withdrawn if the performance of first-time candidates fails to be at least 80% during the examination year following the date that the program was placed on conditional approval.

(F) (No change.)

(3) [~~(d)~~] Survey Visit [~~visit~~]. Each vocational nursing educational [~~education~~] program shall be visited at least every six years after full approval has been granted, unless accredited by a Board-recognized national nursing [~~voluntary~~] accrediting agency [~~body~~].

(A) [~~(1)~~] The Board may authorize staff to conduct a survey visit at any time based upon established criteria.

(B) [~~(2)~~] After a program is fully approved by the Board, a report from a Board- recognized national nursing [~~voluntary~~] accrediting agency [~~body~~] regarding a program's accreditation status may be accepted in lieu of a Board survey visit.

(C) [~~(3)~~] A written report of the survey visit, compliance audit [~~annual report~~], and NCLEX-PN™ examination pass rate shall be reviewed by the Board biennially at a regularly scheduled meeting.

(4) The Texas Board of Nursing will select one or more national nursing accrediting agencies, recognized by the United States Department of Education and determined by the Board to have standards *equivalent to the Board's ongoing approval standards.*

(A) The Texas Board of Nursing will periodically review the standards of the national nursing accrediting agencies following revisions of accreditation standards or revisions in Board requirements for validation of continuing equivalency.

(B) The Texas Board of Nursing will deny or withdraw approval from a school of nursing or educational program that fails to:

(i) meet the prescribed course of study or other standard under which it sought approval by the Board.

(ii) meet or maintain voluntary accreditation, by a school of nursing or educational program approved by the Board as stated in §214.4(c)(4)(C) of this chapter, with the national nursing accrediting agency selected by the Board under which it was approved or sought approval by the Board.

(iii) maintain the approval of the state board of nursing of another state that the Board has determined has standards that are substantially equivalent to the Board's standards under which it was approved.

(C) A school of nursing or educational program is considered approved by the Board and exempt from Board rules that require ongoing approval if the program:

(i) is accredited and maintains voluntary accreditation through an approved national nursing accrediting agency that has been determined by the Board to have standards equivalent to the Board's ongoing approval standards; and

(ii) maintains an acceptable pass rate, as determined by the Board, on the applicable licensing exam.

(D) A school of nursing or educational program that fails to meet or maintain an acceptable pass rate, as determined by the Board, on applicable licensing examinations is subject to review by the Board.

(E) A school of nursing or educational program, approved by the Board as stated in §214.4(c)(4)(C) of this chapter, that does not maintain voluntary accreditation is subject to review by the Board.

(F) The Board may assist the school or program in its effort to achieve compliance with the Board's standards.

(G) A school or program from which approval has been withdrawn may reapply for approval.

(H) A school of nursing or educational program accredited by an agency recognized by the Board shall:

(i) provide the board with copies of any reports submitted to or received from the national nursing accrediting agency selected by the Board within three (3) months of receipt of official reports;

(ii) notify the Board of any change in accreditation status within two (2) weeks following receipt of official notification letter; and

(iii) provide other information required by the Board as necessary to evaluate and establish nursing education and workforce policy in this state.

(d) [~~(e)~~] Notice of a program's approval status shall be sent to the director, chief administrative officer of the controlling agency, and others as determined by the Board.

§214.6. Administration and Organization.

(a) (No change.)

(b) There shall be an organizational chart indicating lines of authority between the vocational nursing educational [~~education~~] program and the controlling agency.

(c) (No change.)

(d) The controlling agency shall:

(1) be responsible for satisfactory operation of the vocational nursing educational program;

(2) - (6) (No change.)

(7) select and appoint a qualified registered nurse director or coordinator for the program who meets the requirements of the Board. The director shall:

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

(D) have had five years of varied nursing experience since graduation from a professional nursing educational [~~education~~] program.

(e) (No change.)

(f) In a fully approved vocational nursing educational [~~education~~] program, if the individual to be appointed as director or coordinator does not meet the requirements for director or coordinator as specified in subsection (d)(7) of this section, the administration is permitted to petition for a waiver of the Board's requirements, according to Board guidelines, prior to the appointment of said individual.

(g) A newly appointed director or coordinator of a vocational nursing educational [~~education~~] program shall attend the next scheduled orientation provided by the Board staff.

(h) The director or coordinator shall have the authority to direct the program in all its phases, including approval of teaching staff, selection of appropriate clinical sites, admission, progression, probation, and dismissal of students. Additional responsibilities include but are not limited to:

(1) - (3) (No change.)

(4) completing and submitting the Texas Board of Nursing Compliance Audit and Nursing Educational Program Information Survey [~~Annual Report the to the Board office~~] by the required dates [~~date~~].

§214.12. Records and Reports.

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

(e) Copies of the program's Texas Board of Nursing Compliance Audit of the Nursing Educational Program (CANEP), Nursing Ed-

ucational Program Information Survey (NEPIS), [~~Annual Reports~~] and important Board communication shall be maintained as appropriate.

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 October 29, 2007.

TRD-200705194
Katherine Thomas
Executive Director
Texas Board of Nursing
Earliest possible date of adoption: December 9, 2007
For further information, please call: (512) 305-6823

♦ ♦ ♦

CHAPTER 215. PROFESSIONAL NURSING EDUCATION

22 TAC §§215.2 - 215.4, 215.6, 215.12

The Texas Board of Nursing (BON) proposes amendments to 22 Texas Administrative Code (TAC) §215.2, concerning Definitions; §215.3, concerning Program Development, Expansion, and Closure; §215.4, concerning Approval; §215.6, concerning Administration and Organization; and §215.12, concerning Records and Reports. The Sunset Advisory Commission Report to the 80th Legislature, May 2007, Recommendations, Change in Statute and Management Action, made recommendations, and House Bill (HB) 2426 (Board's Sunset Bill), implemented those recommendations, resulting in changes to Chapter 301 of the Texas Occupations Code (Nursing Practice Act). Amendments to §301.157(a-d) resulted in proposed amendments to 22 TAC Chapter 215 as follows: §215.2 (Definitions)--clarifying previous terminology and adding new terminology throughout the rule; §215.3 (Program Development, Expansion and Closure)--clarifying requirements relating to accreditation of the governing institution of a school of nursing, limiting the role of the Board to approving nursing educational programs leading to initial licensure, the authority of the Board to approve nursing educational programs approved by other state boards of nursing, streamlining the Board's initial approval process for nursing educational programs, and degree requirements for diploma nursing programs by 2015; §215.4 (Approval)--clarifying requirements relating to the selection of national nursing accrediting agencies by the Board, accreditation of the governing institution of a school of nursing, limiting the role of the Board to approving nursing educational programs leading to initial licensure, degree requirements for diploma nursing programs by 2015, and increasing the Board's approval of nursing educational programs for longer than one year; §215.6 (Administration and Organization)--clarifying requirements relating to accreditation of the governing institution of a school of nursing and limiting the role of the Board to approving nursing educational programs leading to initial licensure, and §215.12 (Records and Reports)--ensuring consistency in the requirements for the proposed amendments in §215.4. Additional non-substantive changes were made throughout these sections for the purpose of clarifying the intent of the rule and correcting spelling/grammatical errors.

When a final delineation of responsibilities is completed, a BON approval process to establish a new nursing educational program will be developed by Board staff for both new vocational nursing educational programs and new professional nursing educational programs. Board staff anticipate that in addition to eliminating duplicative approval steps among the BON, Texas Workforce Commission (TWC), and Texas Higher Education Coordinating Board (THECB), the BON new program approval process will be designed to: reduce the amount of required written information that the applicant must provide; allow the applicant to complete standardized tables for providing required data; and allow the applicant to submit copies of documentation required in the TWC or THECB approval process in order to meet certain requirements in the BON approval process. Once the new program approval process is approved, new BON education guidelines will be developed and made available to the public on the BON web site.

Amendments to rules pertaining to Vocational Nursing Education (22 TAC Chapter 214) are being proposed concurrently with these proposed amendments.

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

Ms. Thomas has also determined that for each year of the first five years the proposal is in effect, the public benefit will be that the amendments will eliminate duplicative approval steps among the BON, TWC, and the THECB for nursing educational programs and will implement the statutory changes passed by the legislature. There will be no additional cost to small businesses or affected individuals as a result of these proposed amendments.

Written comments on the proposal may be submitted to Joy Sparks, Assistant General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701; by e-mail to *joy.sparks@bon.state.tx.us;* or by facsimile to (512) 305-8101.

The amendments are proposed pursuant to the authority of Texas Occupations Code §301.151 and §301.152 which authorizes the BON to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

This proposal will affect Texas Occupations Code §301.157.

§215.2. Definitions.

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

(1) Accredited nursing educational [~~education~~] program--a professional nursing educational [~~education~~] program having voluntary accreditation by a Board-approved nursing accrediting body [~~(i.e. NLNAC, CCNE)~~].

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

[~~(4) Annual Report--a document required by the Board to be submitted at a specified time by the nursing education program dean or director that serves as verification of the program's adherence to chapter 215, Professional Nursing Education.~~]

(4) [~~(5)~~] Approved professional nursing educational [~~education~~] program--a professional nursing educational [~~education~~] program approved by the Texas Board of Nursing [~~Board of Nurse Examiners for the State of Texas~~].

(5) [~~(6)~~] Articulation--a planned process between two or more educational systems to assist students to make a smooth transition from one level of education to another without duplication in learning.

(6) [~~(7)~~] Board--the Texas Board of Nursing [~~Board of Nurse Examiners for the State of Texas~~] composed of members appointed by the Governor for the State of Texas.

(7) [~~(8)~~] Clinical learning experiences--faculty-planned and guided learning activities designed to assist students to meet stated program and course outcomes and to safely apply knowledge and skills when providing nursing care to clients across the life span as appropriate to the role expectations of the graduates. These experiences occur in nursing skills and computer laboratories; in simulated clinical settings; in a variety of affiliating agencies or clinical practice settings including, but not limited to: acute care facilities, extended care facilities, clients' residences, and community agencies; and in associated clinical conferences.

(8) [~~(9)~~] Clinical preceptor--a registered nurse or other licensed health professional who meets the minimum requirements in §215.10(f)(5) of this chapter (relating to Management of Clinical Learning Experiences and Resources), not paid as a faculty member by the governing institution, and who directly supervises a student's clinical learning experience. A clinical preceptor facilitates student learning in a manner prescribed by a signed written agreement between the educational institution, preceptor, and affiliating agency (as applicable).

(9) [~~(10)~~] Clinical teaching assistant--a registered nurse licensed in Texas, who is employed to assist in the clinical area and work under the supervision of a Master's or Doctorally prepared nursing faculty member and who meets the minimum requirements in §215.10(g)(4) of this chapter.

(10) Compliance Audit--a document required by the Board to be submitted at a specified time by the nursing educational program dean or director that serves as verification of the program's adherence to this chapter.

(11) - (13) (No change.)

(14) Dean or Director--a registered nurse who is accountable for administering [~~one or more of the following:~~] a pre-licensure nursing educational [~~education~~] program [~~or a post-licensure baccalaureate or higher degree program for registered nurses~~], who meets the requirements as stated in §215.6(f) of this chapter (relating to Administration and Organization), and [~~who~~] is approved by the Board.

(15) (No change.)

(16) Examination year--the period beginning October 1 and ending September 30 used for the purposes of determining programs' NCLEX-RN™ examination pass rates.

(17) Extension Program--instruction provided by an approved professional pre-licensure nursing educational [~~education~~] program providing a variety of instructional methods to any location(s) other than the program's main campus and where students are required to attend activities such as testing, group conferences, and/or campus laboratory. An extension program may offer the entire identical curriculum or may offer a single course or multiple courses.

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

(18) Faculty member--an individual employed to teach in the professional nursing educational [~~education~~] program who meets the requirements as stated in §215.7 of this chapter (relating to Faculty Qualifications and Faculty Organization).

(19) Faculty waiver--a waiver granted by a dean or director of a professional nursing educational program and submitted to the Board on a notarized notification form, or by the Board, as specified in §215.7(c)(1)(E)(iii) of this chapter, [~~the Board~~] to an individual who has a baccalaureate degree in nursing and is currently licensed in Texas, or has a privilege to practice, to be employed as a faculty member for a specified period of time.

(20) Governing institution--the entity with administrative and operational authority over a Board-approved professional nursing educational program [~~an accredited college, university, or hospital responsible for the administration and operation of a Board-approved nursing program~~].

(21) - (25) (No change.)

(26) Pass rate--the percentage of first-time candidates within one examination year who pass the National Council Licensure Examination for Registered Nurses (NCLEX-RN™).

(27) (No change.)

(28) Professional Nursing Educational [~~Education~~] Programs--[~~.~~]

[~~(A) Pre-licensure nursing education program--~~] an educational entity that offers the courses and learning experiences that prepares graduates who are competent to practice safely and who are eligible to take the NCLEX-RN™ examination and often referred to as a pre-licensure nursing program. Types of pre-licensure nursing programs:

(A) [~~(i)~~] Associate degree nursing educational [~~education~~] program--a program leading to an associate degree in nursing conducted by an educational unit in nursing within the structure of a college or university.

(B) [~~(ii)~~] Baccalaureate degree nursing educational [~~education~~] program--a program leading to a bachelor's degree in nursing conducted by an educational unit in nursing which is a part of a senior college or university.

(C) [~~(iii)~~] Master's degree nursing educational [~~education~~] program--a program leading to a master's degree, which is an individual's first professional degree in nursing, and conducted by an educational unit in nursing within the structure of a senior college or university.

(D) [~~(iv)~~] Diploma nursing educational [~~education~~] program--a program leading to a diploma in nursing conducted by a single purpose school usually under the control of a hospital.

(E) [~~(v)~~] MEEP--a Multiple Entry-Exit Program which allows students to challenge the NCLEX-PN examination when they have completed sufficient course work in a professional nursing educational program that will meet all requirements for the examination.

~~[(B) Post-Licensure nursing education program--an educational unit the purpose of which is to provide mobility options for registered nurses to attain undergraduate academic degrees in nursing. Post-licensure programs may be components of educational units within pre-licensure nursing education programs or independent baccalaureate degree programs for registered nurses as defined in this section.]~~

(29) Program of study--the courses and learning experiences that constitute the requirements for completion of a professional pre-licensure nursing educational [~~education~~] program (associate degree nursing educational [~~education~~] program, baccalaureate degree nursing educational [~~education~~] program, master's degree nursing educational [~~education~~] program, or diploma nursing educational [~~education~~] program) [~~or a post-licensure nursing education program~~].

(30) - (32) (No change.)

(33) Staff--employees of the Texas Board of Nursing [~~Board of Nurse Examiners~~].

(34) (No change.)

(35) Survey Visit--an on-site visit to a professional nursing educational [~~education~~] program by a Board representative. The purpose of the visit is to evaluate the program of learning by gathering data to determine whether the program is meeting the Board's requirements as specified in §§215.2 - 215.13 of this chapter.

(36) (No change.)

(37) Texas Higher Education Coordinating Board (THECB)--a state agency created by the Legislature to provide coordination for the Texas higher education system, institutions, and governing boards, through the efficient and effective utilization and concentration of all available resources and the elimination of costly duplication in program offerings, faculties, and physical plants (Texas Education Code, Title 3, Subtitle B, Chapter 61).

(38) Texas Workforce Commission (TWC)--the state agency charged with overseeing and providing workforce development services to employers and job seekers of Texas (Texas Labor Code, Title 4, Subtitle B, Chapter 301).

§215.3. Program Development, Expansion, and Closure.

(a) New Programs [~~programs~~].

(1) Proposal to establish a new professional pre-licensure [~~or post-licensure~~] nursing educational [~~education~~] program.

(A) The [~~A governing institution accredited by a Board-recognized accrediting body is eligible to submit a~~] proposal to establish [~~develop~~] a professional nursing educational [~~education~~] program may be submitted by:

(i) a college or university accredited by an agency recognized by the THECB or holding a certificate of authority from the THECB under provisions leading to accrediting of the institution in due course; or

(ii) a single-purpose school, such as a hospital, proposing a new diploma program.

(B) The new professional nursing educational program must be approved/licensed by the appropriate Texas agency, i.e., THECB, TWC, before approval can be granted by the Texas Board of Nursing for the program to be implemented.

(i) The approval process conducted by THECB or TWC must precede the approval process conducted by the Board.

(ii) The proposal to establish a new professional nursing educational program may be submitted to the Board at the same time that an application is submitted to THECB or TWC, but the proposal cannot be approved by the Board until such time as the proposed program is approved by THECB or TWC.

(C) The process to establish a new professional nursing educational [~~education~~] program shall be initiated with the Board office one year prior to the anticipated start of the program.

(D) [~~(B)~~] The proposal shall be completed under the direction/consultation of a registered nurse who meets the approved qualifications for a program director according to §215.6 of this chapter.

(E) [~~(C)~~] Sufficient nursing faculty with appropriate expertise shall be in place for development of the curriculum component of the program.

(F) [~~(D)~~] The proposal shall include information outlined in applicable Board guidelines.

(G) A proposal for a new diploma nursing educational program must include a written plan addressing the legislative mandate that all nursing diploma programs in Texas must have a process in place by 2015 to ensure that their graduates are entitled to receive a degree from a public or private institution of higher education accredited by an agency recognized by the THECB and. at a minimum, entitle a graduate of the diploma program to receive an associate degree in nursing.

(H) [~~(E)~~] After the proposal is submitted and reviewed, a preliminary survey visit shall be conducted by Board staff prior to presentation to the Board.

(I) [~~(F)~~] The proposal shall be considered by the Board following a public hearing at a regularly scheduled meeting of the Board. The Board may approve the proposal and grant initial approval to the new program, may defer action on the proposal, or may deny further consideration of the proposal.

(J) [~~(G)~~] The program shall not admit students until the Board approves the proposal and grants initial approval.

(K) [~~(H)~~] Prior to presentation of the proposal to the Board, evidence of approval from the appropriate regulatory/funding agencies shall be provided.

(L) [~~(I)~~] After the proposal is approved, an initial approval fee shall be assessed per §223.1 (related to Fees).

(M) [~~(J)~~] A proposal without action for one calendar year shall be inactivated.

(N) If the Board denies further consideration of a proposal, the educational unit in nursing within the structure of a school, including a college, university, or proprietary school (career school or college), or a hospital must wait a minimum of twelve calendar months from the date of the denial before submitting a new proposal to establish a professional pre-licensure nursing educational program.

(2) (No change.)

(b) Extension Program.

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

(3) A program intending to establish an extension program shall:

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

(D) Provide evidence of approval from the THECB, TWC [~~Texas Higher Education Coordinating Board~~] and/or other regulating/accrediting bodies, as applicable, to the Board four (4) months prior to implementation, as appropriate.

(4) Extension programs of professional pre-licensure nursing educational [~~education~~] programs which have been closed may be reactivated by submitting notification of reactivation to the Board at least four (4) months prior to reactivation, using the Board guidelines for initiating an extension program.

(5) (No change.)

(c) Transfer of Administrative Control by Governing Institutions. The authorities of the governing institution shall notify the Board office in writing of an intent to transfer the administrative authority of the program. This notification shall follow Board guidelines.

(d) (No change.)

(e) Approval of a Nursing Educational Program Outside Texas' Jurisdiction to Conduct Clinical Learning Experiences in Texas.

(1) The nursing educational program outside Texas' jurisdiction seeking approval to conduct clinical learning experiences in Texas should initiate the process with the Texas Board of Nursing two to three months prior to the anticipated start of the clinical learning experiences in Texas.

(2) A written request and the required supporting documentation shall be submitted to the Board office following Board guidelines.

(3) Evidence that the program has been approved/licensed by the appropriate Texas agency, i.e., THECB, to conduct business in the State of Texas must be obtained before approval can be granted by the Texas Board of Nursing for the program to conduct clinical learning experiences in Texas.

§215.4. Approval.

(a) The progressive designation of approval status is not implied by the order of the following listing. Approval status is based upon each program's performance and demonstrated compliance to the Board's requirements and responses to the Board's recommendations. Change from one status to another is based on NCLEX-RN™ examination pass rates, compliance audits [~~annual reports~~], survey visits, and other factors listed under subsection (b) of this section [~~§215.4(b)~~]. Types of approval include:

(1) Initial Approval [~~approval~~].

(A) Initial approval is written authorization by the Board for a new program to admit students and is granted if the program meets the requirements and addresses the recommendations issued by [~~of~~] the Board.

(B) (No change.)

(2) Full Approval [~~approval~~].

(A) [~~Pre-licensure nursing education program.~~] Full approval is granted by the Board to a professional pre-licensure nursing educational [~~education~~] program that is in compliance with all Board requirements and has responded to all Board recommendations. [~~Only programs with full approval status may propose extension programs and petition for faculty waivers.~~]

(B) Only programs with full approval status may initiate extension programs, grant faculty waivers and petition for faculty waivers. [~~Post-licensure nursing education programs. Full approval is granted by the Board to a post-licensure nursing education program after one class has completed the program and the program meets the Board's legal and educational requirements.~~]

(3) Full approval with warning is issued by the Board to a professional nursing educational [~~education~~] program that is not meeting legal and educational requirements. [~~The program is issued a warning, provided a list of the deficiencies, and given a specified time in which to correct the deficiencies.~~]

(A) A program issued a warning will receive written notification from the Board of the warning.

(B) The program is given a list of the deficiencies and a specified time in which to correct the deficiencies.

(4) Conditional Approval [~~approval~~]. Conditional approval is issued by the Board for a specified time to provide the program the opportunity to correct deficiencies.

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

(5) Withdrawal of Approval [~~approval~~]. The Board may withdraw approval from a program which fails to meet legal and educational requirements within the specified time. The program shall be removed from the list of Board-approved professional nursing educational [~~education~~] programs.

(6) A diploma program of study in Texas that leads to an initial license as a registered nurse under this chapter must have a process in place by 2015 to ensure that their graduates are entitled to receive a degree from a public or private institution of higher education accredited by an agency recognized by the THECB. At a minimum, a graduate of a diploma program will be entitled to receive an associate degree in nursing.

(b) Factors Jeopardizing Program Approval Status--Approval may be changed or withdrawn for any of the following reasons:

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

(6) failure to comply with Board requirements or to respond to Board recommendations within the specified time;

(7) - (10) (No change.)

(c) Ongoing Approval Procedures [~~procedures~~]. Approval status is determined biennially [~~annually~~] by the Board on the basis of the program's compliance audit [~~annual report~~], NCLEX-RN™ examination pass rate, and other pertinent data.

(1) Compliance Audit [~~Review of annual report~~]. Each approved professional nursing educational [~~education~~] program shall submit a biennial audit [~~an annual report~~] regarding its compliance with the Board's legal and educational requirements.

(2) [~~Pass rate of graduates on~~] NCLEX-RN™ Pass Rates [~~examination~~].

(A) Eighty percent (80%) of first-time candidates who complete the program of study are required to achieve a passing score on the NCLEX-RN™ examination.

(B) When the passing score of first-time candidates who complete the professional nursing educational [~~education~~] program of study is less than 80% on the NCLEX-RN™ examination during the examination year, the nursing program shall submit a self-study report that evaluates factors which contributed to the graduates' performance on the NCLEX-RN™ examination and a description of the corrective measures to be implemented. The report shall follow Board guidelines.

(C) (No change.)

(D) A program shall be placed on conditional approval status if, within one examination year from the date of the warning, the performance of first-time candidates on the NCLEX-RN™ examination fails to be at least 80%, or the faculty fails to implement appropriate corrective measures.

(E) - (F) (No change.)

(3) [~~(d)~~] Survey Visit [~~visit~~]. Each professional nursing educational [~~education~~] program shall be visited at least every six years after full approval has been granted, unless accredited by a Board-recognized national nursing [~~voluntary~~] accrediting agency [~~body~~].

(A) [~~(1)~~] The Board may authorize staff to conduct a survey visit at any time based upon established criteria.

(B) [~~(2)~~] After a program is fully approved by the Board, a report from a Board-recognized national nursing [~~voluntary~~] accrediting agency [~~body~~] regarding a program's accreditation status may be accepted in lieu of a Board survey visit.

(C) [~~(3)~~] A written report of the survey visit, compliance audit [~~annual report~~], and NCLEX-RN™ examination pass rate shall be reviewed by the Board biennially at a regularly scheduled meeting.

(4) The Texas Board of Nursing will select one or more national nursing accrediting agencies, recognized by the United States Department of Education and determined by the Board to have standards *equivalent* to the Board's ongoing approval standards.

(A) The Texas Board of Nursing will periodically review the standards of the national nursing accrediting agencies following revisions of accreditation standards or revisions in Board requirements for validation of continuing equivalency.

(B) The Texas Board of Nursing will deny or withdraw approval from a school of nursing or educational program that fails to:

(i) meet the prescribed course of study or other standard under which it sought approval by the Board;

(ii) meet or maintain voluntary accreditation, by a school of nursing or educational program approved by the Board as stated in subparagraph (C) of this paragraph, with the national nursing accrediting agency selected by the Board under which it was approved or sought approval by the Board; and

(iii) maintain the approval of the state board of nursing of another state that the Board has determined has standards that are substantially equivalent to the Board's standards under which it was approved.

(C) A school of nursing or educational program is considered approved by the Board and exempt from Board rules that require ongoing approval if the program:

(i) is accredited and maintains voluntary accreditation through an approved national nursing accrediting agency that has been determined by the Board to have standards equivalent to the Board's ongoing approval standards; and

(ii) maintains an acceptable pass rate, as determined by the Board, on the applicable licensing exam;

(D) A school of nursing or educational program that fails to meet or maintain an acceptable pass rate, as determined by the Board, on applicable licensing examinations is subject to review by the Board.

(E) A school of nursing or educational program, approved by the Board as stated in subparagraph (C) of this paragraph, that does not maintain voluntary accreditation is subject to review by the Board.

(F) The Board may assist the school or program in its effort to achieve compliance with the Board's standards.

(G) A school or program from which approval has been withdrawn may reapply for approval.

(H) A school of nursing or educational program accredited by an agency recognized by the Board shall:

(i) provide the board with copies of any reports submitted to or received from the national nursing accrediting agency selected by the Board within three (3) months of receipt of official reports;

(ii) notify the Board of any change in accreditation status within two (2) weeks following receipt of official notification letter; and

(iii) provide other information required by the Board as necessary to evaluate and establish nursing education and workforce policy in this state.

(d) [~~(e)~~] Notice of a program's approval status shall be sent to the director, chief administrative officer of the governing institution, and others as determined by the Board.

§215.6. Administration and Organization.

(a) The governing institution of a professional nursing school/educational program, not including a diploma program, must [~~shall~~] be accredited by an [~~a Board-recognized~~] agency recognized by the THECB or hold a certificate of authority from the THECB under provisions leading to accreditation of the institution in due course.

(b) There shall be an organizational chart which demonstrates the relationship of the professional pre-licensure nursing educational [~~education~~] program to the governing institution, and indicates lines of responsibility and authority.

(c) - (e) (No change.)

(f) Each professional nursing educational [~~education~~] program shall be administered by a qualified individual who is accountable for the planning, implementation and evaluation of the professional nursing educational [~~education~~] program. The dean or director shall:

(1) - (3) (No change.)

(4) have a minimum of three years teaching experience in a professional nursing educational [~~education~~] program;

(5) have demonstrated knowledge, skills and abilities in administration within a professional nursing educational [~~education~~] program; and

(6) (No change.)

(g) When the dean or director of the program changes, the dean or director shall submit to the Board office written notification of the change indicating the final date of employment.

(1) - (3) (No change.)

(4) In a fully approved professional nursing educational [~~education~~] program, if the individual to be appointed as dean or director does not meet the requirements for dean or director as specified in subsection (f) of this section, the administration is permitted to petition for a waiver of the Board's requirements, according to Board guidelines, prior to the appointment of said individual.

(h) A newly appointed dean, director, interim dean, or interim director of a professional nursing educational [~~education~~] program shall attend the next scheduled orientation provided by the Board.

§215.12. Records and Reports.

(a) Accurate and current records shall be maintained in a confidential manner and be accessible to appropriate parties. These records shall include, but are not limited to:

(1) - (3) (No change.)

(4) administrative records, which include minutes of faculty meetings for the past three years[~~, annual reports~~], and school catalogs;

(5) - (7) (No change.)

(b) (No change.)

(c) Copies of the program's Texas Board of Nursing Compliance Audit of the Nursing Educational Program (CANEP), Nursing Educational Program Information Survey (NEPIS), [~~Annual Reports~~] and important Board communication shall be maintained as appropriate.

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 October 29, 2007.

TRD-200705195
Katherine Thomas
Executive Director
Texas Board of Nursing
Earliest possible date of adoption: December 9, 2007
For further information, please call: (512) 305-6823

♦ ♦ ♦

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 1. GENERAL ADMINISTRATION SUBCHAPTER E. NOTICE OF TOLL-FREE TELEPHONE NUMBERS AND PROCEDURES FOR OBTAINING INFORMATION AND FILING COMPLAINTS

28 TAC §1.602

The Texas Department of Insurance proposes new §1.602, concerning a notice to be given by insurers to consumers regarding an Internet website. The notice concerns the location of an Internet website providing information to consumers relating to the purchase of residential property insurance and personal automobile insurance. This new section is necessary to implement the provisions of SB 611, 80th Legislature, Regular Session, effective May 21, 2007, which adds Subchapter D to Chapter 32 of the Insurance Code. Subchapter D requires the Department and the Office of Public Insurance Counsel to establish and maintain a single website that provides information to enable consumers to make informed decisions relating to the purchase of residential property insurance and personal automobile insurance.

Section 32.104(b) requires specified insurers to provide notice of the Internet website required by Subchapter D in a conspicuous manner with each residential property insurance or personal automobile insurance policy issued or renewed in this state. Section 32.104(b) applies only to insurers who comprise the top 25 insurance groups in the national market and who issue residential property insurance or personal automobile insurance policies in this state, including a Lloyd's plan, a reciprocal or interinsurance exchange, a county mutual insurance company, a farm mutual insurance company, the Texas Windstorm Insurance Association, the FAIR Plan Association, and the Texas Automobile Insurance Plan Association. Section 32.104(b) applies to policies that are delivered, issued for delivery, or renewed in this state on or after January 1, 2008.

Section 32.104(b) also requires the Commissioner of Insurance to determine the form and content of the notice. The proposed new section establishes the form and content of this notice. The proposed new section requires insurers to provide the required notice in one of two specified ways and also allows insurers to opt to provide the required notice both ways.

Notwithstanding the requirements in §1.601(a)(3) of this title (relating to Notice of Toll-Free Telephone Numbers and Information and Complaint Procedures) to the contrary, an insurer shall include the following text (in English or Spanish as appropriate) between item 6 and item 7 in the notice required under §1.601(a)(3): "To obtain price and policy form comparisons and other information relating to residential property insurance and personal automobile insurance, you may visit the Texas Department of Insurance/Office of Public Insurance Counsel website: www.helpinsure.com" in the English portion and "Para obtener formas de comparación de precios y póliza y otra información acerca del seguro de propiedad residencial y del seguro de automóvil, visite el sitio web del Departamento de Seguros de Texas y la Oficina del Asesor Público de Seguros: www.helpinsure.com" in the Spanish portion. The text must be in at least 10-point type. The website address "www.helpinsure.com" must be in boldface type and must be preceded by one blank line. If an insurer elects to comply with the proposed new section by amending the notice required under §1.601 to include the requirements of this proposed new section, the insurer need provide only the one notice to comply with both §1.601 and proposed new §1.602.

Alternatively, the insurer shall provide the following notice to comply with proposed §1.602. The notice must be provided in a conspicuous manner with each policy:

INSURANCE WEBSITE NOTICE

To obtain price and policy form comparisons and other information relating to residential property insurance and personal automobile insurance, you may visit the Texas Department of Insurance/Office of Public Insurance Counsel website: www.helpinsure.com.

ANUNCIO DEL SITIO WEB DE SEGUROS

Para obtener formas de comparación de precios y póliza y otra información acerca del seguro de propiedad residencial y del seguro de automóvil, visite el sitio web del Departamento de Seguros de Texas y la Oficina del Asesor Público de Seguros: www.helpinsure.com.

The notice must be printed in at least 10-point type and must be preceded and followed by at least one blank line. "Insurance Website Notice" and "Anuncio Del Sitio Web De Seguros" must be in all capital letters and boldface type and "www.helpinsure.com" must be in boldface type.

The Department proposes that the notice requirements mandated by the new section apply to all policies that are delivered, issued for delivery, or renewed on or after January 1, 2008.

FISCAL NOTE. Audrey Selden, Senior Associate Commissioner for Consumer Protection, has determined that for each year of the first five years the proposed section is 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.

PUBLIC BENEFIT/COST NOTE. Ms. Selden also has determined that for each year of the first five years the proposed section is in effect, the public benefits anticipated as a result of the proposal are increased consumer education and increased awareness of information that will enable consumers to make informed decisions relating to the purchase of residential property insurance and personal automobile insurance.

The costs to insurers required to comply with the proposal are negligible because of the compliance options and flexibility provided under the proposed rule. For insurers electing to comply with the proposed rule by amending the notice required under §1.601, the cost to print the notice should not increase. The current notice required by §1.601 must be provided on a single

page. The revised notice adds nine lines. The notice can still be provided on a single page; thus, insurers should not incur any additional material costs as a result of compliance with the proposal. Insurers electing not to amend the notice required by §1.601 or insurers waiting to exhaust their existing stock of the notice required under §1.601 have the flexibility to provide the proposed notice in the manner preferable and most cost-effective to them, as long as it is conspicuous. These insurers can incorporate the proposed notice into their policies, notices, and other communications. Hence, insurers should not experience any material economic impact. Any costs incurred are a result of the legislation and not the proposed rule.

An insurer that opts to print the proposed notice on a separate piece of paper and/or mail the notice separately from other mailings will incur additional cost, which can be calculated by the insurer based on the individual insurer's printing and mailing costs and the number of notices to be printed and mailed. Insurers can also calculate their particular costs using the Department's cost analysis approach. The estimates used in the Department's analysis assume that a printed page costs $0.05 and postage for one page of paper is $0.41. Insurers that choose to print the notice on a separate piece of paper from the notice required by §1.601 and/or mail the notice separately from other mailings will incur an estimated cost of $0.46 per transaction. Any costs incurred are a result of the legislation and not the proposed rule.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. As required by the Government Code §2006.002(c), the Department has determined that the proposal will not have an adverse economic effect on small or micro businesses because the proposed rule does not apply to any small or micro businesses. The proposed section applies only to insurers comprising the top 25 insurance groups in the national market.

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

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on December 10, 2007, 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 David Durden, Associate Commissioner, Public Affairs, Mail Code 113-3C, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The Commissioner will consider the adoption of the proposed section in a public hearing under Docket No. 2676 scheduled for December 6, 2007, at 9:30 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.

STATUTORY AUTHORITY. The new section is proposed pursuant to Insurance Code §32.104(b) and §36.001. Section 32.104(b) requires the Commissioner of Insurance to determine the form and content of the notice of the Internet website, which insurers are required to provide pursuant to §32.104(b) 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 Department under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statute is affected by this proposal: Insurance Code §32.104(b).

§1.602. Notice of Internet Website.

(a) Purpose and Applicability.

(1) The purpose of this section is to establish the form and content of the notice required under Insurance Code §32.104(b).

(2) This section applies to insurers who comprise the top 25 insurance groups in the national market and who issue residential property insurance or personal automobile insurance policies in this state, including a Lloyd's plan, a reciprocal or interinsurance exchange, a county mutual insurance company, a farm mutual insurance company, the Texas Windstorm Insurance Association, the FAIR Plan Association, and the Texas Automobile Insurance Plan Association.

(3) This section applies to all residential property insurance and personal automobile insurance policies that are delivered, issued for delivery, or renewed in this state on or after January 1, 2008.

(b) Notice Requirements. Each insurer specified in subsection (a)(2) of this section must comply with either subsection (b)(1) or (b)(2) of this section, or may opt to comply with both:

(1) Notwithstanding the requirements in §1.601(a)(3) of this subchapter (relating to Notice of Toll-Free Telephone Numbers and Information and Complaint Procedures) to the contrary, the insurer must include the following text between item 6 and item 7 in the notice required under §1.601(a)(3) with each policy specified in subsection (a)(3) of this section. The text must be in at least 10-point type. The website address "www.helpinsure.com" must be in boldface type and must be preceded by one blank line.

(A) "To obtain price and policy form comparisons and other information relating to residential property insurance and personal automobile insurance, you may visit the Texas Department of Insurance/Office of Public Insurance Counsel website: www.helpinsure.com" in the English portion; and

(B) "Para obtener formas de comparación de precios y póliza y otra información acerca del seguro de propiedad residencial y del seguro de automóvil, visite el sitio web del Departamento de Seguros de Texas y la Oficina del Asesor Público de Seguros: www.helpinsure.com" in the Spanish portion.
Figure: 28 TAC §1.602(b)(1)(B)

(2) The insurer must provide the following notice in a conspicuous manner with each policy specified in subsection (a)(3) of this section. The notice must be printed in at least 10-point type and must be preceded and followed by at least one blank line. "Insurance Website Notice" and "Anuncio Del Sitio Web De Seguros" must be in all capital letters and boldface type and "www.helpinsure.com" must be in boldface type.
Figure: 28 TAC §1.602(b)(2)

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 October 29, 2007.

TRD-200705196

Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: December 9, 2007
For further information, please call: (512) 463-6327

♦ ♦ ♦

TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

SUBCHAPTER O. UNIFORM STATEWIDE ACCOUNTING SYSTEM

34 TAC §5.210

The Comptroller of Public Accounts proposes new §5.210, providing for the administration, maintenance, modification, and operation of the Uniform Statewide Accounting System.

Government Code, Chapter 2101, Subchapter C, §2101.031 established the Uniform Statewide Accounting Project in the comptroller's office and included all components of uniform state accounting system established by the legislature. The comptroller has developed and promulgated the following components of the Uniform Statewide Accounting System: the Human Resources Information System for higher education, the Statewide Property Accounting System, the Standardized Payroll/Personnel Reporting System, the Texas Identification Number System, and the Uniform Statewide Payroll/Personnel System. House Bill 3106, 80th Legislature, 2007, requires enterprise resource planning to be added to and in conjunction with the Uniform State Accounting System and gives authority to the comptroller to administer and govern enterprise resource planning as a part of the comptroller's authority regarding the Uniform State Accounting System as contained in Government Code, Chapter 2101. House Bill 3106 makes certain amendments to Government Code, Chapter 2101 allowing the comptroller to require state agencies to include enterprise resource planning in conjunction with the Uniform State Accounting System and any individual enterprise resource planning systems used by such state agencies so that they are compatible with the Uniform Statewide Accounting System and if not, to direct agencies to modify, delay, stop or replace any such non compatible systems.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the rule would benefit the public by implementing procedures to monitor individual agency accounting systems for their compliance with the Uniform State Accounting System and establish remedies for noncompliance. The proposed new rule would have no fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposals may be submitted to Suzy Whittenton, Director, Fiscal Management Division, P.O. Box 13528, Austin, Texas 78711-3528.

The new section is proposed under Government Code, Chapter 2101 which authorizes the comptroller to adopt rules to efficiently and effectively administer these provisions.

The new section implements Government Code, §2101.035.

§5.210. Uniform Statewide Accounting System.

(a) Purpose. The purpose of this section is to allow the comptroller to administer, maintain, modify and operate the uniform statewide accounting system, including any required component systems, to serve as the financial system of record for the State of Texas. The uniform statewide accounting system includes each component designated by the comptroller. The comptroller may require state agencies to use any or all components of the uniform statewide accounting system as their internal system or may allow agencies to report required information from existing individual systems that conform to reporting and calculation requirements specified by the comptroller.

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

(1) "State agency" has the meaning assigned by Government Code, §403.013(a) but does not include public junior colleges or community colleges.

(2) "HRIS" means the Human Resource Information System, which is the higher education reporting system and a component of the uniform statewide accounting system. HRIS is the system to which the institutions of higher education must report information in the format and by the timeframes required by the comptroller.

(3) "SPA" means the Statewide Property Accounting system, which is the personal property fixed asset component of the uniform statewide accounting system.

(4) "TINS" means the Texas Identification Number System, which is a component of the uniform statewide accounting system. TINS is used to track payees paid through USAS and records the payments.

(5) "USAS" means the Uniform Statewide Accounting System, which is the integrated financial system of record for the State of Texas financial records.

(6) "USPS" means the Uniform Statewide Payroll/Personnel System, which is the integrated human resources and payroll system developed and maintained by the comptroller as a component of the uniform statewide accounting system. USPS is maintained for the use of state agencies and the calculations in USPS serve as the standardized payroll calculations for all state payrolls.

(7) "SPRS" means the Standardized Payroll/Personnel Reporting System, which is a component of the uniform statewide accounting system. SPRS is the system maintained by the comptroller as the reporting data base that state agencies, that do not use USAS as their internal payroll and human resources system, utilize to report required information in the format and by the timeframes required by the comptroller.

(8) "State funds" means funds of the state held by state agencies regardless of whether or not such funds are inside or outside of the State Treasury.

(9) "Individual Accounting and/or Payroll Systems" are systems that are used instead of USAS as a state agency system of

record, or are systems that modify the code base of the integrated statewide administrative system which is the state integrated financial system maintained for state agencies that use the integrated statewide administrative system as their internal financial system to interface with the state's systems of record.

(c) The comptroller shall be responsible for the administration, maintenance, and operation of the Uniform Statewide Accounting System that it has previously implemented through HRIS, SPA, SPRS, TINS, USAS and USPS as follows:

(1) The comptroller shall notify state agencies of the requirements of the USAS components and provide user guides, manuals, and policy statements accessible through www.window.state.tx.us.

(2) The comptroller shall assist and consult with state agencies in the implementation and use of the USAS components in reporting to comptroller.

(3) The comptroller shall be available for discussions or meetings with state agencies to explain and assist with use and implementation of USAS components as well as to provide training.

(4) The comptroller may require reports from state agencies regarding implementation of USAS components.

(5) The comptroller may require state agencies to stop, delay, or modify implementation of individual accounting and/or payroll systems to ensure that those systems are compatible with USAS.

(6) The comptroller may require state agencies to replace individual accounting and/or payroll systems to ensure that those systems are compatible with USAS.

(7) Any expenditure of state funds by state agencies for the establishment, modification, or maintenance of an individual accounting and/or payroll system must be in compliance with rules, user guides, manuals and policy statements issued by the comptroller, regarding the development, implementation or use of USAS.

(8) State agencies may use centralized computer systems other than USAS but such agencies must comply with the comptroller's rule on enterprise resource planning in §5.300 of this title (referring to Monitoring and Implementation of Enterprise Resource Planning Systems) and must follow interoperability standards contained in the comptroller's user guides, manuals, and policy statements available through www.window.state.tx.us.

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 October 29, 2007.

TRD-200705193
Martin Cherry
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: December 9, 2007
For further information, please call: (512) 475-0387

♦ ♦ ♦

SUBCHAPTER P. ENTERPRISE RESOURCE PLANNING

34 TAC §5.300

The Comptroller of Public Accounts proposes new §5.300, concerning monitoring and implementation of enterprise resource planning systems.

House Bill 3106, 80th Texas Legislature, 2007, provides for enterprise resource planning to be included in the Uniform State Accounting System and gives authority to the comptroller to administer and manage enterprise resource planning in Government Code, Chapter 2101. House Bill 3106 makes certain amendments to Government Code, Chapter 2101, allowing the comptroller to require state agencies to adopt standards for the implementation and modification of state agency enterprise resource planning in individual enterprise resource planning systems so that those individual internal accounting/payroll systems are compatible with the Uniform Statewide Accounting System and to direct state agencies to modify, delay, or stop implementation of non compatible systems.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the rule would benefit the public by implementing procedures to monitor individual agency accounting systems for their compliance with the Uniform State Accounting System to include enterprise resource planning components and establishing remedies for noncompliance. The proposed new rule would have no fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposals may be submitted to Suzy Whittenton, Director, Fiscal Management Division, P.O. Box 13528, Austin, Texas 78711-3528.

The new section is proposed under Government Code, Chapter 2101, which authorizes the comptroller to adopt rules to efficiently and effectively administer these provisions.

The new sections implement Government Code, §§2101.001, 2101.031, 2101.036, and 2101.037(a).

§5.300. Monitoring and Implementation of Enterprise Resource Planning Systems.

(a) The purpose of this section is to provide a procedure for the comptroller to monitor compatibility of individual accounting and payroll systems for compliance with the Uniform State Accounting System including enterprise resource planning components and compliance.

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

(1) "State agency" means a department, commission, board, office, council, authority, or other agency in the executive or judicial branch of state government that is created by the constitution or a statute of this state, including a university system or institution of higher education as defined by Education Code, §61.003, other than a public junior college or community college.

(2) "State funds" means funds of the state held by state agencies regardless of whether or not such funds are inside or outside of the State Treasury.

(3) "Enterprise resource planning" means and includes the administration of a state agency's general ledger, accounts payable, accounts receivable, budgeting, inventory, asset management, billing, payroll, projects, grants: administration of human resources, including

administration of performance measures, time spent on tasks, and other personnel and labor issues; and administration of procurement.

(4) "Uniform Statewide Accounting Project" has the meaning assigned by Government Code, Chapter 2101, and includes the components of the Uniform State Accounting System as previously promulgated and adopted by the comptroller.

(5) "Project director" means the person appointed by the comptroller pursuant to Government Code, Chapter 2101, to administer the Uniform Statewide Accounting Project.

(6) "Implementation" means the upgrade of software versions or the addition of new modules or functionality to software or systems

(7) "System" means an internal enterprise resource planning, accounting or payroll system used by a state agency.

(c) In order to ensure the Uniform Statewide Accounting Project includes enterprise resource planning the comptroller shall engage in the procedures that follow in this subsection.

(1) Each state agency implementing individual systems shall submit information to the project director describing and detailing the project so as to allow the project manager to coordinate and consult with the submitting agency.

(2) After reviewing the information provided in paragraph (1) of this subsection, the project director may reasonably request that the submitting state agency to provide additional information describing and detailing the project to allow the project director to fully understand the project and to aid in coordination and consultation on the project.

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 October 29, 2007.

TRD-200705191
Martin Cherry
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: December 9, 2007
For further information, please call: (512) 475-0387

♦ ♦ ♦

34 TAC §5.301

The Comptroller of Public Accounts proposes new §5.301, concerning the enterprise resource planning advisory council.

House Bill 3106, 80th Texas Legislature, 2007, provides for the creation by the comptroller of an enterprise resource planning council to advise the comptroller regarding the development of a plan for enterprise resource planning and assisting the comptroller in reporting to the legislature on the status of enterprise resource planning prior to the beginning of each legislative session. House Bill 3106 makes certain amendments to Government Code, Chapter 2101 by the addition of §2101.040 requiring the comptroller to create the council to implement the legislative mandate on enterprise resource planning.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the rule would benefit the public by implementing procedures to monitor individual agency accounting systems for their compliance with the Uniform State Accounting System to include enterprise resource planning components and establishing remedies for noncompliance. The proposed new rule would have no fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposals may be submitted to Suzy Whittenton, Director, Fiscal Management Division, P.O. Box 13528, Austin, Texas 78711-3528.

The new section is proposed under Government Code, Chapter 2101, which authorizes the comptroller to adopt rules to efficiently and effectively administer these provisions.

The new section implements Government Code, §2101.040.

§5.301. Enterprise Resource Planning Advisory Council.

(a) Purpose. The Enterprise Resource Planning Advisory Council is established under Government Code, §2101.040. The purpose of the council is to develop a plan for key requirements, constraints, and alternative approaches for the comptroller's implementation of enterprise resource planning standards including related core functionality and business process reengineering requirements.

(b) Composition. The council shall be composed of the following:

(1) two representatives of the Department of Information Resources appointed by the executive director of the department;

(2) two representatives of the Health and Human Services Commission appointed by the executive commissioner of the commission;

(3) three representatives of the Information Technology Council for Higher Education, nominated by members of the council;

(4) three representatives of the comptroller's office appointed by the comptroller; and

(5) one representative each from two state agencies selected by the comptroller that have fewer than 100 employees, appointed by the executive head of each agency.

(c) Meetings. The Enterprise Resource Planning Advisory Council shall meet at the call of the comptroller or on a regular schedule established by the council in its organizational meeting.

(d) Operating procedures. The Enterprise Resource Planning Advisory Council may establish its own rules of operation.

(e) Duties. The Enterprise Resource Planning Advisory Council shall develop an enterprise resource planning implementation plan, assist and advise the comptroller on enterprise resource planning implementation and, if requested, assist the comptroller with preparation of the comptroller's report to the legislature concerning implementation of the enterprise resource planning including planned modifications and upgrade requirements of statewide and agency systems and financial impact.

(f) Manner of reporting. The Enterprise Resource Planning Advisory Council shall report to the comptroller on a regular basis regarding its standards and recommendations and also prior to each legislative session on a date set by the comptroller.

(g) Duration. The Enterprise Resource Planning Advisory Council is abolished on the fourth anniversary of its first meeting unless the comptroller acts to continue its existence.

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 October 29, 2007.

TRD-200705190
Martin Cherry
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: December 9, 2007
For further information, please call: (512) 475-0387

♦ ♦ ♦

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER A. PRACTICE AND PROCEDURE

34 TAC §9.107

(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 Comptroller of Public Accounts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Comptroller of Public Accounts proposes to repeal §9.107, concerning appraised value limitation and tax credit for certain qualified property. A new set of rules, proposed for adoption under new Subchapter F, Limitation on Appraised Value and Tax Credits on Certain Qualified Property, will take its place.

John Heleman, Chief Revenue Estimator, has determined that repeal of the rule will not result in any fiscal implications to the state or to units of local government.

Mr. Heleman also has determined the repeal would have no impact on the public because the new proposed rules would provide guidance to eligible business operating in Texas who may apply for a limitation on appraised value on qualified property and for tax credits paid on the property. There would be no anticipated significant economic cost to the public. The proposed repeal of the rule would be adopted before January 1, 2008 and would not require a statement of the fiscal implications for small businesses. There are no additional costs to persons who are required to comply with the repeal.

Comments on the proposed repeal may be submitted to Don Hoyte, Manager, Regional Fiscal Analysis, P.O. Box 13528, Austin, Texas 78711-3528.

The repeal is proposed under Tax Code, §313.031, which requires the comptroller to adopt forms and rules for the implementation and administration of Tax Code, Chapter 313.

The section implements Tax Code, Chapter 313.

§9.107. Appraised Value Limitation and Tax Credit for Certain Qualified Property.

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

Filed with the Office of the Secretary of State on October 29, 2007.

TRD-200705192
Martin Cherry
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: December 9, 2007
For further information, please call: (512) 475-0387

♦ ♦ ♦

34 TAC §9.109

The Comptroller of Public Accounts (Comptroller) proposes an amendment to §9.109, concerning procedures for protesting preliminary findings of taxable value. Subsections (j)(2) and (k)(1) are being amended to add e-mail as an appropriate method of service for the hearings examiner to deliver his or her decision.

John Heleman, Chief Revenue Estimator, has determined that, for the first five-year period the proposed rule amendment will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that, for each year of the first five years the rule proposal is in effect, the public benefit anticipated as a result of enforcing the rule will be in providing additional method of communication with school districts, appraisal districts, and property owners. The proposed amendment would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposed amendment may be submitted to Buddy Breivogel, Manager, Property Tax Division, P. O. Box 13528, Austin, Texas 78711-3528.

The amendment is proposed under Government Code, §403.303(c), which requires the Comptroller to adopt procedural rules governing the conduct of protest hearings, including notice of the Comptroller's decision on the hearing.

The proposed amendment implements Government Code, §403.303(b), which requires the Comptroller to order the appropriate changes in the values of the petitioner who brought the protest.

§9.109. Procedures for Protesting Preliminary Findings of Taxable Value.

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

(1) Agent--The individual that the petitioner is required to designate in the petition to perform the following activities on behalf of the petitioner:

(A) receive and act on all notices, orders, decisions, exceptions, replies to exceptions, and any other communications regarding the petitioner's protest;

(B) resolve any matter raised in petitioner's petition;

(C) argue and present evidence timely submitted with the petition at petitioner's protest hearing, unless agent designates in writing another individual to argue and present timely submitted evidence; and

(D) any other action required of petitioner.

(2) Appraisal district measures--The comptroller's measures of the degree of uniformity and median level of appraisal of an appraisal district made under [~~the~~] Tax Code, §5.10.

(3) Decision.

(A) Proposed decision--An official finding made by the hearing examiner concerning a protest of preliminary findings of taxable value, subject to filing of exceptions by any party.

(B) Final decision--An official finding made by the hearing examiner and signed by the Deputy Comptroller if a written exception is filed by the petitioner. A proposed decision may also become final without the Deputy Comptroller's signature, if no exceptions to that proposed decision are timely filed.

(4) District--A school district. District does not include an appraisal district.

(5) Person--Any individual, partnership, corporation, association, governmental subdivision, or public or private organization.

(6) Petition--The document and supporting evidence filed by petitioner indicating disagreement with the comptroller's preliminary findings or appraisal district measures.

(7) Petitioner--A school superintendent, chief appraiser or eligible property owner who submits a petition seeking redetermination of the comptroller's preliminary findings or appraisal district measures.

(8) Preliminary findings--The comptroller's findings of district property value delivered to a district and certified to the commissioner of education under [~~the~~] Government Code, §403.302(f) or (g).

(9) Protest--A disagreement by a district, property owner, or appraisal district with the comptroller's preliminary findings or appraisal district measures initiated by timely filing the petition required by subsection (f) of this section.

(10) Ratio study--A study designed to evaluate appraisal performance through a comparison of appraised values made for tax purposes with independent estimates of market value based either on sales prices or independent appraisals.

(b) Intent and scope of protest rule. The protest rule is intended to provide a petitioner with a clear process for resolving a disagreement with the Comptroller of Public Account's preliminary findings of property value certified to the commissioner of education pursuant to [~~the~~] Government Code, §403.302(f) or (g), and the measures of degree of uniformity and the median level of appraisal made pursuant to [~~the~~] Tax Code, §5.10. This rule governs all aspects of a preliminary findings or appraisal district measures protest.

(c) Construction of protest rule. Rules concerning protests of the preliminary findings of property value certified to the commissioner of education pursuant to [~~the~~] Government Code, §403.302(f) or (g) and the measures of degree of uniformity and the median level of appraisals made pursuant to [~~the~~] Tax Code, §5.10, will be reasonably construed in the rule's total context and in a manner providing a fair decision for every protest. Unless the context clearly indicates otherwise, in this rule, the term "petitioner" includes petitioner's agent.

(d) General provisions.

(1) All petitions and other documents related to a protest of the comptroller's preliminary findings or appraisal district measures shall be filed with the Comptroller of Public Accounts of the State of Texas, Property Tax Division manager. No document or petition is filed until actually received. However, any petition including supporting evidence is timely filed if it is sent to the Property Tax Division manager by:

(A) first-class United States mail in a properly addressed and stamped envelope or wrapper, and the envelope or wrapper exhibits a legible postmark affixed by the United States Postal Service showing that the petition including supporting evidence was mailed on or before the last day for filing; or

(B) an express mail corporation in a properly addressed envelope or wrapper, and the envelope or wrapper exhibits a legible date showing that the petition including supporting evidence was delivered to the express mail corporation for delivery on or before the last day for filing; or

(C) fax received on or before the last day for filing if the petition including supporting evidence, is under ten pages in content, the original is mailed within three days of the fax and all procedures for submitting a protest have been followed.

(2) An extension of time shall be requested in writing five days in advance of the original deadline for which the extension is requested. No more than one extension during an appeals period may be granted for each petitioner. An extension may not extend the deadline for more than ten days. An extension shall be granted only by the hearing examiner for good cause shown, and if the reason for the extension is not the petitioner's neglect, indifference, or lack of diligence. Good cause does not include a claim that the time periods established in this rule are too short to meet the deadline. If requested in writing by the petitioner and for good cause shown, the hearing examiner may waive the requirement that the request for the extension be made five days in advance of the deadline.

(3) In computing a period of time, the period begins on the day after the act or event in question and ends on the last day of the time period. If the last day of the time period is a Saturday, Sunday, or state or federal legal holiday, the period of time runs until the end of the first day which is neither a Saturday, Sunday, or state or federal legal holiday.

(4) The protest hearing will be conducted by a hearing examiner.

(5) Before a scheduled protest hearing the comptroller or a petitioner may request a preliminary conference to clarify the issues or resolve the protest. If the request is accepted, the conference shall be scheduled during business hours at the offices of the comptroller or at a time mutually agreeable to the comptroller and the petitioner. Admissions, proposals, or offers made in the compromise of disputed issues in a preliminary conference may not be admitted in a hearing. A hearing examiner may not attend a preliminary conference.

(6) An error in the comptroller's preliminary findings caused by an error in a district's annual report of property value or by a change in a district's certified tax roll may be corrected by timely filing a petition and otherwise complying with the requirements of this section.

(7) A district shall send notice of its protest to each appraisal district that appraises property for the district. An appraisal district shall send notice of its protest to each district that participates in the appraisal district. The district's or appraisal district's petition shall contain a certification that a copy of its petition was delivered as required by this subsection.

(8) A property owner may contact the Property Tax Division manager for information concerning the districts or appraisal districts that have filed a petition as required by this section. A district or appraisal district may contact the Property Tax Division manager for

information concerning property owners that have filed a petition as required by this section.

(9) During the conduct of a protest hearing, a petitioner or a comptroller employee may present evidence not submitted prior to the deadline for filing the protest petition if the evidence is requested and obtained by a comptroller employee pursuant to subsection (i)(5) of this section, after the deadline to file a petition has passed and before the date set for the petitioner's protest hearing.

(10) A comptroller employee may present evidence, gathered during the conduct of the property value study or during the comptroller's review of the petitioner's protest, during a hearing on the petitioner's protest.

(11) At any time before the date final changes in the preliminary findings are certified to the commissioner of education, the comptroller may certify to the commissioner of education amended preliminary findings. If the comptroller certifies amended preliminary findings that are adverse to the district, the appraisal district's, property owner's, and district's time to protest begins to run on the date the amended preliminary findings are certified. An amended preliminary finding is made when the comptroller's finding of property value for a district is delivered to a district and certified to the commissioner of education between the date preliminary findings for the district are originally certified and final certification of changes in preliminary findings.

(12) A petition shall show the petitioner's name and address, designate the petitioner's agent, and list for each category of property the grounds for objection to the preliminary findings for that category. The grounds for objection shall list by category specific changes that the petitioner alleges would improve the accuracy of the taxable value finding or appraisal district measures, and shall provide the reason that each change will make the findings more accurate. A petition that does not clearly specify by category of property the specific changes that petitioner alleges would improve the accuracy of the taxable finding or appraisal district measures does not adequately specify the grounds for objection as required by Government Code, §403.303(a). The petition shall include the following information:

(A) all documentary evidence, placed in order by category, necessary to support the factual and legal contentions made in the petition; and

(B) the value petitioner claims is correct.

(13) A petition must be signed by:

(A) the superintendent of the district if it is a petition filed by a school district; or

(B) the property owner or the property owner's agent if it is a petition filed by a property owner; or

(C) the chief appraiser of the appraisal district, if it is a petition filed by an appraisal district.

(14) The petition must contain a statement by the person signing the petition that, to the best of the person's knowledge, the evidence contained in the petition is true and correct.

(15) In a protest of the comptroller's preliminary findings, the comptroller has the burden of proving by a preponderance of the evidence that the comptroller used appraisal, statistical compilation, and analysis techniques, generally accepted as an appropriate method for the conduct of a ratio study by organizations setting recognized standards for the conduct of a ratio study, to reach a correct value for a district included in the property value study.

(16) The comptroller may, on the comptroller's own motion, grant an extension of time for the limited purpose of correcting technical errors or omissions in a timely filed protest petition. Petitioner's failure to submit grounds for objection or all documentary evidence necessary to support the factual and legal contentions made in the petition is not a technical error or omission.

(e) Who may protest.

(1) A district may protest the preliminary findings of its taxable value.

(2) A district may protest the preliminary findings of taxable value of an audit within the district.

(3) An owner of property included in a sample used by the comptroller to determine the taxable value of a category of property in a district may protest the comptroller's preliminary findings of value if the total ad valorem tax liability on the owner's properties included in the category sample for the district is $100,000 or more.

(4) An appraisal district may protest the comptroller's measures, made under [~~the~~] Tax Code, §5.10, of the level and uniformity of property appraisals within the district.

(5) A protest filed by a property owner or an appraisal district will not be considered for any purposes to be a protest filed by a district.

(f) Filing of a protest. A petition for a protest of the preliminary findings of taxable value or measures of degree of uniformity or median level of appraisal must be filed within 40 days after the date the comptroller certifies preliminary findings of district taxable value to the commissioner of education. A petition for a protest of the preliminary findings of taxable value of an audit must be filed within 40 days of the date the district received the preliminary findings of taxable value. Except as provided by subsection (d)(10) or (i)(5) of this section, no additional evidence may be submitted after the deadline for filing the petition.

(g) Scheduling a protest hearing. The comptroller shall deliver notice of the date, time, and place fixed for a hearing to each petitioner. The notice must be delivered not later than ten days before the date of the hearing.

(h) Hearing examiner's powers.

(1) The hearing examiner shall conduct a protest hearing in a manner insuring fairness, the reliability of evidence, and the timely completion of the hearing. The hearing examiner shall have the authority necessary to receive and consider all evidence, propose decisions, consider exceptions and replies to exceptions, and amend a proposed decision. The hearing examiner's authority includes, but is not limited to, the following:

(A) establish the comptroller's jurisdiction concerning the protest, including whether a timely protest has been filed or whether an extension of time should be granted;

(B) set hearing dates;

(C) rule on motions and the admissibility of evidence;

(D) designate parties and establish the order of presentation of evidence;

(E) consolidate related protests;

(F) conduct a single hearing that provides for:

(i) participation by the affected district(s), appraisal district, and any property owner that has filed a valid and timely petition, if the hearing concerns preliminary findings of taxable value or the degree of uniformity and median level of appraisal; or

(ii) participation by the affected district(s) and the commissioner of education, if the hearing concerns the preliminary findings of an audit of a district's taxable property value;

(G) conduct hearings in an orderly manner;

(H) provide for hearings by written submission;

(I) administer oaths to all persons presenting testimony;

(J) examine witnesses and comment on the evidence;

(K) insure that evidence, argument, and testimony are introduced and presented expeditiously;

(L) refuse to hear arguments that are repetitious, not confined to matters raised in the petition, not related to the evidence or that constitute mere personal criticism;

(M) accept and note any petitioner's waiver of any right granted by this rule;

(N) limit each hearing to one hour for presentation of evidence and argument or extend the one-hour time limit in the interest of a full and fair hearing; and

(O) exercise any other powers necessary or convenient to carry out the hearing examiner's responsibilities and to insure timely certification of changes in preliminary findings to the commissioner of education.

(2) The hearing examiner may take official notice of any matter that trial judges may judicially notice and of facts within the hearing examiner's personal knowledge or specialized experience. Petitioners in a protest in which official notice is taken shall have an opportunity to contest the matter.

(3) The hearing examiner may entertain motions for dismissal at any time for any of the following reasons:

(A) failure to prosecute;

(B) unnecessary duplication of proceedings or res judicata;

(C) withdrawal of protest;

(D) moot questions or obsolete petition;

(E) failure to certify that notice of protest was filed as required by subsection (d)(1) of this section or failure to actually file notice as required by subsection (d)(1) of this section; or

(F) the result of an appraisal district protest is adverse to a district.

(4) The hearing examiner may grant a request to postpone a protest hearing if good cause is shown and doing so would not prevent timely certification of changes in the preliminary findings to the commissioner of education. A request to postpone must be in writing, show good cause for the postponement, and be delivered five days before the date the protest hearing is scheduled to begin. Good cause does not include a claim that the time periods established in this rule are too short to meet the deadline. If requested in writing by the petitioner and for good cause shown, the hearing examiner may waive the requirement that the request for postponement be made five days in advance of the deadline.

(5) The hearing examiner shall determine the admissibility of the evidence. Any party may object to the admission of evidence and the objection will be ruled on and noted on the record. The hearing examiner may exclude irrelevant, immaterial, or unduly repetitious evidence. The hearing examiner may receive any part of the evidence in writing.

(6) The hearing examiner in a protest may not communicate outside a protest hearing, directly or indirectly, with any agency, person, petitioner or petitioner's agent regarding any issue of fact or law relating to the protest unless all petitioners in the protest have notice and opportunity to participate, except that the hearing examiner may communicate ex parte with comptroller employees to use the comptroller's special skills to evaluate the evidence if the employee will not participate in the protest hearing, has not been involved in preparing for the hearing, and has not been involved in conducting the particular property value study under protest.

(i) Conduct of hearing.

(1) The hearing examiner shall convene a hearing for a protest.

(2) All protests heard by the hearing examiner shall be recorded on audio tape. A petitioner will be provided a copy of the recording after a written request and payment of a cost-based fee. A petitioner may at any time make arrangements for and bear the cost of having a hearing recorded and transcribed by a court reporter, provided the comptroller's staff timely receives a copy of the transcript.

(3) All proceedings are open to the public and are held in Austin, unless the hearing examiner designates another place for the hearing. The hearing examiner may close a hearing, on the hearing examiner's own motion or on the motion of any party, if confidential information may be disclosed during the hearing.

(4) A petitioner may designate in writing one or more individuals to present argument and evidence timely submitted with the petition.

(5) If a comptroller employee has requested in writing information, materials, sales, or documentary evidence of any type from the appraisal district, property owner, or district and any of these materials are not provided to the comptroller's employee within ten working days of the request, the materials that were not provided shall be inadmissible during the conduct of a protest hearing for a petitioner who failed to provide the materials. The comptroller may require that information requests be supplemented.

(6) Each petitioner may present argument on any matter raised by the petition. Each petitioner may offer oral argument at the hearing. Argument shall be confined to the evidence and to arguments of other parties. Admissions, proposals, or offers made in the compromise of disputed issues in a preliminary conference may not be admitted in a hearing.

(7) No more than one representative for each petitioner or aligned group of petitioners shall be heard in the protest hearing on any petition except on leave of the hearing examiner. An agent may designate, and the hearing examiner may approve, a reasonable number of individuals to present argument and timely submitted evidence. Nothing in this subsection limits the presentation of evidence through witness testimony.

(8) The hearing examiner shall establish the order of proceeding, and is responsible for closing the record.

(j) Proposed decision.

(1) The hearing examiner, hearing examiner's designee, or a comptroller employee who has read the record shall prepare a proposed decision, which shall include a statement of the reasons for the proposed decision.

(2) The hearing examiner shall serve the proposed decision on the petitioner by facsimile machine, if available, electronic mail, or by using an overnight mail delivery service.

(k) Exceptions to proposed decision.

(1) Unless the petitioner has waived the right of review of the proposed decision, any party adversely affected by the proposal may, within ten days after the date the proposed decision is sent by facsimile machine, electronic mail, or delivered to an overnight delivery service, file exceptions by delivering the original documents to the hearing examiner. Replies to exceptions shall be filed in the same manner within 20 days after the proposal for decision is sent by facsimile machine, electronic mail, or delivered to an overnight delivery service. Copies of all exceptions and replies shall be served promptly on the examiner and on all other parties in the protest with certification of service furnished to the hearing examiner. Failure to provide copies to all other parties in the protest and to the hearing examiner with certification of service is grounds for withholding consideration of the written exceptions.

(2) After consideration of the exceptions and replies, the hearing examiner may issue an amended decision without again serving the decision on the petitioner.

(l) Final decision.

(1) A proposed decision is final ten days after it is delivered to the parties to the protest, unless exceptions to the proposed decision are filed, in which case the decision becomes final, in either its original or amended form, on the date signed by the Deputy Comptroller.

(2) A final decision ordering changes to preliminary findings made as a result of a school district's protest will change the preliminary findings for the appraisal district in which the school district is located.

(3) A final decision ordering changes to preliminary findings made as a result of an appraisal district's protest will change the preliminary findings for the school districts participating in the appraisal district.

(4) A final decision ordering changes to preliminary values made as a result of a property owner's or district's protest will change the measures for an appraisal district.

(5) A final decision ordering changes to preliminary findings made as a result of a property owner's protest will change the preliminary findings for the school district where the property which is the subject of the protest is located. A property owner's preliminary value may be changed by a protest brought by a school district or appraisal district.

(6) A decision concerning a protest of preliminary findings of taxable value of an audit must be decided by written order within 120 days of the date the school district received the preliminary findings.

(7) The hearing examiner shall deliver written notice of the final decision to each protesting petitioner.

(m) Certification of changes to preliminary findings. Unless the comptroller determines that circumstances require otherwise, the comptroller shall certify to the commissioner of education all changes to the preliminary findings on or before July 1 of the year following the year of the study.

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 October 26, 2007.

TRD-200705154

Martin Cherry
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: December 9, 2007
For further information, please call: (512) 475-0387

SUBCHAPTER F. LIMITATION ON APPRAISED VALUE AND TAX CREDITS ON CERTAIN QUALIFIED PROPERTY

34 TAC §§9.1051 - 9.1058

The Comptroller of Public Accounts proposes new §§9.1051 - 9.1058, concerning the limitation on appraised value and tax credits on certain qualified property created by Tax Code, Chapter 313. The new sections will be under new Subchapter F, Limitation on Appraised Value and Tax Credits on Certain Qualified Property. The new sections are being proposed to replace the current §9.107, which the comptroller proposes to repeal. The new sections implement House Bill 2994, House Bill 1470, House Bill 3732, House Bill 3430, and House Bill 3693, 80th Legislature, 2007, clarifies issues related to application and qualification, and adopts by reference application forms for the limitation on appraised value and the tax credits.

New §9.1051 defines certain terms used in new Subchapter F, such as qualified property, application review period, and applicant. New §9.1052 adopts by reference forms entitled Application for Appraised Value Limitation on Qualified Property (From 50-296) and Application For Tax Credit on Qualified Property (Form 50-300) by reference. New §9.1053 concerns requirements and restrictions, governs extension of the application review period, provision of supplemental and amended information, and sets forth requirements for the primary activity of a project and the applicant's use of the property. New §9.1054 governs the applicant and action on applications, including provisions setting forth the application date for certain qualifying time periods, the minimum standards for completion, the actions the governing body must take upon receiving an application, requiring specific information on the application, specifying the types of information that may be amended and types of information that may be supplemented, and addressing the time period in which the comptroller must issue a recommendation when an application is amended. New §9.1055 sets forth the requirements for the written agreement between the school district and the taxpayer to limit the appraised value of certain property, including provisions requiring the school district to send the comptroller and appraisal districts a copy of the agreement, setting out provisions that may be included in the agreement and provisions that must be contained in the agreement, requiring the reporting of additions of property to the agreement to the comptroller and appraisal districts, setting out the requirements for an agreement to add property, and prohibiting amendment of the agreement to extend the qualifying time period. New §9.1056 concerns the tax credit to which an applicant may be entitled and states how the credit is to be calculated. New §9.1057 concerns the comptroller's duties under Tax Code, Chapter 313, including provisions permitting the comptroller to require certain information from the school district, setting forth the time period in which the information must be provided, requiring applicants to promptly submit certain information required to complete a biennial report assessing the progress of each agreement; addresses the calculation of the 60-day time period for issuing the comptroller's rec-

ommendation; stating that the comptroller will notify the school district if an application is materially deficient; governing the submission of certain information requested by the comptroller, and providing that information not submitted in a timely manner may not be considered in the comptroller's recommendation, economic impact evaluation, or report. New §9.1058 includes miscellaneous provisions, such as a requirement that recipients of the limitation notify certain parties of certain changes, requiring the chief appraiser to maintain a list of property subject to the limitation; defining an owner of land for purposes of specific sections of Tax Code, Chapter 313, stating that certain changes in conditions do not affect certain terms in the agreement, and that the comptroller may promulgate guidelines to further implement Tax Code, Chapter 313.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rules will be in effect, there will be no revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be in providing guidance to eligible businesses operating in Texas who may apply for a limitation on appraised value on qualified property and for tax credits paid on the property. The proposed rules would be adopted before January 1, 2008 and do not require a statement of the fiscal implications for small businesses. There is no anticipated economic cost to individuals who are required to comply with the proposed rules.

Comments on the new sections may be submitted to Gary Price, Regional Fiscal Analysis, P.O. Box 13528, Austin, Texas 78711-3528.

The new sections are proposed under Tax Code, §313.031, which requires the comptroller to adopt forms and rules for the implementation and administration of Tax Code, Chapter 313.

The new sections implement Tax Code, Chapter 313.

§9.1051. Definitions.

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

(1) Agreement--the written agreement between the governing body of a school district and the property owner to implement a limitation on the appraised value of qualified property, required by Tax Code, §313.027(d).

(2) Applicant--a person or an "affiliated group," as defined in Tax Code, §171.0001, who has applied for a limitation of appraised value on qualified property as provided by Tax Code, Chapter 313, and is subject to Tax Code, Chapter 171.

(3) Application--the Application for Appraised Value Limitation on Qualified Property, adopted by reference in §9.1052 of this title (relating to Forms).

(4) Application review period--the period of time during which the governing body of a school district is required to consider and approve or disapprove an Application for Appraised Value Limitation on Qualified Property. The application review period begins on the day an Application for Appraised Value Limitation on Qualified Property is filed with a school district and ends on the 120th day after the date on which the application is filed.

(5) Qualified property--property that meets the requirements of Tax Code, §313.021(2), and that is used either as an integral part, or as a necessary auxiliary part, in manufacturing, research and development, a clean coal project, an advanced clean energy project, renewable energy electric generation, electric power generation using integrated gasification combined cycle technology, or nuclear electric power generation.

(6) Tax credit settle-up--the process by which tax credit amounts earned by a Chapter 313 recipient which are not paid during the value limitation period are paid following the expiration of the value limitation.

§9.1052. Forms.

(a) The comptroller adopts by reference the following forms:

(1) Application for Appraised Value Limitation on Qualified Property (Form 50-296); and

(2) Application for Tax Credit on Qualified Property (Form 50-300).

(b) Copies of the forms are available for inspection at the office of the *Texas Register* or may be obtained from the Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711-3528. The forms may be viewed or downloaded from the comptroller's web site, at http://www.window.state.tx.us/taxinfo/taxforms/02-forms.html. Copies may also be requested by calling our toll-free number, (800) 252-9121.

(c) In special circumstances, a school district may obtain prior approval in writing from the comptroller to use an application form that requires additional information, or sets out the required information in different language or sequence than that which this section requires.

§9.1053. Requirements and Restrictions.

(a) Extension of the Application Review Period. If the governing body of a school district with which an owner has filed an application finds that the application review period is insufficient to permit adequate consideration of the application, before the end of the application review period the governing body may extend the application review period for a specified time period.

(b) An extension of the application review period does not extend any time period established by this title.

(c) The school district shall immediately report each extension to the comptroller and each appraisal district that appraises property subject to the extension.

(d) All supplemental and amended information provided to the school district shall be in the same format, style, and presentation used in the application and attached documentation.

(e) In addition to meeting each eligibility and qualification requirement set out in this title and Tax Code, Chapter 313, the primary activity of an applicant's project must meet the eligibility criteria provided by Tax Code, §313.024(b)(1) - (7) and the applicant must use the property in connection with an eligible activity described by Tax Code, §313.024(b)(1) - (7).

§9.1054. Application, Action on Application.

(a) Application Date. An application may be filed at any time. An applicant who intends the qualifying time period to begin on January 1 of the year following the year the application is filed, however, must file the application and all required accompanying documentation before September 3 of the year preceding the year in which the applicant proposes the qualifying time period to begin.

(b) The comptroller is not required to consider applications that do not meet minimum requirements. Minimum requirements include:

(1) each question, schedule, and request for information concerning the following items is answered in detail and conforms to reasonable standards for application form and content set by the comptroller:

(A) dollar value of investment;

(B) proposed wages;

(C) employment;

(D) a property description;

(E) qualifying time period;

(F) notification of intent to request a waiver of minimum job requirements; and

(G) other items of relevant information as required by the comptroller.

(2) it is signed by the applicant or the applicant's authorized agent; and

(3) it is accompanied by the application fee adopted by the school district.

(c) Each document required by the application must be submitted during the required time frame.

(d) Immediately upon electing to consider the application the school district shall:

(1) forward to the comptroller the application, including the required schedules; the documentation that accompanied the application and proof of payment of the application fee; and

(2) forward to each appraisal district that appraises property subject to the application one copy of the application, schedules, and attached documentation.

(e) The applicant shall describe with specificity the qualified investment and qualified property that the applicant proposes to build or install, including sound, good faith estimates of the value of proposed investment. The information must be sufficient to show that the real and personal property identified in the application as qualified property meets the criteria established by Tax Code, §313.021(2) and that the minimum required qualified investment amount is made during the qualifying time period.

(f) If the application is filed before September 3 and is approved during that tax year, the qualifying time period begins on January 1 of the following tax year. If the governing body extends the application review period, the qualifying time period specified in the application begins on January 1 of the first tax year following the approval of the application.

(g) Amended application--the governing body of a school district may at any time during the application review process permit an applicant to amend the application to provide changes in investment, wage, employment, a property description, or a qualifying time period to replace that submitted on the original application.

(h) If the school district's governing body permits an applicant to amend the application at any time after the 60th day of the application review period, the governing body shall, by official action, extend the application review period by a number of days equal to the difference between 60 and the number of days of the application review period that had passed when the application was received. For example, if the application was amended on the 85th day of the application review period, the governing body is required to extend the application review period for 25 additional days.

(i) The school district shall immediately send each amended application and each item of attached documentation to the comptroller. As soon as practicable after receiving an amended application, the school district shall send the amended application and attached documentation to each appraisal district that appraises property proposed to be subject to a limitation on appraised value.

(j) For purposes of the comptroller's recommendation only, an amended application is considered a new application and the 60-day time period within which the recommendation must be issued will be calculated in the manner provided by §9.1057(d) of this title (relating to Recommendation, Evaluation, and Reports by Comptroller).

(k) Supplementing the application--the governing body of a school district may permit an applicant to supplement the original application with certain information that was unavailable prior to the filing date and that will be used to verify that the property meets the requirements of Tax Code, Chapter 313. Changes in information concerning the proposed investment, property description, wages, employment, or a change in the qualifying time period may not be provided as supplemental information. Changes in the proposed investment, property description, wages, employment information, and the qualifying time period shall be submitted through an amended application. For example, an application may be supplemented to provide reinvestment zone descriptions, maps and reinvestment zone guidelines and criteria that were not available before the application was filed, while a change in the qualifying time period must be submitted on an amended application.

(l) The school district shall immediately forward to the comptroller and each appraisal district in which property that is subject to the limitation will be located all supplemental information that the district receives.

(m) An application that was filed before January 1, 2008, is not subject to subsection (h) of this section until July 1, 2008. This subsection expires on July 2, 2008.

§9.1055. Agreement to Limit Appraised Value.

(a) As soon as practicable after execution, the school district must submit to the comptroller and to all appraisal districts that appraise property described in the agreement a copy of the agreement between the school district and the property owner for the appraised value limitation required by Tax Code, §313.027 and all accompanying documents and exhibits.

(b) The agreement may include authorization for the company to replace property specified in the original agreement, provided that the company reports investment, value, and employment information related to replacement property added to the agreement to the school board, the comptroller, and to each appraisal district with the same format, style, and presentation used for the original application.

(c) The agreement shall contain the following:

(1) a requirement that the recipient meet minimum eligibility requirements throughout the value limitation and tax credit settle-up periods. Minimum eligibility requirements shall meet or exceed the Tax Code, Chapter 313 requirements for qualified investment and employment;

(2) the Texas Taxpayer Identification Number assigned by the comptroller to the company entering into the agreement or the Texas Taxpayer Identification Number of its reporting entity. The number included in the agreement shall match the number listed on the application; and

(3) a provision that states the amount of the limitation is based on the limitation amount for the category that applies to the

school district on the effective date of the agreement, as set out by Tax Code, §313.022(b) or §313.052.

(d) By official action of the governing body of the school district, the agreement may be amended to include in the limitation of appraised value qualified property that was not specified in the original agreement, provided that the company reports to the school board, the comptroller, and to each appraisal district in the same format, style, and presentation as the original application, all relevant investment, value, and employment information that is related to the additional property. An agreement amended as permitted by this title shall:

(1) require that all property added by amendment be directly related to the economic activity proposed in the filed application;

(2) clearly distinguish the property, investment, and employment information added by amendment from the property, investment, and employment information in the original agreement; and

(3) define minimum eligibility requirements for the recipient of limited value.

(e) An agreement may not be amended to extend the value limitation time period.

§9.1056. Tax Credit.

An applicant is entitled to a credit for part of the maintenance and operations property taxes that were paid to a school district for each tax year during the qualifying time period in an amount that is equal to the difference between the amount of maintenance and operations tax that was actually paid on the qualified property and the amount of maintenance and operations tax that would have been paid based on the appraised value limitation to which the school district agreed, provided that the applicant meets the requirements of Tax Code, Chapter 313, Subchapter D.

§9.1057. Recommendation, Evaluation, and Reports by Comptroller.

(a) Recipients of property value limitations shall promptly submit to the comptroller information that is required to complete the comptroller's biennial report assessing the progress of each agreement. The comptroller will promulgate a form on which the required information shall be submitted.

(b) At any time during the application review period, the comptroller may request information from the school district or applicant that is reasonably necessary to complete the recommendation or economic impact evaluation. This information may include, but is not limited to, information from the school district that is related to the estimated effect of tax base changes on a district's state aid through the Foundation School Program and information related to local school facilities' needs. The school district or applicant shall provide the requested information to the comptroller within 10 working days of the date of the request. On request of the school district or the applicant, the comptroller may extend the deadline for providing additional information for a period of not more than 14 calendar days.

(c) For purposes of the recommendation required by Tax Code, §313.025(d), the 60-day period within which a recommendation must be submitted begins on the day the comptroller receives a substantially complete application and other documentation, forwarded pursuant to §9.1054 of this title (relating to Application, Action on Application).

(d) If one or more of the application schedules or the qualifying time period is amended, the comptroller will consider the application as a new application only for purposes of issuing the recommendation required by Tax Code, §313.025(d). If the comptroller receives an application amended in this manner any time after the 60th day of the application review period, the time period for submitting the recommendation is extended by a number of days that equals the sum of the remaining days in the application review period plus the difference between 60 and the number of days of the application review period that had passed when the amended application was filed with the school district. The extended time period provided by this subsection shall match the number of days for which the application review period was extended as required by §9.1054(h) of this title.

(e) As soon as practicable after receipt, the comptroller will review each forwarded application to determine if the application and accompanying documentation is complete. If the review determines that an application is not substantially complete or is missing documentation that is material to the comptroller's recommendation or economic evaluation, the comptroller will promptly notify the school district.

(f) Supplemental application information, amended application information, and additional information requested by the comptroller shall be promptly forwarded to the comptroller. Additional information concerning investment, property value, property description, employment, and the qualifying time period that is not provided to the comptroller in a timely manner may not be included in the comptroller's recommendation, economic impact evaluation, or report. Supplemental information shall be in the same format, style, and presentation as the application.

(g) An amended application and all attached documentation shall immediately be forwarded to the comptroller in the manner specified in §9.1055(d) of this title (relating to Agreement to Limit Appraised Value).

(h) The comptroller may not consider an application more than one year after the application's filing date unless the comptroller agrees to do so in writing.

§9.1058. Miscellaneous Provisions.

(a) A recipient of limited value under Tax Code, Chapter 313 shall notify immediately the comptroller, school district, and appraisal district in writing of any change in address or other contract information for the owner of the property subject to the limitation agreement for the purposes of Tax Code, §313.032. An assignee's or its reporting entity's Texas Taxpayer Identification Number shall be included in the notification.

(b) Property list by chief appraiser. Before October 1 of each year, the chief appraiser shall compile and send to the comptroller a list of properties that are subject to a limitation on appraised value under Tax Code, Chapter 313. The comptroller may promulgate a form to facilitate the annual collection of this information from appraisal districts. The market value of each property on the list shall include separately listed taxable real and personal property owned by a person at one site. The list shall include, at a minimum, the appraisal district name, the name of any other appraisal district that appraises the property, the appraisal district number that the comptroller has assigned, the name of each school district that taxes the property, each school district number that the education agency has assigned, each account number that the appraisal district has assigned, each taxpayer name, the market value of the taxable real and personal property that the taxpayer owns at that site, any value exempted due to pollution control or other exemption, the taxable value of the taxable real and personal property that the taxpayer owns at that site, the tax year to which the listed information pertains, and the name and telephone number of a person at the appraisal district who is responsible for the information that is contained in the list.

(c) Changes in property values, population data, or strategic investment area designations that occur after an agreement is executed do not affect the job requirements or value limitation in the agreement.

(d) For purpose of Tax Code, §313.021(2)(A) and §313.025(a), a person who owns an interest in the land, including a leasehold that is at least coextensive with the agreement, is an owner.

(e) The comptroller may promulgate guidelines for the administration of Tax Code, Chapter 313.

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 October 29, 2007.

TRD-200705197
Martin Cherry
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: December 9, 2007
For further information, please call: (512) 475-0387

♦ ♦ ♦

PART 6. TEXAS MUNICIPAL RETIREMENT SYSTEM

CHAPTER 123. ACTUARIAL TABLES AND BENEFIT REQUIREMENTS

34 TAC §123.7

The Board of Trustees ("Board") of the Texas Municipal Retirement System ("TMRS") proposes new §123.7 to 34 TAC Chapter 123, concerning the Board's authority to adopt changes to actuarial cost methods, assumptions, mortality tables and amortization periods.

The proposed new 34 TAC §123.7, Authority to Make Actuarial Changes, implements the authority granted to the Board in House Bill 1244 (Act of June 15, 2007, 80th Legislature, Regular Session), which granted the Board authority to change amortization periods. The new rule also consolidates in one location the various actions the Board can take with regard to actuarial matters and codifies current Board practices.

David Gavia, General Counsel of TMRS, has determined that for the first five-year period the new rule is in effect there will be no fiscal implications for state or local governments as a result of administering this rule. However, changes to the actuarial cost methods, assumptions, mortality tables, and amortization periods may affect the contribution rates of municipalities participating in TMRS.

For each of the first five years that the proposed new rule would be in effect, Mr. Gavia has determined that the public benefit anticipated as a result of adoption of this rule would be clarification of current practices and improved accounting and funding of accrued actuarial liabilities. Small businesses and individuals will not be affected by this rule.

Comments may be submitted to Eric Henry, Executive Director, TMRS, P.O. Box 149153, Austin, Texas 78714-9153, faxed to (512) 225-3786, or submitted electronically to Mr. Henry at *ehenry@tmrs.com*. To be considered, comments must be received no later than November 30, 2007.

Statutory Authority: The new rule is proposed under Texas Government Code, §855.110, which authorizes the Board to change amortization periods and §855.102, which grants the Board authority to adopt rules necessary for the efficient administration of the retirement system.

Cross-reference to Statute: The proposed new rule affects §855.407, Government Code, which provides limitations on municipality contribution rates.

§123.7. Authority to Make Actuarial Changes.

(a) After considering the results of the actuarial experience study performed by the retirement system's actuary or at such other times as necessary, the Board of trustees may adopt changes to the actuarial cost method, actuarial assumptions and mortality tables by Board resolution. The Board resolution shall specify the first actuarial valuation and plan year affected by the changes.

(b) If as the result of actuarial changes, including, but not limited to, changes in actuarial cost methods or actuarial assumptions, a municipality's contribution rate increases by more than one-half of one percent, the Board may, after consultation with the retirement system's actuary, take one or both of the following actions:

(1) phase in the increase in contribution rate for the municipality over a reasonable period of time; or

(2) increase the period for amortizing the municipality's unfunded actuarial accrued liabilities up to thirty years.

(c) A municipality may decline to phase in the increase in its contribution rate or increase its amortization period as set out in subsection (b) of this section by notifying the retirement system in writing.

(d) The Board of trustees, after consultation with the retirement system's actuary, may change the period for amortizing a municipality's unfunded actuarial accrued liabilities from an open period to a closed period. The Board of trustees may also decrease the amortization period. The Board of trustees may, but is not required to, set different amortization periods for unfunded actuarial accrued liabilities arising from different types of benefit enhancements and ladder the amortization of the liabilities.

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 October 26, 2007.

TRD-200705167
David Gavia
General Counsel
Texas Municipal Retirement System
Earliest possible date of adoption: December 9, 2007
For further information, please call: (512) 225-3754

♦ ♦ ♦

34 TAC §123.8

The Board of Trustees ("Board") of the Texas Municipal Retirement System ("TMRS") proposes new 34 TAC Chapter 123, §123.8, concerning changes to Updated Service Credit ("USC") calculations. The new rule adjusts the method for calculation of average compensation used in the calculation of USC, by reducing the number of deposits used in the calculation from 36 to 34.

David Gavia, General Counsel of TMRS, has determined that for the first five-year period the new rule is in effect there will be no

fiscal implications for state or local governments as a result of administering this rule.

Mr. Gavia has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing this rule will be to ensure that a large, but temporary increase in compensation does not artificially inflate the USC calculation for any one member. Small businesses will not be affected.

There may be an economic cost to members whose USC calculations are affected by this rule because it may affect the calculation of retirement benefits. It is not possible to quantify this cost.

Comments may be submitted to Eric Henry, Executive Director, TMRS, P.O. Box 149153, Austin, Texas 78714-9153, faxed to (512) 225-3786, or submitted electronically to Mr. Henry at *ehenry@tmrs.com*. To be considered, comments must be received no later than November 30, 2007.

Statutory Authority: The new rule is proposed under Texas Government Code, §853.402, which authorizes the Board to limit the increases in a member's average updated service compensation from year to year.

No other statutes, articles or codes are affected by this proposed new rule.

§123.8. Updated Service Credit Calculations.

(a) In calculating the average updated service compensation used in the Updated Service Credit calculation, the highest and lowest deposits in the thirty-six (36) month period being used shall be disregarded, and the average updated service compensation shall be computed based on the remaining thirty-four (34) deposits.

(b) This rule is effective January 1, 2008.

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 October 26, 2007.

TRD-200705168
David Gavia
General Counsel
Texas Municipal Retirement System
Earliest possible date of adoption: December 9, 2007
For further information, please call: (512) 225-3754

♦ ♦ ♦

CHAPTER 125. ACTIONS OF PARTICIPATING MUNICIPALITIES

34 TAC §125.7

The Board of Trustees ("Board") of the Texas Municipal Retirement System ("TMRS") proposes new §125.7 to 34 TAC Chapter 125, §125.7, concerning optional additional contributions by municipalities. The new rule allows a participating municipality to make extra contributions to the retirement system in excess of its required contribution and describes the effects and consequences of such contributions.

David Gavia, General Counsel of TMRS, has determined that for the first five-year period the new rule is in effect there will be no fiscal implications for state or local governments as a result of administering this rule.

Mr. Gavia has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing this rule will be to increase the options available to participating municipalities and encourage improved funding of individual municipalities' accrued unfunded actuarial liabilities. Small businesses and individuals will not be affected.

Comments may be submitted to Eric Henry, Executive Director, TMRS, P.O. Box 149153, Austin, Texas 78714-9153, faxed to (512) 225-3786, or submitted electronically to Mr. Henry at *ehenry@tmrs.com*. To be considered, comments must be received no later than November 30, 2007.

Statutory Authority: The new rule is proposed under Texas Government Code, §855.4065, which authorizes the Board to authorize such additional payments by rule.

Cross-reference to Statute: The proposed new rule affects the following statutes: §855.407, Government Code, providing limitations on municipality contribution rates and §855.501, Government Code, providing for increased current service annuities.

§125.7. Optional Additional Contributions to Municipal Accumulation Fund.

(a) Effective January 1, 2008, a municipality may make deposits in excess of its actuarially required contribution to its account in the Municipal Accumulation Fund. The deposit may be in the form of a lump sum payment or periodic payments. All funds deposited in a municipality's account in the Municipal Accumulation Fund are held in trust by the retirement system and cannot be returned to the municipality.

(b) The retirement system retains the right to not accept a payment if, in the opinion of the director, acceptance of the payment would result in an unreasonable administrative or investment burden. A decision by the director to not accept a contribution may be appealed to the Board of trustees.

(c) A contribution made in accordance with this section is not subject to the maximum contribution rules under §855.407 and §855.501 of the Act.

(d) The retirement system may adopt reasonable policies and procedures to administer 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 October 26, 2007.

TRD-200705169
David Gavia
General Counsel
Texas Municipal Retirement System
Earliest possible date of adoption: December 9, 2007
For further information, please call: (512) 225-3754

♦ ♦ ♦

CHAPTER 127. MISCELLANEOUS RULES

34 TAC §127.9

The Board of Trustees ("Board") of the Texas Municipal Retirement System ("TMRS") proposes new §127.9 to 34 TAC Chap-

ter 127, concerning authorization for certain payments in accordance with the Pension Protection Act of 2006.

The proposed new 34 TAC §127.9 authorizes TMRS to make payments in accordance with §845 of the Pension Protection Act of 2006, Pub. L. No. 109-280 ("PPA"). This section of the PPA permits certain public safety retirees to direct pension plan payments directly to an insurance carrier for health or long-term care premiums to obtain federal income tax benefits.

David Gavia, General Counsel of TMRS, has determined that for the first five-year period the new rule is in effect there will be no fiscal implications for state or local governments as a result of administering this rule.

Mr. Gavia has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of adopting this rule will be to ensure that distributions from the retirement system will be in accordance with applicable federal income tax law. Small businesses and individuals will not be affected by this rule.

Comments may be submitted to Eric Henry, Executive Director, TMRS, P.O. Box 149153, Austin, Texas 78714-9153, faxed to (512) 225-3786, or submitted electronically to Mr. Henry at *ehenry@tmrs.com*. To be considered, comments must be received no later than November 30, 2007.

Statutory Authority: The new rule is proposed under Texas Government Code, §851.006(b), which authorizes the Board to adopt a rule to authorize TMRS to make certain payments in accordance with §845 of the PPA.

No other statutes, articles or codes are affected by this proposed new rule.

§127.9. Authorization of Certain Payments in Accordance with the Pension Protection Act of 2006.

(a) Effective with annuity payments that become due January 2008, the retirement system is authorized to make disbursements in accordance with Section 845 of the Pension Protection Act of 2006, Pub. L. 109-280 and related regulations.

(b) The director is authorized to adopt reasonable policies and procedures to implement and administer 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 October 26, 2007.

TRD-200705166
David Gavia
General Counsel
Texas Municipal Retirement System
Earliest possible date of adoption: December 9, 2007
For further information, please call: (512) 225-3754

♦ ♦ ♦

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER A. REGULATIONS GOVERNING HAZARDOUS MATERIALS

37 TAC §4.1

The Texas Department of Public Safety proposes amendments to Chapter 4, Subchapter A, §4.1, concerning Regulations Governing Hazardous Materials.

Amendment to §4.1 is necessary to ensure that the Federal Hazardous Material Regulations, incorporated by reference in this section, reflect all amendments and interpretations issued through October 1, 2007.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the section as proposed. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to ensure to the public greater compliance by motor carriers with all of the statutes and regulations pertaining to the safe operation of commercial vehicles in this state.

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

The department has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

The Texas Department of Public Safety, in accordance with the Administrative Procedure and Texas Register Act, Texas Government Code, §§2001, et seq., and Texas Transportation Code, Chapter 644, will hold a public hearing on November 16, 2007, at 9:00 a.m., at the Texas Department of Public Safety, Texas Highway Patrol Division, Building G Annex, 5805 North Lamar, Austin, Texas. The purpose of this hearing is to receive comments from all interested persons regarding adoption of the proposed amendments to Administrative Rule §4.1 regarding Hazardous Materials and Transportation Safety, proposed for adoption under the authority of Texas Government Code, §411.018, and Texas Transportation Code, Chapter 644, which provides that the director shall, after notice and a public hearing, adopt rules regulating the safe operation of commercial motor vehicles.

Persons interested in attending this hearing are encouraged to submit advance written notice of their intent to attend the hearing and to submit a written copy of their comments. Correspondence should be addressed to Major Mark Rogers, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500.

Persons with special needs or disabilities who plan to attend this hearing and who may need auxiliary aids or services are requested to contact Major Rogers at (512) 424-7509 at least three working days prior to the hearing so that appropriate arrangements can be made.

Other comments on this proposal may be submitted to Mark Rogers, Major, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-7509.

The amendments are proposed pursuant to Texas Government Code, §411.018, which authorizes the director to adopt all or part of the federal hazardous materials rules by reference; and Texas Transportation Code, §644.051, which authorizes the director to adopt all or part of the federal safety regulations by reference.

Texas Government Code, §411.018 and Texas Transportation Code, §644.051 are affected by this proposal.

§4.1. Transportation of Hazardous Materials.

(a) The director of the Texas Department of Public Safety incorporates, by reference, the Federal Hazardous Materials Regulations, Title 49, Code of Federal Regulations, Parts 107 (Subpart G), 171 - 173, 177, 178, and 180, including all interpretations thereto, for commercial vehicles operated in intrastate, interstate, or foreign commerce, as amended through October [~~June~~] 1, 2007. All other references in this section to the Code of Federal Regulations also refer to amendments and interpretations issued through October [~~June~~] 1, 2007.

(b) Explanations and Exceptions.

(1) Certain terms when used in the federal regulations as adopted in subsection (a) of this section will be defined as follows:

(A) the definition of motor carrier will be the same as that given in Texas Transportation Code, §643.001(6);

(B) hazardous material shipper means a consignor, consignee, or beneficial owner of a shipment of hazardous materials;

(C) interstate or foreign commerce will include all movements by commercial motor vehicle, both interstate and intrastate, over the streets and highways of this state;

(D) department means the Texas Department of Public Safety;

(E) FMCSA field administrator, as used in the federal motor carrier safety regulations, means the director of the Texas Department of Public Safety or the designee of the director for vehicles operating in intrastate commerce;

(F) farm vehicle means any vehicle or combination of vehicles controlled and/or operated by a farmer or rancher being used to transport agriculture products, farm machinery, and farm supplies to or from a farm or ranch; and

(G) private carrier means any person not included in the terms "common carrier by motor vehicle" or "contract carrier by motor vehicle" who transports by commercial motor vehicle property of which the person is the owner, lessee, or bailee, when such transportation is for the purpose of sale, lease, rent or bailment, or in furtherance of commerce.

(2) All references in Title 49, Code of Federal Regulations, Parts 107 (Subpart G), 171 - 173, 177, 178, and 180 made to other modes of transportation, other than by motor vehicles operated on streets and highways of this state, will be excluded and not adopted by this department.

(3) Regulations adopted by this department, including the federal motor carrier safety regulations, will apply to farm tank trailers used exclusively to transport anhydrous ammonia from the dealer to the farm. The usage of non-specification farm tank trailers by motor carriers to transport anhydrous ammonia must be in compliance with Title 49, Code of Federal Regulations, §173.315(m).

(4) The reporting of hazardous material incidents as required by Title 49, Code of Federal Regulations, §171.15 and §171.16 for shipments of hazardous materials by highway is adopted by the department.

(5) Regulations adopted by this department, including the federal motor carrier safety regulations, will apply to an intrastate motor carrier transporting a flammable liquid petroleum product in a cargo tank. The usage of non-specification cargo tanks by motor carriers for the intrastate transportation of flammable liquid petroleum products must be in compliance with Title 49, Code of Federal Regulations, §173.8.

(6) Regulations and exceptions adopted herein are applicable to all drivers and vehicles transporting hazardous materials in interstate, foreign, or intrastate commerce.

(7) Nothing in this section shall be construed to prohibit an employer from requiring and enforcing more stringent requirements relating to safety of operation and employee safety and health.

(8) Penalties assessed for violations of the regulations adopted herein will be based upon the provisions of Texas Transportation Code, Chapter 644, and §4.16 of this title (relating to Administrative Penalties, Payment, Collection and Settlement of Penalties).

(9) A peace officer certified, in accordance with §4.13 of this title (relating to Authority to Enforce, Training and Certificate Requirements), to enforce the Federal Hazardous Material Regulations, as adopted in this section, may declare a vehicle out-of-service using the North American Standard Hazardous Materials Out-of-Service Criteria as a guideline.

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 October 26, 2007.

TRD-200705164
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: December 9, 2007
For further information, please call: (512) 424-2135

♦ ♦ ♦

SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY

37 TAC §4.11, §4.13

The Texas Department of Public Safety proposes amendments to Chapter 4, Subchapter B, §4.11 and §4.13 concerning Regulations Governing Transportation Safety.

The amendment proposed for §4.11 updates the rule so that it reflects October 1, 2007 in subsection (a). The amendment is necessary to ensure that the Federal Motor Carrier Safety Regulations, incorporated by reference in this section, reflect all amendments and interpretations issued through that particular date for the subchapter. An additional amendment proposed for §4.11 provides a definition for the term "off-road motorized construction equipment".

Amendments to §4.13 are necessary in order to implement the changes in municipality population thresholds that determine eligibility for certification to conduct commercial vehicle inspections that are contained in House Bills 1638 and 2077 and Senate Bill 545, as passed by the 80th Texas Legislature (2007). An additional amendment to §4.13 is necessary in order to clarify the requirements for obtaining and maintaining certification to perform inspections on vehicles transporting hazardous materials in other bulk packaging.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the section as proposed. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to ensure to the public greater compliance by motor carriers with all of the statutes and regulations pertaining to the safe operation of commercial vehicles in this state.

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

The department has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

The Texas Department of Public Safety, in accordance with the Administrative Procedure and Texas Register Act, Texas Government Code, §2001, et seq., and Texas Transportation Code, Chapter 644, will hold a public hearing on November 16, 2007, at 9:00 a.m., at the Texas Department of Public Safety, Texas Highway Patrol Division, Building G Annex, 5805 North Lamar, Austin, Texas. The purpose of this hearing is to receive comments from all interested persons regarding adoption of the proposed amendments to Administrative Rules §4.11 and §4.13 regarding Hazardous Material and Transportation Safety, proposed for adoption under the authority of Texas Transportation Code, Chapter 644, which provides that the director shall, after notice and a public hearing, adopt rules regulating the safe operation of commercial motor vehicles.

Persons interested in attending this hearing are encouraged to submit advance written notice of their intent to attend the hearing and to submit a written copy of their comments. Correspondence should be addressed to Major Mark Rogers, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500.

Persons with special needs or disabilities who plan to attend this hearing and who may need auxiliary aids or services are requested to contact Major Rogers at (512) 424-7509 at least three working days prior to the hearing so that appropriate arrangements can be made.

Other comments on this proposal may be submitted to Major Mark Rogers, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-7509.

The amendments are proposed pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

Texas Transportation Code, §644.051 is affected by this proposal.

§4.11. General Applicability and Definitions.

(a) General. The director of the Texas Department of Public Safety incorporates, by reference, the Federal Motor Carrier Safety Regulations, Title 49, Code of Federal Regulations, Parts 40, 380, 382, 385, 386, 387, 390 - 393, and 395 - 397 including all interpretations thereto, as amended through October [~~June~~] 1, 2007. All other references in this subchapter to the Code of Federal Regulations also refer to amendments and interpretations issued through October [~~June~~] 1, 2007. The rules adopted herein are to ensure that:

(1) a commercial motor vehicle is safely maintained, equipped, loaded, and operated;

(2) the responsibilities imposed on a commercial motor vehicle's operator do not impair the operator's ability to operate the vehicle safely;

(3) the physical condition of a commercial motor vehicle's operator enables the operator to operate the vehicle safely; and,

(4) the minimum levels of financial responsibility required to be maintained by motor carriers of property or passengers operating commercial motor vehicles in interstate, foreign, or intrastate commerce.

(b) Terms. Certain terms, when used in the federal regulations as adopted in subsection (a) of this section, will be defined as follows:

(1) the definition of motor carrier will be the same as that given in Texas Transportation Code, §643.001(6);

(2) hazardous material shipper means a consignor, consignee, or beneficial owner of a shipment of hazardous materials;

(3) interstate or foreign commerce will include all movements by motor vehicle, both interstate and intrastate, over the streets and highways of this state;

(4) department means the Texas Department of Public Safety;

(5) director means the director of the Texas Department of Public Safety or the designee of the director;

(6) FMCSA field administrator, as used in the federal motor carrier safety regulations, means the director of the Texas Department of Public Safety for vehicles operating in intrastate commerce;

(7) farm vehicle means any vehicle or combination of vehicles controlled and/or operated by a farmer or rancher being used to transport agriculture commodities, farm machinery, and farm supplies to or from a farm or ranch;

(8) commercial motor vehicle has the meaning assigned by Texas Transportation Code, §548.001(1) if operated intrastate; commercial motor vehicle has the meaning assigned by Title 49, Code of Federal Regulations, Part 390.5 if operated interstate;

(9) foreign commercial motor vehicle has the meaning assigned by Texas Transportation Code, §648.001;

(10) agricultural commodity is defined as an agricultural, horticultural, viticultural, silvicultural, or vegetable product, bees and honey, planting seed, cottonseed, rice, livestock or a livestock product, or poultry or a poultry product that is produced in this state, either in its natural form or as processed by the producer, including wood chips. The term does not include a product which has been stored in a facility not owned by its producer;

(11) planting and harvesting seasons are defined as January 1 to December 31; and

(12) producer is defined as a person engaged in the business of producing or causing to be produced for commercial purposes an agricultural commodity. The term includes the owner of a farm on which the commodity is produced and the owner's tenant or sharecropper.

(13) off-road motorized construction equipment includes but is not limited to motor scrapers, backhoes, motor graders, compactors, excavators, tractors, trenchers, bulldozers, and other similar equipment routinely found at construction sites and that is occasionally moved to or from construction sites by operating the equipment short distances on public highways. Off-road motorized construction equipment is not designed to operate in traffic and such appearance on a public highway is only incidental to its primary functions. Off-road motorized construction equipment is not considered to be a commercial motor vehicle as that term is defined in Texas Transportation Code, §644.001.

(c) Applicability.

(1) The regulations shall be applicable to the following vehicles:

(A) a vehicle or combination of vehicles with an actual gross weight, a registered gross weight, or a gross weight rating in excess of 26,000 pounds when operating intrastate;

(B) a farm vehicle or combination of farm vehicles with an actual gross weight, a registered gross weight, or a gross weight rating of 48,000 pounds or more when operating intrastate;

(C) a vehicle designed or used to transport more than 15 passengers, including the driver; and

(D) a vehicle transporting hazardous material requiring a placard.

(E) a motor carrier transporting household goods for compensation in intrastate commerce in a vehicle not defined in Texas Transportation Code, §548.001(1) is subject to the record keeping requirements in Title 49, Code of Federal Regulations, Part 395 and the hours of service requirements specified in this subchapter.

(F) a foreign commercial motor vehicle that is owned or controlled by a person or entity that is domiciled in or a citizen of a country other than the United States.

(G) a contract carrier transporting the operating employees of a railroad on a road or highway of this state in a vehicle designed to carry 15 or fewer passengers.

(2) The regulations contained in Title 49, Code of Federal Regulations, Part 392.9a, and all interpretations thereto, are applicable to motor carriers operating in intrastate commerce and to for-hire interstate motor carriers exempt from economic regulation. The term "operating authority" as used in Title 49, Code of Federal Regulations, Part 392.9a, for the motor carriers described in this paragraph, shall mean compliance with the registration requirements found in Texas Transportation Code, Chapter 643, for vehicles operating in intrastate commerce, or Texas Transportation Code, Chapters 643 or 645, for for-hire interstate motor carriers exempt from economic regulation. For purposes of enforcement of this paragraph, peace officers certified to enforce this chapter, shall verify that a motor carrier is not registered, as required in Texas Transportation Code, Chapters 643 or 645, before placing a motor carrier out-of-service. Motor carriers placed out-of-service under Title 49, Code of Federal Regulations, Part 392.9a may request a review under §4.18 of this chapter. All costs associated with the towing and storage of a vehicle and load declared out-of-service under subsection (c)(2) shall be the responsibility of the motor carrier and not the department or the State of Texas.

(3) All regulations contained in Title 49, Code of Federal Regulations, Parts 40, 380, 382, 385, 386, 387, 390 - 393 and 395 - 397, and all interpretations thereto pertaining to interstate drivers and vehicles are also adopted except as otherwise excluded.

(4) Nothing in this section shall be construed to prohibit an employer from requiring and enforcing more stringent requirements relating to safety of operation and employee health and safety.

§4.13. Authority to Enforce, Training and Certificate Requirements.

(a) Authority to Enforce.

(1) An officer of the department may stop, enter or detain on a highway or at a port of entry a motor vehicle that is subject to Texas Transportation Code, Chapter 644.

(2) A non-commissioned employee of the department that is trained and certified to enforce the federal safety regulations may stop, enter or detain at a fixed-site facility, or at a port of entry, a motor vehicle that is subject to Texas Transportation Code, Chapter 644.

(3) An officer of the department or a non-commissioned employee of the department that is trained and certified to enforce the federal safety regulations may prohibit the further operation of a vehicle on a highway or at a port of entry if the vehicle or operator of the vehicle is in violation of Texas Transportation Code, Chapter 522, or a federal safety regulation or rule adopted under Texas Transportation Code, Chapter 644, by declaring the vehicle or operator out-of-service using the North American Standard Out-of-Service Criteria as a guideline.

(4) Municipal police officers from any of the following Texas cities meeting the training and certification requirements contained in subsection (b) of this section and certified by the department may stop, enter or detain on a highway or at a port of entry within the

municipality a motor vehicle subject to Texas Transportation Code, Chapter 644:

(A) a municipality with a population of 50,000 [~~100,000~~] or more;

(B) a municipality with a population of 25,000 or more, any part of which is located in a county with a population of 500,000 [~~two million~~] or more;

(C) a municipality any part of which is located in a county bordering the United Mexican States; [~~or~~]

(D) a municipality with a population of less than 25,000, any part of which is located in a county with a population of 2.4 million and that contains or is adjacent to an international port;[~~.~~]

(E) a municipality with a population of less than 5,000 that is located adjacent to a bay connected to the Gulf of Mexico and in a county adjacent to a county with a population greater than 3.3 million;

(F) a municipality with a population of 60,000 or more any part of which is located in a county with a population of 750,000 or more and in two or more counties with a combined population of one million or more; or

(G) a municipality with a population of at least 34,000 that is located in a county that borders two or more states.

(5) A sheriff, or deputy sheriff from any of the following Texas counties meeting the training and certification requirements contained in subsection (b) of this section and certified by the department, may stop, enter or detain on a highway or at a port of entry within the county a motor vehicle subject to Texas Transportation Code, Chapter 644:

(A) a county bordering the United Mexican States, or

(B) a county with a population of 2.2 million or more.

(6) A constable, or deputy constable, designated under Texas Transportation Code, §621.4015, meeting the training and certification requirements contained in subsection (b) of this section and certified by the department, may stop, enter or detain on a highway within the county a motor vehicle subject to Texas Transportation Code, Chapter 644.

(7) A certified peace officer from an authorized municipality or county may prohibit the further operation of a vehicle on a highway or at a port of entry within the municipality or county if the vehicle or operator of the vehicle is in violation of Texas Transportation Code, Chapter 522, or a federal safety regulation or rule adopted under Texas Transportation Code, Chapter 644, by declaring the vehicle or operator out-of-service using the North American Standard Out-of-Service Criteria as a guideline.

(b) Training and Certification Requirements.

(1) Minimum standards. Certain peace officers from the municipalities and counties specified in subsection (a) of this section before being certified to enforce this article must meet the following standards:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) successfully complete the Texas Intrastate Roadside Inspection Course (Part C), if initial certification occurs on or after January 1, 2006, or if recertification is required under subsection (c)(4) of this section; and

(C) participate in an on-the-job training program following the North American Standard Roadside Inspection Course with a certified officer and perform a minimum of 32 level I inspections. These inspections should be completed as soon as practicable, but no later than six months after course completion.

(2) Hazardous materials. Certain peace officers from the municipalities and counties specified in subsection (a) of this section and eligible to enforce the Hazardous Materials Regulations must:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) successfully complete the Hazardous Materials Inspection Course; and

(C) participate in an on-the-job training program following this course with a certified officer and perform a minimum of 16 level I inspections on vehicles containing non-bulk quantities of hazardous materials. These inspections should be completed as soon as practicable, but no later than six months after course completion.

(3) Cargo Tank Specification. Certain peace officers from the municipalities and counties specified in subsection (a) of this section and eligible to enforce the Cargo Tank Specification requirements must:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) successfully complete the Hazardous Materials Inspection Course;

(C) successfully complete the Cargo Tank Inspection Course; and

(D) participate in an on-the-job training program following this course with a certified officer and perform a minimum of 16 level I inspections on vehicles transporting hazardous materials in cargo tanks. These inspections should be completed as soon as practicable, but no later than six months after course completion.

(4) Other Bulk Packaging. Certain peace officers from the municipalities and counties specified in subsection (a) of this section and eligible to enforce the Other Bulk Packaging requirements must:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) successfully complete the Hazardous Materials Inspection Course;

(C) successfully complete the Cargo Tank Inspection Course; and

(D) successfully complete the Other Bulk Packaging Course. [~~; and~~]

[~~(E) participate in an on-the-job training program following this course with a certified officer and perform a minimum of 16 level I inspections on vehicles containing hazardous materials in other bulk packaging. These inspections should be completed as soon as practicable, but no later than six months after course completion.~~]

(5) Passenger Vehicle. Certain peace officers from the municipalities and counties specified in subsection (a) of this section and eligible to enforce the passenger vehicle requirements must:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) successfully complete the Passenger Vehicle Inspection Course; and

(C) participate in an on-the-job training program following this course with a certified officer and perform a minimum

of 8 level I or V inspections on passenger vehicles such as motor coaches/buses. These inspections should be completed as soon as practicable, but no later than six months after course completion.

(6) Training provided by the department. When the training is provided by the Texas Department of Public Safety, the department shall collect fees in an amount sufficient to recover from municipalities and counties the cost of certifying its peace officers. The fees shall include:

(A) the per diem costs of the instructors established in accordance with the Appropriations Act regarding in-state travel;

(B) the travel costs of the instructors to and from the training site;

(C) all course fees charged to the department;

(D) all costs of supplies; and

(E) the cost of the training facility, if applicable.

(7) Training provided by other training entities. A public or private entity desiring to train police officers in the enforcement of the Federal Motor Carrier Safety Regulations must:

(A) submit a schedule of the courses to be instructed;

(B) submit an outline of the subject matter in each course;

(C) submit a list of the instructors and their qualifications to be used in the training course;

(D) submit a copy of the examination;

(E) submit an estimate of the cost of the course;

(F) receive approval from the director prior to providing the training course;

(G) provide a list of all peace officers attending the training course, including the peace officer's name, rank, agency, social security number, dates of the course, and the examination score; and

(H) receive from each peace officer, municipality, or county the cost of providing the training course(s).

(c) Maintaining Certification.

(1) To maintain certification to conduct inspections and enforce the federal safety regulations, a peace officer must:

(A) Successfully complete the required annual certification training; and

(B) Perform a minimum of 32 Level I inspections per calendar year.

(C) If the officer is certified to perform hazardous materials inspections, at least eight inspections (Levels I, II or V) shall be conducted on vehicles containing non-bulk quantities of hazardous materials per calendar year. Level I inspections on vehicles containing non-bulk quantities of hazardous materials may also be used to satisfy the 32 Level I inspections required by subparagraph (B) of this paragraph.

(D) If the officer is certified to perform cargo tank inspections, at least eight inspections (Levels I, II or V) shall be conducted on vehicles transporting hazardous materials in cargo tanks per calendar year. Level I inspections on cargo tank vehicles transporting hazardous materials may also be used to satisfy the 32 Level I inspections required by subparagraph (B) of this paragraph.

(E) If the officer is certified to perform other bulk packaging inspections, the officer can use [~~at least eight inspections (Levels I, II or V) shall be conducted on vehicles transporting hazardous materials in other bulk packaging per calendar year.~~] Level I inspections performed on vehicles transporting hazardous materials in[~~containing~~] other bulk packaging [~~may also be used~~] to satisfy the 32 Level I inspections required by subparagraph (B) of this paragraph. Level I, II or V inspections on vehicles transporting hazardous materials in other bulk packaging may also be used to satisfy the eight inspections required by subparagraph (D) of this paragraph.

(F) If the officer is certified to perform passenger vehicle inspections, at least eight inspections (Levels I or V) shall be conducted on passenger vehicles such as motor coaches/buses per calendar year. Level I inspections on passenger vehicles may also be used to satisfy the 32 Level I inspections required by subparagraph (B) of this paragraph.

(2) In the event an officer does not meet the requirements of subsection (c) of this section, his or her certification shall be suspended by the department. Such suspension action will be initiated by the director or the director's designee.

(3) To be recertified, after suspension, an officer shall pass the applicable examinations which may include the North American Standard Roadside Inspection, the Hazardous Materials Inspection Course, the Cargo Tank Inspection Course, the Other Bulk Packaging Inspection Course, and/or the Passenger Vehicle Inspection Course and repeat the specified number of inspections with a certified officer.

(4) Any officer failing any examination, or failing to successfully demonstrate proficiency in conducting inspections after allowing any certification to lapse will be required to repeat the entire training process as outlined in subsection (b) 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 October 26, 2007.

TRD-200705165
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: December 9, 2007
For further information, please call: (512) 424-2135

♦ ♦ ♦

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 15. TEXAS VETERANS COMMISSION

CHAPTER 455. TAPS PROGRAM

The Texas Veterans Commission (commission) proposes new Chapter 455, regarding Taps Vouchers, which will be located in Title 40, Part 15, of the Texas Administrative Code. Chapter 455 will include §455.1, Purpose; §455.2, Application; §455.3, Definitions; §455.4, Process; and §455.5, Adoption of Standard Form. The purpose of these rules is to establish the responsibilities, composition, and terms for Taps vouchers. The proposed new rule is authorized under Government Code

§434.0072, granting the commission the authority to establish Taps vouchers for the sounding of Taps at military funerals.

Tina M. Coronado, General Counsel for the commission, has determined that for each year of the first five year period that the new chapter is in effect there will be no significant increase in expenditures or revenue for state government and no significant fiscal impact for local government as a result of enforcing or administering the chapter.

Ms. Coronado has also determined that for each year of the first five year period the proposed chapter is in effect there should be no effect on a local economy therefore no local employment impact statement is required under the Administrative Procedures Act, §2001.022.

Comments on the proposed new chapter may be submitted to Tina M. Coronado, General Counsel, Texas Veterans Commission, 1700 N. Congress, Austin, Texas 78701 or by fax to (512) 463-3288. Comments may also be submitted electronically to Tina.Coronado@tvc.state.tx.us. For comments submitted electronically, please include "TAPS" in the subject line. The deadline for submission of comments is twenty (20) days from the date of publication of the proposed chapter in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the chapter under consideration.

40 TAC §455.1

The new chapter is proposed pursuant to Government Code §434.010, which provides general authority for the commission to adopt rules necessary for its administration.

No other statutes, articles, or codes are affected by this section.

§455.1 Purpose.

The purpose of this chapter is to establish the standard for the distribution of tuition vouchers for the sounding of "Taps" using a bugle, trumpet, or cornet at military honors funerals.

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 October 29, 2007.

TRD-200705179
Tina Coronado
General Counsel
Texas Veterans Commission
Earliest possible date of adoption: December 9, 2007
For further information, please call: (512) 463-1549

♦ ♦ ♦

40 TAC §455.2

The new chapter is proposed pursuant to Government Code §434.010, which provides general authority for the commission to adopt rules necessary for its administration.

No other statutes, articles, or codes are affected by this section.

§455.2. Application.

The application applies to all students who sound "Taps" using the bugle, trumpet, or cornet during military honors funerals held in this state for deceased veterans and who wish to submit vouchers to offset tuition or other required fees at institutions of higher education, as defined by §61.003, Texas Education Code.

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 October 29, 2007.

TRD-200705175
Tina Coronado
General Counsel
Texas Veterans Commission
Earliest possible date of adoption: December 9, 2007
For further information, please call: (512) 463-1549

♦ ♦ ♦

40 TAC §455.3

The new chapter is proposed pursuant to Government Code §434.010, which provides general authority for the commission to adopt rules necessary for its administration.

No other statutes, articles, or codes are affected by this section.

§455.3. Definitions.

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

(1) Student--An individual enrolled in grades 6 through 12 or at a postsecondary educational institution as defined by §61.003, Education Code, located in the State of Texas.

(2) Veteran--A person who has been a member of the Army, Navy, Air Force, Marines, or Coast Guard of the United States and who has, in some manner, been released from active duty therein and is entitled to military funeral honors.

(3) Participant--A student who sounds "Taps" at a military honors funeral in order to be awarded a voucher for an exemption from tuition and required fees at an institution of higher education as defined by §61.003, Texas Education Code, located in Texas for their services.

(4) Commission--Texas Veterans Commission

(5) Voucher--A numbered form prepared by the Commission in the amount of $25.00 to be exchanged for an exemption from the payment of tuition and required fees at an institution of higher education as defined by §61.003, Texas Education Code, located in the State of Texas.

(6) Funeral Director--An individual licensed by the Texas Funeral Service Commission responsible for directing the funeral service of the veteran.

(7) Taps--A musical tribute sounded on a bugle, trumpet, or cornet at military honors funerals for a deceased veteran.

(8) Institution of Higher Education and Private or Independent Institution of Higher Education--As defined by §61.003, Education Code.

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 October 29, 2007.

TRD-200705176

Tina Coronado
General Counsel
Texas Veterans Commission
Earliest possible date of adoption: December 9, 2007
For further information, please call: (512) 463-1549

♦ ♦ ♦

40 TAC §455.4

The new chapter is proposed pursuant to Government Code §434.010, which provides general authority for the commission to adopt rules necessary for its administration.

No other statutes, articles, or codes are affected by this section.

§455.4. Process.

(a) To receive a voucher through the Texas Veterans Commission, a student must:

(1) have sounded "Taps" at a military honors funeral of a deceased veteran;

(2) provide proof that "Taps" was sounded by such student by completing and submitting Form TVCTAPS to the Commission. This form may be obtained from the funeral director responsible for directing the veteran's funeral service;

(3) for each veteran funeral at which a student sounds "Taps," and for which the student has completed and submitted Form TVCTAPS to the Commission, the Commission shall award one (1) voucher in the amount of $25.00 to be used as an exemption from tuition and required fees at an institution of higher education as defined by §61.003, Texas Education Code. This voucher will not have an expiration date;

(b) a school district may excuse a student in grades 6 through 12 for the purpose of sounding "Taps" at a military honors funeral held in this state for a deceased veteran. A student whose absence is excused may not be penalized for that absence and shall be allowed a reasonable time to make up school work missed on those days. If the student satisfactorily completes the school work, the day of absence shall be counted as a day of compulsory attendance.

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 October 29, 2007.

TRD-200705177
Tina Coronado
General Counsel
Texas Veterans Commission
Earliest possible date of adoption: December 9, 2007
For further information, please call: (512) 463-1549

♦ ♦ ♦

40 TAC §455.5

The new chapter is proposed pursuant to Government Code §434.010, which provides general authority for the commission to adopt rules necessary for its administration.

No other statutes, articles, or codes are affected by this section.

§455.5. Adoption of Standard Form.

(a) The Commission hereby adopts the standard form identified below under subsection (b) of this section to be issued to a student for the sounding of "Taps."

(b) The standard form hereby adopted by the Commission is the following:
Figure: 40 TAC §455.5(b)

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 October 29, 2007.

TRD-200705178
Tina Coronado
General Counsel
Texas Veteran Commission
Earliest possible date of adoption: December 9, 2007
For further information, please call: (512) 463-1549

♦ ♦ ♦

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 61. CRIME VICTIMS' COMPENSATION

SUBCHAPTER E. PECUNIARY LOSS

1 TAC §§61.402, 61.405 - 61.407, 61.414, 61.415

The Office of the Attorney General (OAG) adopts an amendment to Subchapter E (Pecuniary Loss) §§61.402, 61.405 - 61.407, and new §61.414 and §61.415. The amendments to §§61.402, 61.406, and 61.407, and new §61.414 and §61.415 are adopted without changes to the proposed text as published in July 6, 2007, issue of the *Texas Register* (32 TexReg 4107) and will not be republished. The amendment to §61.405 is adopted with changes to the proposed text as published in the July 6, 2007, issue of the *Texas Register* (32 TexReg 4107) and will be republished.

The amendments are adopted to accurately implement, interpret, and prescribe the law and minimum standards of practices, procedures, and policies of the OAG relating to the administration of the Texas Compensation to Victims of Crime Fund as required by the Administrative Procedures Act, Texas Government Code, Chapter 2001.

Section 61.402 adds the requirement that after six months of receiving crime related mental healthcare, a treatment recommendation associated with continued prescribed medication must be submitted. Adds limit to providing care for incapacitated adults or minor children not to exceed 180 consecutive days, if the attending physician provides a letter stating the care is medically necessary.

Section 61.405 clarifies that a victim, and the victim's minor children and dependents are eligible for care benefits, and clarifies that the transportation of a deceased victim is excluded from the limit on burial costs when the remains are transported more than 50 miles from either the place of death to the funeral home, or from the funeral home to the place of burial.

Section 61.406 establishes that earned wages may be considered a collateral source during the period of time within which a victim or claimant receives lost wage compensation benefits from CVC.

Section 61.407 clarifies that "extraordinary pecuniary loss" means crime related expenses that exceed, or the OAG anticipates expenses to exceed, the maximum amount allowed under Texas Code Criminal Procedure Article 56.42(a). Provides that once the OAG determines that a victim is catastrophically injured, the OAG may approve payment of expenses from either the victim's basic or catastrophic compensation benefits as determined appropriate by the OAG. Requires that the legal owner of a home to submit verification of ownership and written permission to modify a dwelling for which a victim or claimant seeks accessibility.

Section 61.414 establishes the process for applying for compensation benefits when a Texas resident is injured in another state or country with a compensation program, and how to apply for federal and state compensation when a Texas resident is injured as a result of international terrorism.

Section 61.415 establishes the method by which CVC requests a refund of overpayments resulting from the victim or claimant failing to report collateral sources, and when a victim dies subsequent to being approved for benefits, and there is no claimant on the application.

The public comment period began July 6, 2007 and ended August 6, 2007. The following is a summary of Comments received and corresponding Agency responses regarding the proposed amendments.

Comment. Concerning §61.402, Loss of Earnings, the Texas Council on Family Violence (TCFV) recommends that the OAG review loss of earnings claims on a case-by-case basis and, if deemed necessary by the OAG, extend the 180 days loss of earnings to care for an incapacitated adult victim or minor child victim.

Agency Response. The Agency agrees but declines to make the suggested change, as the rules already allow for flexibility. Administrative rule §61.1(d) provides that the Agency may suspend the administrative rules if good cause is shown that compliance would result in an injustice to any party. The Agency reviews all claims on a case-by-case basis, and if good cause is shown the Agency may approve loss of earnings beyond 180 consecutive days to provide care of an incapacitated adult victim or minor child victim.

Comment. Concerning §61.405, Other Limits on Compensation, TCFV recommended that the word "each" before the word "dependent" would clarify whether the new language provides a maximum of $100 per week regardless of the number of children or $100 per week per child.

Agency Response. The Agency agrees and has changed the rule to clarify that the $100 weekly maximum applies to the cost of care for each dependent and minor child.

Comment. Concerning §61.405, Other Limits on Compensation, TCFV recommended a clarification on whether transportation of the deceased victim more than 50 miles to the funeral service location, and 50 miles or more to the place of burial, are excluded from the $4500 funeral expense limit.

Agency Response. The Agency agrees and has changed the rule to clarify that transportation of the remains of the deceased victim more than 50 miles to the funeral service location, and 50 miles or more to the place of burial, are excluded from the $4500 funeral expense limit.

Comment. Concerning §61.415, Refunds, TCFV recommended that the OAG should only request a refund if a service provider or victim is overpaid for reasons of fraud or false information on the part of the victim or provider, not for an erroneous overpayment.

Agency Response. The Agency disagrees and declines to make the suggested change. The OAG has a duty to protect the solvency of the victims of crime fund and must make reasonable efforts to recover money that is paid out in error.

The amendments are adopted under Texas Code of Criminal Procedure, Article 56.33, which authorizes the OAG to amend rules pertaining to its administration.

§61.405. Other Limits on Compensation.

(a) The limits on amounts of awards may be different from the amounts listed in this subchapter based on the law in effect at the time of the criminally injurious conduct.

(b) Under Tex. Code Crim. Proc. Art. 56.32(a)(9)(c), the cost of care for a victim, a dependent of a victim or a minor child of a victim may be awarded if the criminally injurious conduct occurred on or after September 1, 1997, and the care is a new expense resulting from the crime. This benefit is subject to the following provisions:

(1) The victim or claimant must submit a written request for the care and an explanation of how the crime created the new care expense. Care must be provided by a certified, registered, or licensed care provider.

(2) The OAG will provide reimbursement for the care at a maximum rate of $100 per week for the victim, each dependent, and minor child or the actual cost of care, whichever is less. A minor child for purposes of this benefit may be limited to children 14 years of age or younger. The age requirement may be removed by the OAG upon review of extenuating circumstances.

(3) The OAG may limit care for the surviving victim, and the children and dependent(s) of the victim to a maximum of 90 consecutive days. Under extenuating circumstances, care may be extended upon review by the OAG.

(4) Care for the children and dependent(s) of a deceased victim may be paid on an ongoing basis up to a maximum of $100 per week based on the pecuniary loss. This benefit is subject to the award cap determined by the date of the criminally injurious conduct, up to the maximum amount of the claim or until the claimant or dependent(s) no longer qualifies for this benefit by age, marital status, or emancipation.

(c) Funeral and burial expenses provided by Tex. Code Crim. Proc. Art. 56.32(a)(9)(D) are limited to $4,500. The reasonable costs of transporting the deceased victim 50 miles or more to the funeral service location, and 50 miles or more to the place of burial, are allowable funeral and burial expenses which may be excluded from the $4,500 limit.

(d) Under Tex. Code Crim. Proc. Art. 56.32(a)(9)(F), the cost of cleaning the crime scene may be awarded if the criminally injurious conduct occurred on or after September 1, 1995. This benefit is limited to $750 per victim.

(e) Under Tex. Code Crim. Proc. Art. 56.32(a)(9)(G), if the criminally injurious conduct occurred on or after September 1, 1995, the OAG may pay for the reasonable replacement costs, not to exceed $750 in the aggregate, for property seized as evidence, rendered unusable as a result of the criminal investigation, or that is not returned to the victim or claimant by law enforcement within a reasonable period of time.

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 October 25, 2007.

TRD-200705143
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Effective date: November 14, 2007
Proposal publication date: July 6, 2007
For information regarding this publication, contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

♦ ♦ ♦

SUBCHAPTER F. MEDICAL CARE

1 TAC §61.503

The Office of the Attorney General (OAG) adopts an amendment to Subchapter F (Medical Care), §61.503. The amendment is adopted without changes to the proposed text as published in July 6, 2007, issue of the *Texas Register* (32 TexReg 4124) and will not be republished.

The amendment is adopted to accurately implement, interpret, and prescribe the law and minimum standards of practices, procedures, and policies of the OAG relating to the administration of the Texas Compensation to Victims of Crime Fund as required by the Administrative Procedures Act, Texas Government Code, Chapter 2001.

Section 61.503 requires that bills for mental health treatment must be submitted within three years and clarifies that catastrophic injury benefits are only available to victims.

The OAG received no public comment on the proposal.

The amendment is adopted under Texas Code of Criminal Procedure, Article 56.33, which authorizes the OAG to amend rules pertaining to its administration.

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 October 25, 2007.

TRD-200705144
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Effective date: November 14, 2007
Proposal publication date: July 6, 2007
For information regarding this publication, contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

♦ ♦ ♦

SUBCHAPTER G. RELOCATION AND HOUSING RENTAL EXPENSES BENEFITS

1 TAC §61.601, §61.602

The Office of the Attorney General (OAG) adopts amendments to Subchapter G (Relocation and Housing Rental Expenses Benefits), §61.601 and §61.602. The amendments are adopted with changes to the proposed text as published in July 6, 2007, issue of the *Texas Register* (32 TexReg 4124) and will be republished.

The amendments are adopted to accurately implement, interpret, and prescribe the law and minimum standards of practices, procedures, and policies of the OAG relating to the administration of the Texas Compensation to Victims of Crime Fund as required by the Administrative Procedures Act, Texas Government Code, Chapter 2001.

Section 61.601 adds new definition of "Family violence center," "Family violence nonresidential center," and "Family violence shelter center."

Section 61.602 changes housing rental payments from a single payment totaling $1,800 to three months of the actual housing rental amount, not to exceed $1,800; denies relocation and housing rental benefits if the offender moves into the dwelling with the victim or claimant; requires a permanent address and alternate phone number from the victim or claimant and requires that a request for rent and relocation expenses must be submitted to the OAG within three years of the date of crime. Establishes that rent payments shall be limited to the victim's proportionate share of rent based on the number of adult tenants listed on the leasing agreement.

The public comment period began July 6, 2007 and ended August 6, 2007. The following is a summary of Comments received and corresponding Agency responses regarding the proposed amendments.

Comment. Concerning §61.601, Definitions Pertaining to Relocation and Housing Rental Expenses Benefits, the Texas Council on Family Violence (TCFV) suggested that the use of the term "family violence" should include §71.004(1) - (4) of the Texas Family Code rather than limit the definition to §71.004 (1). This would provide rental and relocation benefits to victims of dating violence that are not living with their abuser.

Agency Response. The Agency disagrees and declines to make the suggested change. Tex. Code Crim. Proc., Art. 56.32(a)(12), restricts the definition by providing that "Family violence" has the meaning assigned by §71.004(1), Family Code.

Comment. Concerning §61.601, TCFV and SafePlace recommended that the OAG not require a victim to obtain a signed form by a member of law enforcement, a victim/witness liaison, or a family violence advocate because such a form would be burdensome. TCFV and SafePlace recommended that the OAG delete definitions for "family violence center," "family violence nonresidential center," and "family violence shelter center" as they apply to the relocation form.

Agency Response. The Agency agrees with the concerns of TCFV and SafePlace and will delete the definitions of "family violence center," "family violence nonresidential center" and "family violence shelter center" as they apply to the relocation form. The Agency will continue to study the issue.

Comment. Concerning §61.601, TCFV recommends that the term "utility connections" should include up to two telephone lines, to allow one telephone line for an internet connection.

Agency Response. The Agency disagrees and declines to make the suggested change. However, the Agency will conduct a review to consider expanding this benefit in the future to include an internet connection.

Comment. Concerning §61.602, Eligibility and Reimbursement for Relocation and Housing Rental Expenses Benefits, TCFV and SafePlace recommended that the OAG not require a victim to obtain a signed form by a member of law enforcement, a victim/witness liaison, or a family violence advocate because such a form would be burdensome.

Agency Response. The Agency agrees with the concerns of TCFV and SafePlace and will remove the requirement of the signed form. The Agency will continue to study the issue.

The amendments are adopted under Texas Code of Criminal Procedure, Article 56.33, which authorizes the OAG to amend rules pertaining to its administration.

§61.601. Definitions Pertaining to Relocation and Housing Rental Expenses Benefits.

For the limited purpose of awarding benefits for relocation and housing rental expenses pursuant to Tex. Code Crim. Proc. Art. 56.42(d)(1) and (2), the following terms shall have the following meanings:

(1) Deposits--Expenses for rental deposits are limited to property deposits.

(2) Domestic violence--For purposes of this subchapter the term "domestic violence" shall have the same meaning as the term "family violence" in Tex. Fam. Code §71.004(1). "Domestic violence" refers to an act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault, or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself.

(3) Family--As defined in Tex. Fam. Code §71.003, without regard to whether the following individuals reside together, the term "family" includes:

(A) individuals related by consanguinity or affinity, as determined by Tex. Govt. Code, §573.022 and §573.024;

(B) individuals who are former spouses of each other;

(C) individuals who are the biological parents of the same child without regard to marriage; and

(D) a foster child and foster parent.

(4) Family violence--As defined in Tex. Fam. Code §71.004(1), the term "family violence" refers to an act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault, or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself.

(5) Household--As defined in Tex. Fam. Code §71.005, the term "household" means a unit composed of persons living together in the same dwelling, without regard to whether they are related to each other.

(6) Member of a household--As defined by the Tex. Fam. Code, §71.006, the term "member of a household" includes a person who previously lived in the household.

(7) Place of Residence--The term means a victim's dwelling, the property under the dwelling, and all other areas and structures on the property under the control of the owner of the property.

(8) Utility connections--Expenses for utility connections are limited to expenses for gas, electricity, water, and one telephone line connection.

§61.602. Eligibility and Reimbursement for Relocation and Housing Rental Expenses Benefits.

(a) Pursuant to Tex. Code Crim. Proc. Art. 56.42(d), the OAG shall determine eligibility for reimbursement of the reasonable and necessary costs for relocation and housing rental expenses. A request for relocation and housing rental expenses must be submitted within three years of the date of crime.

(b) A victim of domestic violence that occurred on or after June 19, 1999, to on or before August 31, 2001, may receive a one time only per offender assistance payment in an amount not to exceed $2,000.00 for relocation expenses, and a one time only per offender assistance payment in an amount not to exceed $1,800.00 for housing rental expenses. For purposes of determining eligibility, the criminal offense or violation is considered to have occurred on the date when the criminally injurious conduct occurred.

(c) A victim of family violence that occurred on or after September 1, 2001, may receive a one time only per offender assistance payment in an amount not to exceed $2,000.00 for relocation expenses, and a one time only per offender assistance payment in an amount not to exceed $1,800.00 for housing rental expenses. For purposes of determining eligibility, the criminal offense or violation is considered to have occurred on the date when the criminally injurious conduct occurred.

(d) A victim of sexual assault who is sexually assaulted in the victim's place of residence on or after September 1, 2001, may receive a one time only per incident assistance payment in an amount not to exceed $2,000.00 for relocation expenses, and a one time only per incident assistance payment in an amount not to exceed $1,800.00 for housing rental expenses. For the purposes of determining eligibility, the criminal offense or violation is considered to have occurred on the date when the criminally injurious conduct occurred.

(e) Before the OAG will make an award pursuant to Tex. Code Crim. Proc. Art. 56.42(d), the OAG will verify that the victim requesting this benefit was the victim of domestic violence or family violence by reviewing:

(1) the victim's or claimant's affidavit seeking a protective order and the court order signed by the issuing judge, pursuant to Tex. Fam. Code Chapters 71, 81, and 82; or the offense report submitted by a law enforcement agency; and

(2) proof of the relationship between the victim and the offender in a manner deemed appropriate by the OAG.

(f) Before the OAG will make an award pursuant to Tex. Code Crim. Proc. Art. 56.42(d), the OAG will verify that the victim was sexually assaulted in the victim's residence by reviewing the offense report submitted by a law enforcement agency.

(g) To determine the amount of an award for relocation expenses, the victim or claimant must provide the OAG proof of actual costs or an estimate of the relocation expenses on the form provided and approved by the OAG. Relocation expenses may include, but are not limited to the costs of rental deposits, utility connections, moving vans, moving labor, packing, private vehicle mileage, transportation, lodging, and meals. Relocation expenses shall be limited to the victim's proportionate share of costs based on the number of adult tenants listed on the leasing agreement. Expenses for transportation, lodging, and meals will be reimbursed in a manner consistent with §61.404 of this title. Restrictions on reimbursement for travel under 20 miles are not applicable for this award.

(h) The victim must provide the OAG with documentation such that the OAG can reconcile the estimated relocation costs with the actual relocation expenditures within 30 days of receipt of relocation benefits.

(1) In the event the estimated relocation costs were less than the actual relocation expenses, the OAG will reimburse the victim for the actual relocation costs. The total amount of a relocation award may not exceed $2,000.00.

(2) In the event the estimated relocation costs were more than the actual relocation expenses, the OAG will:

(A) reduce other benefits to which the victim may be entitled by an amount equal to the overpayment; or

(B) demand payment from the victim to satisfy the overpayment.

(i) An award for rental expenses under this provision may be approved for three months of rent, not to exceed $1,800.00. Rent payments shall be limited to the victim's proportionate share of rent based on the number of adult tenants listed on the leasing agreement. Pursuant to Tex. Code Crim. Proc. Art 56.41(b)(5), rent and relocation expenses shall be denied if the offender occupies the new residence with the victim or claimant. To make an award for rental expenses, the victim must provide to the OAG the following information:

(1) a copy of the signed lease or signed contract for a rental agreement for the victim, or a written statement from the landlord showing the location of the rental property, the date of the victim's move-in, the rent amount, the rent due date, and the names of the occupants of the rental property;

(2) the landlord's name, phone number, address, and federal tax identification number or social security number; or the name of the management company to whom the rent is paid and its phone number, address, and federal tax identification number; and

(3) other information deemed necessary by the OAG to assist in locating the victim or claimant.

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 October 25, 2007.

TRD-200705145
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Effective date: November 14, 2007
Proposal publication date: July 6, 2007
For information regarding this publication, contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

♦ ♦ ♦

SUBCHAPTER J. ADMINISTRATIVE REMEDIES

1 TAC §61.901, §61.905

The Office of the Attorney General (OAG) adopts amendments to Subchapter J (Administrative Remedies) §61.901 and new section §61.905. The amendments are adopted without changes to the proposed text as published in July 6, 2007, issue of the *Texas Register* (32 TexReg 4107) and will not be republished.

The amendments are adopted to accurately implement, interpret, and prescribe the law and minimum standards of practices, procedures, and policies of the OAG relating to the administration of the Texas Compensation to Victims of Crime Fund as required by the Administrative Procedures Act, Texas Government Code, Chapter 2001.

The OAG received no public comment on the proposal.

The amendments are adopted under Texas Code of Criminal Procedure, Article 56.33, which authorizes the OAG to amend rules pertaining to its administration.

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 October 25, 2007.

TRD-200705146
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Effective date: November 14, 2007
Proposal publication date: July 6, 2007
For information regarding this publication, contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

♦ ♦ ♦

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 1. GENERAL PROCEDURES

SUBCHAPTER B. COLLECTION OF DEBTS

4 TAC §1.56

The Texas Department of Agriculture (the department) adopts amendments to §1.56, concerning waiver of fees charged to persons obtaining licenses or services from the department, without changes to the proposal published in the August 31, 2007, issue of the *Texas Register* (32 TexReg 5540). The amendments are adopted to improve allocation of personnel resources in the department's Licensing Division by allowing NCP renewals to be processed by the automated payment processing equipment at the Texas State Comptroller's office. The rule allowed employees of a political subdivision that hold a noncommercial political applicator license (NCP) to obtain a waiver of the entire licensing fee. An increase in the number of eligible licensees made the change in the rule necessary due to the amount of time required to receive, track, and process waiver requests. The adopted amendments eliminate the clause allowing these licensees to receive a waiver of their licensing fee.

No comments were received on the proposal.

The amendments to §1.56 are adopted under the Texas Agriculture Code, §12.034, which provides the department with the authority to adopt rules which provide for the waiver of licensing and inspection fees.

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 October 23, 2007.

TRD-200705109
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: November 12, 2007
Proposal publication date: August 31, 2007
For further information, please call: (512) 463-4075

♦ ♦ ♦

TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 8. PIPELINE SAFETY REGULATIONS

SUBCHAPTER C. REQUIREMENTS FOR NATURAL GAS PIPELINES ONLY

16 TAC §8.201

The Railroad Commission of Texas (Commission) adopts amendments to §8.201, relating to Pipeline Safety Program Fees, without changes to the version published in the August 31, 2007, issue of the *Texas Register* (32 TexReg 5584). The Commission adopts the amendments to implement provisions of House Bill 1, 80th Texas Legislature (2007), and, specifically, Article VI, Railroad Commission Rider 11, which makes the amounts appropriated from general revenue for State Fiscal Years 2008 and 2009 for the pipeline safety program and the underground pipeline damage prevention program, as well as other direct and indirect costs for the programs, contingent upon the Commission assessing fees sufficient to generate, during the 2008-2009 Biennium, revenue to cover that general revenue appropriation.

The adopted amendments in §8.201(b) change the deadline for filing the DOT Distribution Annual Report, Form 7100.1-1, from 2006 to an annual requirement without a specified year; change the deadline by which the annual pipeline safety program fee is to be paid from April 20, 2007, to an annual requirement of March 15 of each year; and increase the assessment rate from $0.37 to $0.50 annually for each service line reported to be in service at the end of each calendar year. The Commission adopts the increase in the annual service line fee in order meet the requirements of House Bill 1 with respect to funding not only the established pipeline safety program, but the underground pipeline

damage prevention program as well, for which the Commission adopted rules that became effective on September 1, 2007.

The Commission received one comment on the proposal from the Texas Pipeline Safety Coalition (the Coalition). The Coalition stated that it is a strong supporter of the Commission's damage prevention efforts and believed the small increase in the service line fee will result in additional income to support the initial damage prevention program administration at the Commission. The Coalition also stated that the nominal increase will be borne by those individuals who benefit the most from damage prevention efforts, the general public. The Coalition also referred to the Commission's recently adopted damage prevention rules (16 TAC Chapter 18) as being a key tool to assist pipeline operators with protecting the excavators and the general public from preventable pipeline incidents.

The Commission appreciates and agrees with the Coalition's comments.

The Commission adopts the amendments under Texas Utilities Code, §§121.201 - 121.210, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §§60101, *et seq*.; and Texas Utilities Code, §121.211, which authorizes the Railroad Commission to adopt, by rule, an annual inspection fee not to exceed 50 cents for each service line reported by a natural gas distribution system subject to Chapter 121 on the Distribution Annual Report, Form RSPA F7100.1-1; and House Bill 1, 80th Texas Legislature (2007), Article VI, Railroad Commission Rider 11, which requires the Commission to assess fees sufficient to generate during the 2008-2009 Biennium, revenue to cover the general revenue appropriation.

Texas Utilities Code, §§121.201 - 121.211; and 49 United States Code Annotated, §§60101, *et seq*., are affected by the adopted amendments.

Statutory authority: Texas Utilities Code, §§121.201 - 121.211; 49 United States Code Annotated, §§60101, *et seq*.; and House Bill 1, 80th Texas Legislature (2007).

Cross-reference to statute: Texas Utilities Code, Chapter 121; 49 United States Code Annotated, Chapter 601; and House Bill 1, 80th Texas Legislature (2007).

Issued in Austin, Texas, on October 23, 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 October 23, 2007.

TRD-200705107
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: November 12, 2007
Proposal publication date: August 31, 2007
For further information, please call: (512) 475-1295

♦ ♦ ♦

CHAPTER 9. LP-GAS SAFETY RULES

SUBCHAPTER A. GENERAL REQUIREMENTS

16 TAC §9.26

The Railroad Commission of Texas adopts amendments to §9.26, relating to Insurance Requirements, without changes to the version published in the August 31, 2007, issue of the *Texas Register* (32 TexReg 5586). The Commission adopts amendments to update the requirements for certificates of insurance and to delete some references to insurance endorsements.

Amendments in subsection (a)(1) add wording to allow the use of an insurance Acord™ form or any other form prepared and signed by the insurance carrier that contains all the information required by the certificate of insurance. The certificates or forms must be issued by an insurance carrier authorized or accepted by the Texas Department of Insurance. The Figure in subsection (a) includes changes to delete the column entitled "Insurance Policy Endorsement Required" and to add references to the Acord™ form in the column entitled "Form Required." The Commission made no changes to the license categories or dollar amounts for the types of coverage. The Commission deleted subsection (b) regarding endorsements.

The amendments in former subsection (c), redesignated as subsection (b), delete references to endorsements and clearly state that the licensee shall give the Section notice of 30 calendar days before cancellation of any insurance coverage. The remaining subsections are redesignated.

The Commission adopts new subsection (j) requiring each licensee to promptly notify the Commission of any change in insurance coverage or insurance carrier by filing a properly completed revised certificate of insurance; insurance Acord™ form; other form that contains all the information required by the certificate of insurance; or documents demonstrating the applicant's compliance with the self- insurance requirements set forth in subsection (i). A licensee's failure to promptly notify the Commission of a change in the status of insurance coverage or insurance carrier may result in an enforcement action and an administrative penalty.

The Commission finds that these amendments, and in particular, the Commission's recognition and acceptance of the Acord™ form or any other form prepared and signed by the insurance carrier that contains all the information required by the certificate of insurance, will allow more flexibility for the LP-gas industry while still providing the Commission with the necessary information regarding proof of insurance. The Acord™ form was developed by the Association for Cooperative Operations Research and Development (ACORD), a global, non-profit insurance association whose mission is to facilitate the development and use of standards for the insurance, reinsurance, and related financial services industries. Hundreds of insurance and reinsurance companies and thousands of agents and brokers are affiliated with ACORD. Thus, the Commission's acceptance of this standardized form will be efficient while still ensuring that LP-gas licensees meet the insurance requirements for licensure.

Concurrently with these amendments to §9.26, the Commission requested comments on proposed changes to three forms, LPG Form 996A, LPG Form 997A, and LPG Form 998A, as well as the fee calculation sheet that accompanies notices of license renewal. These documents were published separately in the "In Addition" section of the *Texas Register*. The changes to the forms eliminate obsolete TDI endorsement information and add

acceptance of the Acord™ forms universally used by the insurance industry.

The Commission received comments on the proposal from one individual, who expressed concern with the acceptance of the insurance industry's standard Acord™ Certificate of Insurance. The individual stated that only the Commission form should be used because it contains endorsements that require the licensee to insure all owned vehicles without the requirement to list each vehicle individually. Additionally, the individual was concerned that a certificate of insurance stating that a policy has an ending or expiration date does not meet the requirements that the certificates of insurance be continuous until cancelled. The individual stated that the specific wording of the Commission endorsements "placed the responsibility of the cancellation notice on the insurance carrier rather than the licensee."

The Commission disagrees that acceptance of the Acord™ certificates which contain an expiration date constitutes a change in current policy. There is no difference between a notice sent 30 days from expiration and a notice sent 12 months from expiration. In both cases, the licensee is notified by the Commission within 30 days of expiration to replace the policy prior to the expiration date. Upon the expiration date, and, if no replacement certificate of insurance has been received, a cease operations notice is sent to the licensee. The burden of maintaining proper insurance and of notifying the Commission of that proper insurance is the licensee's responsibility, not the insurance carrier's; the Commission has no authority to impose any requirements on the insurance carriers.

The Commission disagrees that a licensee operating a fleet of vehicles must insure the entire fleet to the same standards as required by the Commission on vehicles subject to the Commission's jurisdiction and registered with the Commission. The Commission has no authority or obligation to require that the licensee insure any non-jurisdictional vehicles to the same standard as vehicles required to be registered with the Commission.

The Commission adopts the amendments under Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP- gas industry that will protect or tend to protect the health, welfare, and safety of the general public, and §113.097, which requires LP-gas licensees to demonstrate proof of insurance coverage to the Commission and requires the Commission to adopt by rule reasonable amounts of coverage that LP-gas licensees must maintain for motor vehicle bodily injury and property damage liability on each motor vehicle, including trailers and semitrailers, used to transport LP-gas; for general liability based on the type or types of licensed activities; for workers' compensation for employees under policies of work-related accident, disability, and health insurance, including coverage for death benefits; and for completed operations or products liability insurance, or both, based on the type or types of licensed activities.

Texas Natural Resources Code, §113.051 and §113.097, are affected by the adopted amendments.

Statutory authority: Texas Natural Resources Code, §113.051 and §113.097.

Cross reference to statute: Texas Natural Resources Code, Chapter 113.

Issued in Austin, Texas, on October 23, 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 October 23, 2007.

TRD-200705116
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: November 12, 2007
Proposal publication date: August 31, 2007
For further information, please call: (512) 475-1295

♦ ♦ ♦

CHAPTER 12. COAL MINING REGULATIONS
SUBCHAPTER G. SURFACE COAL MINING AND RECLAMATION OPERATIONS, PERMITS, AND COAL EXPLORATION PROCEDURES SYSTEMS
DIVISION 2. GENERAL REQUIREMENTS FOR PERMITS AND PERMIT APPLICATIONS

16 TAC §12.108

The Railroad Commission of Texas (Commission) adopts amendments to §12.108, relating to Permit Fees, without changes from the version published in the August 31, 2007, issue of the *Texas Register* (32 TexReg 5588). The Commission adopts the amendments to implement provisions of House Bill (HB) 1, 80th Texas Legislature (2007), and, specifically, Article VI, Railroad Commission Rider 10, which makes the amounts appropriated from general revenue for State Fiscal Years 2008 and 2009 to cover the cost of permitting and inspecting coal mining facilities contingent upon the Commission assessing fees sufficient to generate, during the 2008-2009 Biennium, revenue to cover the general revenue appropriations.

The Commission amends the fees set forth in subsection (b) as follows. In paragraph (1), the Commission decreases the annual fee for each acre of land within a permit area on which coal or lignite was actually removed during a calendar year from the current $160 to $150. In paragraph (2), the Commission increases the annual fee for each acre of land within a permit area covered by a reclamation bond on December 31st of a year, as shown on the map required by §12.142(2)(C) of this chapter (relating to Operation Plan: Maps and Plans), from the current $3.00 to $3.75. Finally, in paragraph (3), the Commission increases the annual fee for each permit in effect on December 31st of a year from the current $3,550 to $4,200. The Commission anticipates that annual fees at these new amounts will result in revenue of $1,273,000 in each year of the 2008-2009 Biennium.

The Commission received no comments on the proposal.

The Commission adopts the amendments under Texas Natural Resources Code, §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations; Texas Natural Resources Code, §134.055, which authorizes the Commission to obtain annual fees and mandates the fee structure in §12.108; and House Bill (HB) 1, 80th Texas Legislature (2007), Article VI, Railroad Commission Rider 10, which requires

the Commission to assess fees sufficient to generate during the 2008-2009 Biennium, revenue to cover the general revenue appropriations.

Statutory authority: Texas Natural Resources Code, §134.013 and §134.055; House Bill (HB) 1, 80th Texas Legislature (2007).

Cross-reference to statute: Texas Natural Resources Code, §134.013 and §134.055; House Bill (HB) 1, 80th Texas Legislature (2007).

Texas Natural Resources Code, §134.013 and §134.055, are affected by the adopted amendments.

Issued in Austin, Texas, on October 23, 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 October 23, 2007.

TRD-200705108
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: November 12, 2007
Proposal publication date: August 31, 2007
For further information, please call: (512) 475-1295

♦ ♦ ♦

CHAPTER 12. COAL MINING REGULATIONS

The Railroad Commission of Texas adopts amendments to §§12.147, 12.309, 12.337, 12.395, 12.681, 12.682, 12.689, 12.693, and 12.816 relating to Reclamation Plan: Postmining Land Uses; Terms and Conditions of the Bond; Topsoil: Redistribution; Revegetation: Standards for Success; Public Hearing; Review of Notice of Violation or Cessation Order; Assessment of Separate Violations for Each Day; Request for Hearing; and Liens, without changes to the proposed versions, and adopts amendments to §12.688, relating to Determination of Amount of Penalty, with changes to the proposed version. The proposals were published in the August 3, 2007, issue of the *Texas Register* (32 TexReg 4690).

The Commission adopts these amendments to update provisions of the Texas Coal Mining Regulatory and Abandoned Mine Land Programs. Regarding the amendments to §12.147, the federal Office of Surface Mining Reclamation and Enforcement (OSM) completed a rulemaking in May 1994, deleting the requirement that a permit application contain detailed management plans when range or grazing is proposed as a postmine land use. OSM, in deleting this requirement, concluded that for legitimate economic and/or ecological reasons the actual management plan implemented for the reclaimed area might often vary greatly from the detailed plan originally submitted under this section of the regulations. OSM further stated that the requirements of 30 CFR 780.23(b)(1) (the Texas counterpart is §12.147(a)(1)), should allow for the level of reporting detail necessary for the regulatory authority to determine the feasibility of any proposed range land or grazing land use. The necessary detail required by this regulation has been problematic because the elements defining such plans are highly "perishable" over time. A detailed grazing plan submitted with a permit application most likely will be obsolete prior to its actual implementation, possibly five to ten years after a permit is issued. Deleting §12.147(a)(2) brings the Commission's rules in line with OSM's regulations for the same reasons OSM revised its regulations.

Concerning §12.309, the Commission's regulation in §12.306(a), relating to Period of Liability, requires that the performance bond continue in force until all reclamation has been completed. Letters of credit used as security for collateral bonds for mining activities must be irrevocable during their terms, pursuant to §12.309(g)(2). Letters of credit have terms that are shorter than the period of reclamation liability and therefore do not provide continuous bond coverage. The federal counterpart to §12.309(g)(2) contains an additional stipulation under the terms and conditions for a letter of credit to ensure continuous bond coverage. A letter of credit would be forfeited if not replaced by other suitable bond or letter of credit at least 30 days before its expiration date. The Commission adopts new wording in §12.309(g)(2) to mirror the federal counterpart and to clarify the consequence that would occur if a replacement bond is not filed and accepted by the Commission at least 30 days before the expiration of the letter of credit. The Commission adopts non-substantive typographical corrections in subsections (j) and (l).

The amendments in §12.337 and §12.395 result from an OSM rulemaking completed in August 2006, which adopted changes to its regulations in response to its revegetation and reforestation, outreach initiative. According to OSM's rulemaking, the revisions will: (1) encourage species diversity on reclaimed land by allowing replacement of soil in variable thicknesses; (2) provide more flexibility to States in using new vegetation success standards and sampling techniques by removing the current requirement that such changes be included in the approved regulatory program; (3) define success standards for lands with an undeveloped land postmining land use; (4) remove shelter belts from the list of postmining land uses subject to success standards; (5) provide more flexibility to operators when they demonstrate compliance with time-in-place requirements by allowing them to consider trees and shrubs in place at bond release, including volunteer trees and shrubs; and (6) make the timing of vegetation success measurements in areas receiving 26 inches or less of annual rainfall consistent with those in areas receiving more than 26 inches of annual rainfall. The Commission adopts amendments in §12.337 and §12.395 to mirror the changes resulting from OSM's rulemaking.

The amendments to §12.681 add several critical elements found in OSM's counterpart regulation. The word "Informal" is added in the title of the rule; other amendments state that a notice of violation or cessation order that requires cessation of mining expires within 30 days after it is served, unless an informal public hearing is held within that time. New wording in subsections (a) and (b) allows for a waiver of the informal public hearing, and no hearing will be required where the condition, practice, or violation in question has been abated or the hearing has been waived. For purposes of this section only, the Commission adds within the meaning of the term "mining" the processing, cleaning, concentrating, preparing, or loading of the coal where such operations occur at a place other than at a mine site. A notice of violation or cessation order will not expire if the informal public hearing has been waived, or if, with the consent of the person to whom the notice or order was issued, the informal public hearing is held later than 30 days after the notice or order was served. The section specifies the conduct that constitutes waiver of the public hearing and extension of the time for holding the public

hearing. These amendments reflect OSM's current counterpart regulation.

In §12.682, the existing wording simply refers to the requirements of the Act. The Commission adopts amendments to add the word "Formal" to the rule title and to mirror OSM's federal counterpart regulation. The amendments more fully describe the rights for formal review and the time frame for requesting such review.

The penalty amounts in the Commission's current §12.688, relating to Determination of Amount of Penalty, were promulgated in 1979 and adopted in Chapter 12 in 1997. The Commission adopts increases in the administrative penalty assessments on the schedule to reflect the decreased value in the dollar since 1979. The current schedule does not include a minimum base amount to reflect staff time in preparing the notice of violation documents and penalty assessment evaluation. The Commission proposed a base administrative penalty amount of $500 (zero assessment points) to reflect the staff time required to prepare the notice of violation documents, based on an average of 20 hours in staff time at $25 an hour attributable to this task. This would have resulted in a minimum administrative penalty of $500 for a violation that had zero points assessed, due to good faith points being awarded. However, the Commission has reconsidered this element of the penalty provisions, based on one comment received on the proposal, and does not adopt this proposed $500 base administrative penalty amount.

With respect to penalty increments, the current schedule begins with an initial $20 penalty (for one assessment point), with $20 assessed for each additional point up to 25 points, and thereafter, $100 per point up to a maximum penalty of $5,000. The Commission increases these increments by a factor of 2.5, which is the approximate consumer price index change since 1979. The amendments increase the maximum penalty per violation from $5,000 to $10,000, which is consistent with the amendment in Texas Natural Resources Code, §134.174(b), enacted by Senate Bill 1667, 80th Legislature (2007), which increased the maximum penalty from $5,000 to $10,000. The Commission had proposed to delete the penalty amounts for assessment points of 59 and more, because the maximum penalty amount, $10,000, is assessed for 58 points; however, with the removal of the $500 base administrative penalty amount from each category, the Commission does not adopt the deletion of penalty amounts for 59 and 60 assessment points; instead, the Commission retains those categories and adopts the increased penalty amounts for those two assessments.

The Commission adopts amendments to §12.689(b) to increase the per day civil penalty from $750 to $1,025, which is the same amount as the current OSM counterpart regulation. Other amendments correct statutory citations and add language to clarify that the daily penalty will not be assessed for more than 30 days. The changes mirror the federal counterpart regulations.

In §12.693, the Commission adopts amendments to clarify time frames for requesting a hearing if an assessment conference was previously held. These changes mirror the OSM counterpart regulations.

The Commission deletes §12.816(c)(1). Changes to federal law effective December 20, 2006 (PL 109-432, 2006 HR 6111) deleted the specific phase "who owned the surface prior to May 2, 1977, and" as a precondition for a waiver of the lien requirement. The Commission deletes §12.816(c)(1) to conform to federal standards concerning exceptions for a waiver of the lien requirement.

The Commission received one comment on the proposal from the Texas Mining and Reclamation Association (TMRA). TMRA implicitly supported the proposed amendments with the exception of the proposal for calculating the penalty amount for notices of violation. Specifically, TMRA objected to the portion of the proposed rule dealing with the base administrative penalty amount of $500, which reflects the staff time required to prepare the notice of violation documents. TMRA's position is that costs for staff time to prepare notices of violation is covered under the more general administrative costs associated with inspection and enforcement, and that these costs are covered by the existing fees for each acre mined, each acre bonded, and each permit held in Texas.

The Commission agrees with TMRA that the fees collected annually for mined acres, bonded acres, and permits support the overall administrative costs of the coal mining regulatory program, and has adopted the amendments to §12.688 without the $500 base administrative penalty amount. This has the effect of reducing the penalty amounts by $500 for each point assessed.

SUBCHAPTER G. SURFACE COAL MINING RECLAMATION AND OPERATIONS, PERMITS, AND COAL EXPLORATION PROCEDURES SYSTEMS

DIVISION 6. SURFACE MINING PERMIT APPLICATIONS--MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

16 TAC §12.147

The Commission adopts the amendments under Texas Natural Resources Code, §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations; §134.150, as amended by Senate Bill 1666, 80th Legislature (2007), effective June 15, 2007, which pertains to the requirements for filing a lien; and §134.174, as amended by Senate Bill 1667, 80th Legislature (2007), effective September 1, 2007, which establishes the maximum penalty amount that can be imposed for a violation of Chapter 134, the Texas Surface Coal Mining and Reclamation Act.

Statutory authority: Texas Natural Resources Code, §§134.013, 134.150, and 134.174.

Cross-reference to statute: Texas Natural Resources Code, §§134.013, 134.150, and 134.174.

Issued in Austin, Texas, on October 23, 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 October 23, 2007.

TRD-200705110

Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: November 12, 2007
Proposal publication date: August 3, 2007
For further information, please call: (512) 475-1295

♦ ♦ ♦

SUBCHAPTER J. BOND AND INSURANCE REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS
DIVISION 3. FORM, CONDITIONS, AND TERMS OF PERFORMANCE BOND AND LIABILITY INSURANCE

16 TAC §12.309

The Commission adopts the amendments under Texas Natural Resources Code, §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations; §134.150, as amended by Senate Bill 1666, 80th Legislature (2007), effective June 15, 2007, which pertains to the requirements for filing a lien; and §134.174, as amended by Senate Bill 1667, 80th Legislature (2007), effective September 1, 2007, which establishes the maximum penalty amount that can be imposed for a violation of Chapter 134, the Texas Surface Coal Mining and Reclamation Act.

Statutory authority: Texas Natural Resources Code, §§134.013, 134.150, and 134.174.

Cross-reference to statute: Texas Natural Resources Code, §§134.013, 134.150, and 134.174.

Issued in Austin, Texas, on October 23, 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 October 23, 2007.

TRD-200705111
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: November 12, 2007
Proposal publication date: August 3, 2007
For further information, please call: (512) 475-1295

♦ ♦ ♦

SUBCHAPTER K. PERMANENT PROGRAM PERFORMANCE STANDARDS
DIVISION 2. PERMANENT PROGRAM PERFORMANCE STANDARDS--SURFACE MINING ACTIVITIES

16 TAC §12.337, §12.395

The Commission adopts the amendments under Texas Natural Resources Code, §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations; §134.150, as amended by Senate Bill 1666, 80th Legislature (2007), effective June 15, 2007, which pertains to the requirements for filing a lien; and §134.174, as amended by Senate Bill 1667, 80th Legislature (2007), effective September 1, 2007, which establishes the maximum penalty amount that can be imposed for a violation of Chapter 134, the Texas Surface Coal Mining and Reclamation Act.

Statutory authority: Texas Natural Resources Code, §§134.013, 134.150, and 134.174.

Cross-reference to statute: Texas Natural Resources Code, §§134.013, 134.150, and 134.174.

Issued in Austin, Texas, on October 23, 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 October 23, 2007.

TRD-200705112
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: November 12, 2007
Proposal publication date: August 3, 2007
For further information, please call: (512) 475-1295

♦ ♦ ♦

SUBCHAPTER L. PERMANENT PROGRAM INSPECTION AND ENFORCEMENT PROCEDURES
DIVISION 2. ENFORCEMENT

16 TAC §12.681, §12.682

The Commission adopts the amendments under Texas Natural Resources Code, §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations; §134.150, as amended by Senate Bill 1666, 80th Legislature (2007), effective June 15, 2007, which pertains to the requirements for filing a lien; and §134.174, as amended by Senate Bill 1667, 80th Legislature (2007), effective September 1, 2007, which establishes the maximum penalty amount that can be imposed for a violation of Chapter 134, the Texas Surface Coal Mining and Reclamation Act.

Statutory authority: Texas Natural Resources Code, §§134.013, 134.150, and 134.174.

Cross-reference to statute: Texas Natural Resources Code, §§134.013, 134.150, and 134.174.

Issued in Austin, Texas, on October 23, 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 October 23, 2007.

TRD-200705113
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: November 12, 2007
Proposal publication date: August 3, 2007
For further information, please call: (512) 475-1295

♦ ♦ ♦

DIVISION 3. CIVIL PENALTIES

16 TAC §§12.688, 12.689, 12.693

The Commission adopts the amendments under Texas Natural Resources Code, §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations; §134.150, as amended by Senate Bill 1666, 80th Legislature (2007), effective June 15, 2007, which pertains to the requirements for filing a lien; and §134.174, as amended by Senate Bill 1667, 80th Legislature (2007), effective September 1, 2007, which establishes the maximum penalty amount that can be imposed for a violation of Chapter 134, the Texas Surface Coal Mining and Reclamation Act.

Statutory authority: Texas Natural Resources Code, §§134.013, 134.150, and 134.174.

Cross-reference to statute: Texas Natural Resources Code, §§134.013, 134.150, and 134.174.

Issued in Austin, Texas, on October 23, 2007.

§12.688. Determination of Amount of Penalty.

The Commission shall determine the amount of any civil penalty by converting the total number of points assigned under §12.687 of this title (relating to Point System for Penalties) to a dollar amount, according to the following schedule:
Figure: 16 TAC §12.688

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 October 23, 2007.

TRD-200705115
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: November 12, 2007
Proposal publication date: August 3, 2007
For further information, please call: (512) 475-1295

♦ ♦ ♦

SUBCHAPTER R. TEXAS ABANDONED MINE LAND RECLAMATION PROGRAM

16 TAC §12.816

The Commission adopts the amendments under Texas Natural Resources Code, §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations; §134.150, as amended by Senate Bill 1666, 80th Legislature (2007), effective June 15, 2007, which pertains to the requirements for filing a lien; and §134.174, as amended by Senate Bill 1667, 80th Legislature (2007), effective September 1, 2007, which establishes the maximum penalty amount that can be imposed for a violation of Chapter 134, the Texas Surface Coal Mining and Reclamation Act.

Statutory authority: Texas Natural Resources Code, §§134.013, 134.150, and 134.174.

Cross-reference to statute: Texas Natural Resources Code, §§134.013, 134.150, and 134.174.

Issued in Austin, Texas, on October 23, 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 October 23, 2007.

TRD-200705114
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: November 12, 2007
Proposal publication date: August 3, 2007
For further information, please call: (512) 475-1295

♦ ♦ ♦

CHAPTER 13. REGULATIONS FOR COMPRESSED NATURAL GAS (CNG)
SUBCHAPTER C. CLASSIFICATION, REGISTRATION, AND EXAMINATION

16 TAC §13.62

The Railroad Commission of Texas (Commission) adopts amendments to §13.62, relating to Insurance Requirements, without changes to the version published in the August 31, 2007, issue of the *Texas Register* (32 TexReg 5590). The Commission adopts amendments to update the requirements for certificates of insurance and to delete some references to insurance endorsements.

In subsection (a), the Commission moves the Figure, which was in subsection (i), to subsection (a) and changes a cross-reference. The Figure includes changes to delete the column entitled "Insurance Policy Endorsement Required" and to add references to the Acord™ form in the column entitled "Form Required." The Commission made no changes to the license categories or dollar amounts for the types of coverage.

In subsection (b), the Commission clarifies the wording to allow the use of an insurance Acord™ form or any other form prepared and signed by the insurance carrier that contains all the information required by the certificate of insurance. The certificates or forms must be issued by an insurance carrier authorized or accepted by the Texas Department of Insurance. The Commission deletes other unnecessary wording.

In subsection (d), some references are changed from subsection (i)(5) to subsection (a), because of the Figure being moved to subsection (a). The Commission adopts new paragraphs (4) and

(5) to clarify requirements that are on the Figure with regard to completed operations or products liability insurance. New paragraph (5) regarding accident and health insurance is similar to subsection (j), which the Commission has deleted.

The Commission deletes subsection (g) which referred to endorsements.

Subsection (h) was redesignated as subsection (g) and wording added to clearly state that the licensee shall give the Section notice of 30 calendar days before cancellation of any insurance coverage.

With the wording in subsection (g), the Commission deletes subsection (i) because it is unnecessary.

The Commission adopts new subsection (i) requiring each licensee to promptly notify the Commission of any change in insurance coverage or insurance carrier by filing a properly completed revised certificate of insurance; insurance Acord™ form; other form that contains all the information required by the certificate of insurance; or documents demonstrating the applicant's compliance with the self- insurance requirements set forth in §13.63 of this title, relating to Qualification as Self-Insured. A licensee's failure to promptly notify the Commission of a change in the status of insurance coverage or insurance carrier may result in an enforcement action and an administrative penalty.

The Commission finds that these adopted amendments and, in particular, the Commission's recognition and acceptance of the Acord™ form or any other form prepared and signed by the insurance carrier that contains all the information required by the certificate of insurance, will allow more flexibility for the CNG industry while still providing the Commission with the necessary information regarding proof of insurance. The Acord™ form was developed by the Association for Cooperative Operations Research and Development (ACORD), a global, non-profit insurance association whose mission is to facilitate the development and use of standards for the insurance, reinsurance, and related financial services industries. Hundreds of insurance and reinsurance companies and thousands of agents and brokers are affiliated with ACORD. Thus, the Commission's acceptance of this standardized form will be efficient while still ensuring that CNG licensees meet the insurance requirements for licensure. Concurrently with these adopted amendments to §13.62, the Commission requested comments on proposed changes to three forms, CNG Form 1996A, CNG Form 1997A, and CNG Form 1998A . These forms were published separately in the "In Addition" section of the *Texas Register*. The changes to the forms eliminate obsolete TDI endorsement information and add acceptance of the Acord™ forms universally used by the insurance industry.

The Commission received no comments on the proposal.

The Commission adopts the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public, and §116.036, which authorizes the Commission to adopt rules establishing specific requirements for insurance coverage and evidence of such coverage. Texas Natural Resources Code, §116.012 and §116.036, are affected by the adopted amendments.

Statutory authority: Texas Natural Resources Code, §116.012 and §116.036.

Cross-reference to statute: Texas Natural Resources Code, Chapter 116.

Issued in Austin, Texas, on October 23, 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 October 23, 2007.

TRD-200705118
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: November 12, 2007
Proposal publication date: August 31, 2007
For further information, please call: (512) 475-1295

♦ ♦ ♦

CHAPTER 14. REGULATIONS FOR LIQUEFIED NATURAL GAS (LNG)

SUBCHAPTER A. GENERAL APPLICABILITY AND REQUIREMENTS

16 TAC §14.2031

The Railroad Commission of Texas adopts amendments to §14.2031, relating to Insurance Requirements, without changes to the version published in the August 31, 2007, issue of the *Texas Register* (32 TexReg 5592). Specifically, the Commission adopts amendments to update the requirements for certificates of insurance and to delete some references to insurance endorsements.

The amendment in subsection (a) is found in the Figure, which includes changes to delete the column entitled "Insurance Policy Endorsement Required" and to add references to the Acord™ form in the column entitled "Form Required." The Commission made no changes to the license categories or dollar amounts for the types of coverage.

Amendments in subsection (b) add wording to allow the use of an insurance Acord™ form or any other form prepared and signed by the insurance carrier that contains all the information required by the certificate of insurance. The certificates or forms must be issued by an insurance carrier authorized or accepted by the Texas Department of Insurance. Obsolete wording in subsection (b)(1), (2), and (5) is deleted.

The Commission adopts amendments in subsection (c) to delete references to endorsements and to clearly state that the licensee shall give the Section notice of 30 calendar days before cancellation of any insurance coverage.

The Commission adopts new subsection (i) requiring each licensee to promptly notify the Commission of any change in insurance coverage or insurance carrier by filing a properly completed revised certificate of insurance; insurance Acord™ form; other form that contains all the information required by the certificate of insurance; or documents demonstrating the applicant's compliance with the self- insurance requirements set forth in §14.2034, relating to Self- Insurance Requirements. A licensee's failure to promptly notify the Commission of a change in the status of insurance coverage or insurance carrier may result in an enforcement action and an administrative penalty.

The Commission finds that these amendments, and in particular, the Commission's recognition and acceptance of the Acord™ form or any other form prepared and signed by the insurance carrier that contains all the information required by the certificate of insurance, will allow more flexibility for the LNG industry while still providing the Commission with the necessary information regarding proof of insurance. The Acord™ form was developed by the Association for Cooperative Operations Research and Development (ACORD), a global, non-profit insurance association whose mission is to facilitate the development and use of standards for the insurance, reinsurance, and related financial services industries. Hundreds of insurance and reinsurance companies and thousands of agents and brokers are affiliated with ACORD. Thus, the Commission's acceptance of this standardized form will be efficient while still ensuring that LNG licensees meet the insurance requirements for licensure.

Concurrently with these amendments to §14.2031, the Commission requested comments on proposed changes to three forms, LNG Form 2996A, LNG Form 2997A, and LNG Form 2998A. These forms were published separately in the "In Addition" section of the *Texas Register*. The changes to the forms eliminate obsolete TDI endorsement information and add acceptance of the Acord™ forms universally used by the insurance industry.

The Commission received no comments on the proposal.

The Commission adopts the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to liquefied natural gas activities to protect the health, welfare, and safety of the general public, and §116.036, which authorizes the Commission to adopt rules establishing specific requirements for insurance coverage and evidence of such coverage.

Texas Natural Resources Code, §§116.012 and 116.036, are affected by the adopted amendments.

Statutory authority: Texas Natural Resources Code, §§116.012 and 116.036.

Cross-reference to statute: Texas Natural Resources Code, Chapter 116.

Issued in Austin, Texas, on October 23, 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 October 23, 2007.

TRD-200705117
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: November 12, 2007
Proposal publication date: August 31, 2007
For further information, please call: (512) 475-1295

♦ ♦ ♦

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING SPECIAL EDUCATION SERVICES

The Texas Education Agency (TEA) adopts amendments to §§89.1011, 89.1040, 89.1045, 89.1047, 89.1049, 89.1050, 89.1052, 89.1053, 89.1055, 89.1056, 89.1065, 89.1070, 89.1075, 89.1076, 89.1085, 89.1090, 89.1096, 89.1125, 89.1131, 89.1141, 89.1150, 89.1151, 89.1165, 89.1180, 89.1185, and 89.1191, and the repeal of §89.1060, concerning special education services.

The amendments to §§89.1011, 89.1045, 89.1049, 89.1052, 89.1053, 89.1056, 89.1065, 89.1075, 89.1076, 89.1085, 89.1090, 89.1125, 89.1141, 89.1150, 89.1151, 89.1165, 89.1185, and 89.1191 and the repeal of §89.1060 are adopted without changes to the proposed text as published in the April 20, 2007, issue of the *Texas Register* (32 TexReg 2229) and will not be republished. The amendments to §§89.1040, 89.1047, 89.1050, 89.1055, 89.1070, 89.1096, 89.1131, and 89.1180 are adopted with changes to the proposed text as published in the April 20, 2007, issue. The adopted amendments and repeal reflect changes required by the Individuals with Disabilities Education Improvement Act (IDEA 2004) Amendments of 2004, 34 Code of Federal Regulations (CFR), and Texas Education Code (TEC).

On December 3, 2004, President Bush signed into law the Individuals with Disabilities Education Improvement Act (IDEA 2004) Amendments of 2004, which contain many changes to the federal law pertaining to the education of students with disabilities. On October 13, 2006, the United States Department of Education, Office of Special Education Programs, published final federal regulations. As a result of the changes to the federal special education law and regulations, 19 TAC Chapter 89, Adaptations for Special Populations, Subchapter AA, Commissioner's Rules Concerning Special Education Services, must be amended to reflect these changes to ensure school district compliance with new procedural and reporting requirements. The adopted rule actions for 19 TAC Chapter 89, Subchapter AA, add, revise, and delete text and update references to statutory citations to reflect changes in the IDEA 2004, 34 CFR, and the TEC and to reflect minor technical corrections, as follows.

Division 2, Clarification of Provisions in Federal Regulations and State Law

Section 89.1011, Referral for Full and Individual Initial Evaluation, is amended to reflect adopted revisions in 19 TAC §89.1040, relating to consideration of scientific, research-based intervention and other academic or behavior support services for all students prior to referral for possible special education services. No changes were made to this section since published as proposed.

Section 89.1040, Eligibility Criteria, is amended to reflect changes in the new IDEA Regulations regarding learning disability eligibility, as well as stakeholder recommendations regarding mental retardation eligibility. Stakeholder recommendations indicated that the definition regarding eligibility criteria for mental retardation was outdated and inconsistent with current research. Changes are adopted to address this recommendation. Changes are also adopted to address changes in the new IDEA

regulations regarding learning disability eligibility that require states to develop rules that define eligibility criteria for learning disabilities that are consistent with the IDEA regulations. Clarification about other health impairments is also adopted as well as additional changes throughout the section to reflect the renumbering of the new IDEA regulations. In response to public comment, subsection (c)(9) is revised to add clarification regarding determination of learning disability eligibility.

Section 89.1045, Notice to Parents for Admission, Review, and Dismissal (ARD) Committee Meetings, is amended to reflect the renumbering of the new IDEA regulations. No changes were made to this section since published as proposed.

Section 89.1047, Procedures for Surrogate and Foster Parents, is amended to be consistent with the new IDEA regulations and an amendment made in 2004 to §89.1055(g) concerning the consideration of transition services in the development of an individualized education program. Throughout §89.1047, citations to the IDEA regulations are updated to reflect the renumbering of the new IDEA regulations. Deadlines for completing training when this rule was initially adopted are deleted from the rule because they are obsolete. References to the Texas Department of Protective and Regulatory Services are updated to reflect the agency's new name, the Texas Department of Family and Protective Services. In response to public comment, a change is made to §89.1047(a)(1)(D) to align state requirements with federal law regarding the age at which transition services must be addressed.

Section 89.1049, Parental Rights Regarding Adult Students, is amended to reflect the renumbering of the new IDEA regulations. No changes were made to this section since published as proposed.

Section 89.1050, The Admission, Review, and Dismissal (ARD) Committee, is amended to reflect requirements found in the new IDEA regulations with regard to the membership, attendance, and excusal of ARD committee members and with regard to the interstate and intrastate transfers of students between school districts during the same school year. In response to public comment, subsection (c)(4) is revised to add language requiring membership of both a teacher certified in the education of students with visual impairments and a teacher certified in auditory impairments at an ARD committee meeting of a student with suspected or documented deaf-blindness. Also in response to public comment, subsection (f) is revised to add clarification regarding the evaluation of and provision of special education services to students transferring between school districts.

Section 89.1052, Discretionary Placements in Juvenile Justice Alternative Education Programs (JJAEP), is amended to reference the TEC, §37.007, rather than the TEC, §37.004, when addressing the expulsion of a student with a disability. Section 89.1052 originally addressed statutory provisions in the TEC, §37.004(e)-(f), however, the TEC, §37.004(e)-(g), expired September 1, 2005. The adopted amendment to §89.1052 incorporates elements of the expired TEC, §37.004(e)-(f), into the commissioner's rule as new subsections (b) and (c) pursuant to the TEC, §29.001(7), which gives the Texas Education Agency rulemaking authority to ensure that an individualized education program for each student is properly developed, implemented, and maintained in the least restrictive environment that is appropriate to meet the student's educational needs. The adopted amendment also adds language to set forth the serious offenses cited in the TEC, §37.007, that would warrant expulsion. Changes are also made in the section as applicable to reflect the renumbering of the new IDEA regulations. No changes were made to this section since published as proposed.

Section 89.1053, Procedures for Use of Restraint and Time-Out, is amended to remove specified outdated timeframes throughout the section. A reference to the new IDEA regulations is also updated. No changes were made to this section since published as proposed.

Section 89.1055, Content of the Individualized Education Program (IEP), is amended to reflect recommendations of the Autism Rule Study Group regarding IEP considerations for students with autism, as required in the TEC, §25.0051. The law required a rule study group to meet and provide recommendations to the commissioner of education, resulting in the clarification of existing considerations and the addition of new IEP considerations. The rule is also amended to reflect changes in the new IDEA regulations regarding accommodations in the administration of assessment instruments developed in accordance with the TEC, §39.023. Changes are also be made in the section as applicable to reflect the renumbering of the new IDEA regulations.

In response to public comments, the following revisions were made to §89.1055 since published as proposed. Subsection (b) is modified to clarify that district-wide assessments as described in this subsection are optional. As proposed, revisions in subsections (e) and (f) were made to address IEPs for students with autism spectrum disorders. In response to public comments, the TEA revised subsection (e) to clarify that the 11 items in this subsection are to be addressed on an individual basis when needed. Additional revisions were also made to clarify that strategies discussed in the 11 items are provided as examples and are not requirements unless the ARD committee determines they are needed by the student. Subsection (e) is also revised to clarify the IEP "considerations" and the term "research-based educational programming practices." In addition, subsection (g) is revised to indicate that IEP considerations related to transition must be addressed by age 16, consistent with federal law.

Section 89.1056, Transfer of Assistive Technology Devices, is amended to reflect the renumbering of the new IDEA regulations. No changes were made to this section since published as proposed.

Section 89.1060, Definitions of Certain Related Services, is repealed because of changes in the new IDEA regulations that now designate interpreting services as a related service. Due to the change in federal regulation, §89.1060 is no longer necessary. No changes were made to this section since published as proposed.

Section 89.1065, Extended School Year Services (ESY Services), is amended to reflect the renumbering of the new IDEA regulations. No changes were made to this section since published as proposed.

Section 89.1070, Graduation Requirements, is amended to clarify assessment requirements for graduation and to meet requirements of the new IDEA regulations. Changes in this section reorganize provisions to clarify additional conditions that would satisfy graduation requirements consistent with a student's IEP; to substitute new language describing provisions that must be addressed in a summary of academic achievement and functional performance; and to delete reference to TEC, §39.024. As proposed, revisions in subsection (b) would have clarified the requirement of satisfactory performance on an alternate assessment instrument. In response to public comment, subsection

(b)(2) is revised to no longer reference the assessment instrument as alternative assessment instrument. Also in response to public comment, changes are made in subsection (b)(2) to clarify graduation requirements as related to high school graduation programs.

Section 89.1075, General Program Requirements and Local District Procedures, is amended to reflect the renumbering of the new IDEA regulations. No changes were made to this section since published as proposed.

Section 89.1076, Interventions and Sanctions, is amended to provide clarification regarding the IDEA Regulations, including reference to program effectiveness as well as compliance with federal and state requirements. The restriction that technical assistance be obtained from the education service center is removed. Other clarifications relating to monitoring, interventions, and sanctions are provided. No changes were made to this section since published as proposed.

Section 89.1085, Referral for the Texas School for the Blind and Visually Impaired (TSBVI) and the Texas School for the Deaf Services (TSD), is amended to eliminate the current requirement that a school must list special education services it is unable to provide when referring a student to the TSBVI or the TSD. The requirement may discourage schools from referring students to TSD or TSBVI due to the perception it may leave the school open to legal action by the parent for failure to provide adequate services. The section is also amended to update references to federal regulations. No changes were made to this section since published as proposed.

Section 89.1090, Transportation of Students Placed in a Residential Setting, Including the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf, is amended to incorporate minor technical corrections. No changes were made to this section since published as proposed.

Section 89.1096, Provision of Services for Students Placed by their Parents in Private Schools or Facilities, is amended to add an option for students ages 3 and 4 placed by their parents in a private school to receive limited special education and related services through a service plan. This amendment adds clarification regarding an option which allows students with disabilities ages 3 and 4 to be dually enrolled in both public and private schools and to receive the services and protections available under an individualized education plan. The amended rule adds a definition of an elementary school and a secondary school, which is now required as a result of the new IDEA regulations. The section is also modified to reflect the renumbering of the new IDEA regulations and to re-letter subsections accordingly. In response to public comments, subsection (a) is revised to clarify the definition of a private elementary or secondary school and to ensure consistency with federal regulations concerning students with disabilities enrolled by parents in private schools.

Division 4, Special Education Funding

Section 89.1125, Allowable Expenditures of State Special Education Funds, is amended to remove reference to 34 CFR in keeping with changes resulting from the new IDEA regulations. No changes were made to this section since published as proposed.

Division 5, Special Education and Related Service Personnel

Section 89.1131, Qualifications of Special Education, Related Service, and Paraprofessional Personnel, is amended to reflect changes in the new IDEA regulations with regard to emergency certifications of interpreters. Qualification requirements for teachers of students meeting eligibility requirements for orthopedically impaired or other health impaired are removed due to federal requirements of the IDEA regulations regarding highly qualified personnel. Provisions regarding attendance of teachers of students with visual or auditory impairments at ARD committee meetings are deleted from this rule and moved to §89.1050. The amended rule addresses certification by the Registry of Interpreters for the Deaf (RID). In response to public comment, subsection (d) is modified to establish that the TEA recognizes as RID certified, any interpreter who is certified by or a certified member of the RID.

Division 6, Regional Education Service Center Special Education Programs

Section 89.1141, Education Service Center Regional Special Education Leadership, is amended to reflect the renumbering of the new IDEA regulations. No changes were made to this section since published as proposed.

Division 7, Resolution of Disputes Between Parents and School Districts

Section 89.1150, General Provisions, is amended to reflect the renumbering of the new IDEA regulations. No changes were made to this section since published as proposed.

Section 89.1151, Due Process Hearings, is amended to reflect the renumbering of the new IDEA regulations. In addition, an outdated timeframe is deleted. No changes were made to this section since published as proposed.

Section 89.1165, Request for Hearing, is amended to reflect changes made as a result of the adoption of 34 CFR, §300.508. Changes include commencement of timelines applicable to prehearing procedures and due process hearings and information that must be included in the request for due process hearing. No changes were made to this section since published as proposed.

Section 89.1180, Pre-hearing Procedures, is amended to reflect changes made as a result of the adoption of 34 CFR, §300.508. Changes include specific items to be set out in a prehearing order by the hearing officer as a result of amendments to the IDEA 2004, including the resolution session and the opportunity to contest the sufficiency of the complaint. The amendment includes the addition of the requirement of transcription of the prehearing conference by a certified court reporter. As proposed, language related to dismissal or nonsuit after the Disclosure Deadline was proposed for deletion. In response to public comment, however, language related to dismissal or nonsuit after the Disclosure Deadline is reinstated with no changes as new subsection (i).

Section 89.1185, Hearing, is amended to reflect changes made in applicable timelines for final resolution of due process hearings as a result of the adoption of 34 CFR, §300.510, which added the obligation of the resolution session into the due process hearings procedure. Additional revisions are made to address changes to timelines. The adopted amendment also reflects the renumbering of the new IDEA regulations throughout the section. No changes were made to this section since published as proposed.

Section 89.1191, Special Rule for Expedited Due Process Hearings, is amended to reflect the renumbering of the new IDEA regulations. No changes were made to this section since published as proposed.

Stakeholder meetings of parents, advocates, school districts, education service centers, support personnel organizations, and teacher and administrator organizations were convened in November 2006 and January 2007 during the development of the proposed rule changes. The public comment period on the proposed amendments and repeal to 19 TAC Chapter 89, Subchapter AA, began April 20, 2007, and ended June 19, 2007. In addition, statewide public hearings were conducted in May 2007. Following is a summary of public comments received and corresponding agency responses regarding the proposed amendments and repeal.

More than 400 individuals, including educators, school officials, legislators, regional education service centers, organizations, and interested citizens, submitted comments regarding the proposed amendments and repeal to 19 TAC Chapter 89, Adaptations for Special Populations, Subchapter AA, Commissioner's Rules Concerning Special Education Services.

§89.1011, Referral for Full and Individual Initial Evaluation

Comment. A parent expressed support for the proposed amendment to §89.1011.

Agency Response. The agency agrees.

Comment. A licensed specialist in school psychology and an appraisal staff leader/educational diagnostician recommended that the agency enforce pre-referral/referral procedures.

Agency Response. The agency agrees. Pre-referral/referral procedures are enforced by the agency to the extent appropriate through its authority and responsibility to general supervision. Following rule adoption, the agency plans to provide clarification and policy guidance regarding pre-referral/referral procedures.

Comment. An appraisal staff leader/educational diagnostician, three ARD facilitators, two special education directors, a licensed specialist in school psychology, a special education coordinator, an instructional specialist, and a diagnostician recommended clarification of "Response to scientific, research-based interventions."

Agency Response. The agency agrees. Following rule adoption, the agency plans to provide clarification and guidance regarding this issue.

Comment. A senior education specialist for assessment, a consultant for assessment, and a special education director suggested implementation of a statewide standardized progress monitoring tool for response to intervention (RtI), and further suggested that Texas schools be required to submit a plan for RtI with timelines and measurable goals.

Agency Response. The agency disagrees. Decisions regarding implementation of RtI are best addressed at a local level. Following rule adoption, the agency plans to provide policy guidance on RtI and related issues.

Comment. Two special education directors expressed concern that the proposed amendment to §89.1011 will place a general education mandate in special education, allowing special education referrals to be denied and resulting in students continuing to fail in the general education environment. In addition, a concern was expressed regarding consistency in evaluation throughout the state.

Agency Response. The agency disagrees. The rule is sufficiently clear and will not result in inconsistent evaluation or denial of special education referrals. Following rule adoption, the agency plans to provide policy guidance regarding pre-referral/referral and evaluation procedures.

Comment. A special education director expressed concern that the proposed rule contains insufficient detail regarding three-year evaluations.

Agency Response. The agency disagrees. Reevaluations are not within the scope of this rule. Following rule adoption, the agency plans to provide policy guidance regarding this issue.

Comment. A licensed specialist in school psychology recommended the proposed rule language be changed to indicate that response to scientific intervention is conducted by specific disability.

Agency Response. The agency disagrees. The wording is in alignment with the federal regulations and indicates such a pre-referral RtI process is intended to be conducted within the general education setting.

Comment. A licensed specialist in school psychology expressed concern about general education teacher training and/or determination of evaluation requirements and interventions.

Agency Response. Following rule adoption, the agency will provide further guidance on this issue, including pre-referral/referral procedures, such as RtI, and related training.

Comment. The executive director of the Arc of Texas expressed concern that some districts have failed to initiate a referral for special education when requested due to the use of early intervening services and recommended requiring a school district to initiate a special education referral if requested by a parent, including providing a parent with requested forms for initial evaluation.

Agency Response. The agency disagrees. Federal regulations in 34 Code of Federal Regulations (CFR) §300.301(b) and (c) require a school to conduct an initial evaluation upon parent request and consent. It is unnecessary to repeat federal requirements in commissioner's rule in this case. Following rule adoption, the agency plans to provide policy guidance regarding this issue.

Comment. An individual recommended including dyslexia and Section 504 of the Rehabilitation Act to the list of possible pre-referral programs in addition to adding a reference to the use of research-based programs before making a referral.

Agency Response. The agency disagrees. As the list of potential pre-referral services is not meant to be exhaustive, the agency views a reference to dyslexia and Section 504 programs as unnecessary. Reference to scientific, research-based intervention is included in the rule. Following rule adoption, the agency plans to provide policy guidance on research-based programs and pre-referral services.

Comment. A licensed specialist in school psychology recommended defining and adding clarification to the proposed rule language, "student continues to experience difficulty in the general classroom."

Agency Response. The agency disagrees. Following rule adoption, the agency will provide policy guidance clarifying the pre-referral/referral and evaluation process.

Comment. A parent commented that the way the rules are written, children are not being evaluated in all areas of a suspected disability.

Agency Response. The agency disagrees. 34 CFR §300.304(c)(4) and (6) require an evaluation to be sufficiently comprehensive to assess a child in all areas related to a suspected disability and to identify all the child's special education needs. It is unnecessary to restate the federal regulation in this case.

§89.1040, Eligibility Criteria

§89.1040(b)

Comment. A parent suggested adding clarification to the proposed rule stating that students must be tested in all areas of disability.

Agency Response. The agency disagrees. 34 CFR §300.304(c)(4) and (6) require an evaluation to be sufficiently comprehensive to assess a child in all areas related to a suspected disability and to identify all the child's special education needs. The agency believes it is unnecessary to restate the federal regulation in this case.

§89.1040(c)(4)

Comment. A licensed specialist in school psychology recommended that the term "Emotional Disturbance" be changed to "Emotional and Behavioral Disorders" because more parents are willing to allow the use of such a designation for their child.

Agency Response. The agency disagrees. The term "Emotional Disturbance" continues to be used in the federal regulations referred to in commissioner's rule. Therefore the agency will continue using the term "Emotional Disturbance."

§89.1040(c)(5)

Comment. The executive director with the Arc of Texas, three assistant special education directors, five educational diagnosticians, eight special education directors, one consultant, and one assistant director expressed support for the proposed changes.

Agency Response. The agency agrees.

Comment. Four special education directors, six educational diagnosticians, one speech-language pathologist, two licensed specialists in school psychology, five ARD facilitators, one instructional specialist, one teacher, one special education coordinator, one parent, and two individuals expressed opposition to the proposed change due to concerns the change will result in an increase in students found eligible for special education services.

Agency Response. The agency disagrees. The rule provides for consistent eligibility determination and will not result in student eligible for special education services. Following rule adoption, the agency will provide additional guidance regarding these issues in order to encourage accurate eligibility determination of mental retardation.

Comment. A school psychologist, an individual, a special education director, and an educational diagnostician, recommended clarifying the proposed rule due to the potential for increased litigation as the result of inconsistency in eligibility determination for mental retardation.

Agency Response. The agency disagrees. The rule provides for consistent eligibility determination and will not result in an increase in litigation. Following rule adoption, the agency will provide additional guidance regarding these issues in order to encourage accurate eligibility determination of mental retardation.

Comment. One educational diagnostician expressed opposition to the proposed change because it is in conflict with federal regulations.

Agency Response. The agency disagrees. The rule is consistent with the definition of mental retardation in federal regulations, 34 CFR §300.8(c)(6).

Comment. One licensed specialist in school psychology, two ARD facilitators, one special education coordinator, and one special education director recommended changing the term mental retardation to intellectual and developmental disability.

Agency Response. The agency disagrees and maintains consistency with federal regulations, which continue to use the term mental retardation.

Comment. Three licensed specialists in school psychology, one psychologist, and two special education directors expressed opposition to the proposed change regarding adaptive behavior due to concerns the change will result in an increase in students found eligible for special education services.

Agency Response. The agency disagrees. The rule provides for consistent eligibility determination and will not result in an increase in students found eligible for special education services. Following rule adoption, the agency will provide additional guidance regarding these issues in order to encourage accurate eligibility determination of mental retardation.

Comment. One educational diagnostician and one special education director recommended clarification regarding adaptive behavior.

Agency Response. Following rule adoption, the agency will provide additional guidance regarding these issues in order to encourage accurate eligibility determination of mental retardation.

Comment. A special education director recommended adding to the proposed rule a requirement that a student exhibit deficits of at least two standard deviations in adaptive behavior.

Agency Response. The agency disagrees and considers the recommendation as overly prescriptive. Following rule adoption, the agency will provide additional guidance for evaluators to make informed decisions regarding mental retardation eligibility determination.

Comment. A special education director requested clarification/guidance regarding use of standard error of measurement in mental retardation eligibility determination.

Agency Response. Following rule adoption, the agency will provide additional guidance for evaluators to make informed decisions regarding mental retardation eligibility determination.

§89.1040(c)(8)

Comment. The executive director of the Arc of Texas, five special education directors, an assistant special education director, a consultant, and an education specialist expressed support for the proposed changes.

Agency Response. The agency agrees.

Comment. An attorney, a regional coordinator, and two parents recommend changing "such as" to "including but not limited to" in order to accommodate medical conditions that are new or yet to be defined.

Agency Response. The agency disagrees. It is sufficiently clear that the list of conditions in the rule is not exhaustive.

Comment. One educational diagnostician and a licensed specialist in school psychology recommended clarifying attention deficit hyperactivity disorder by adding "with or without hyperactivity."

Agency Response. The agency disagrees. The common understanding of the phrase "attention deficit disorder or attention deficit hyperactivity disorder" includes the disorder both with hyperactivity and without hyperactivity and is consistent with federal regulations. In addition, the term "attention deficit disorder" is still commonly used in evaluations and should remain in the rule.

Comment. One licensed specialist in school psychology, two ARD facilitators, one special education coordinator, one special education director, and one parent opposed the change because it may imply that a medical diagnosis automatically results in automatic eligibility for special education services.

Agency Response. The agency disagrees. An ARD committee is required to consider evaluation information and must base a determination of eligibility on both multiple sources of information and educational need.

Comment. A special education director requested further alignment with federal regulations.

Agency Response. The agency disagrees and believes the rule is consistent with federal regulations.

§89.1040(c)(9)

Comment. The executive director of the Arc of Texas recommended: (1) deleting subparagraph (B)(ii)(II) and adding that a parent must be reminded of the right to request an independent educational evaluation (IEE); (2) including language covering students identified under current rule; (3) adding an expiration date for subparagraph (B)(ii)(II) if the section is retained; and (4) requiring schools to collect data on the number of students identified as having a learning disability under subparagraph (B)(ii)(II).

Agency Response. The agency disagrees with each recommendation, as follows. Recommendations (1) and (3): Subparagraph (B)(ii)(II) describing learning disability eligibility criteria related to a "pattern of strengths and weaknesses" provides evaluators with an option for determining learning disability eligibility other than use of an RtI process. The agency has determined that a significant number of local educational agencies (LEAs) across the state have yet to adequately prepare for the full implementation of an RtI process. Therefore, it is premature to make RtI a requirement in learning disability eligibility determination. In addition, federal regulation, 34 CFR §300.502, describes requirements regarding IEEs. The agency sees no reason to repeat these federal requirements. Recommendation (2): Students currently identified as meeting learning disability eligibility criteria are subject to the same state and federal law as other students. The agency believes it is unnecessary to exempt these students from requirements under commissioner's rules. Recommendation (4): The agency has an extensive data collection process as required by the agency's State Performance Plan and believes it is unnecessary to exceed these federal requirements as described in 20 USC §1418.

Comment. Two educational diagnosticians and a licensed specialist in school psychology recommended continuing the option of using an intellectual ability (IQ)/achievement discrepancy to identify a learning disability and adding the option that a cognitive processing disorder also be present in determining learning disability eligibility.

Agency Response. The agency agrees. The use of a discrepancy between IQ and achievement in determining learning disability eligibility continues as an option in rule under the "pattern of strengths and weaknesses" provision in subparagraph (B)(ii)(II). Learning disability eligibility under a "pattern of strengths and weaknesses" provision may also include a cognitive processing disorder. In response to public comment, the agency has added clarifying language in subsection (c)(9)(B) regarding this provision. Following rule adoption, the agency will provide additional guidance for evaluators regarding these issues in order to encourage the accurate eligibility determination of learning disabilities. Such guidance will enable evaluators to make informed decisions regarding learning disability eligibility determination.

Comment. A school psychology director, three licensed specialists in school psychology, two psychologists, three educational diagnosticians, two special education directors, an individual, and a parent/licensed specialists in school psychology recommended requiring evaluation information contained in both subparagraph (B)(ii)(I) and (II) by changing "or" to "and."

Agency Response. The agency disagrees. Federal regulation in 34 CFR §300.307(a)(1) prohibits the state from requiring the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a learning disability. However, the agency has determined that a significant number of LEAs across the state are not adequately prepared for the full implementation of an RtI process. Therefore, the rationale for choosing "or" over "and" is to make both methods of determining learning disability eligibility available while the state scales up to fully implement RtI.

Comment. Two executive directors, eight superintendents, two special education teachers, 30 special education directors, five licensed specialists in school psychology, five ARD facilitators, five special education coordinators, four education specialists, an instructional coordinator, three individuals, five attorneys, two assistant special education directors, a parent, a speech-language pathologist, a professor, a special education supervisor and thirteen educational diagnosticians recommended clarification/guidance regarding learning disability eligibility.

Agency Response. The agency agrees. In response to public comment, the agency has added language to subsection (c)(9)(B) clarifying requirements for learning disability eligibility. Following rule adoption, the agency will provide additional guidance regarding these issues in order to encourage the accurate eligibility determination of learning disabilities.

Comment. An educational diagnostician and a special education coordinator recommended guidance regarding learning disability reevaluations.

Agency Response. Following rule adoption, the agency will provide additional guidance regarding learning disability reevaluation in order to ensure the accurate eligibility determination of learning disabilities.

Comment. A special education director expressed support of the change in rule regarding "intervals" for evaluating learning disability eligibility.

Agency Response. The agency agrees.

Comment. A licensed specialist in school psychology, a special education director, a speech-language pathologist, and four educational diagnosticians expressed opposition to the proposed change in rule due to concerns that the number of students identified as having a learning disability will increase.

Agency Response. The agency disagrees. Federal regulation in 34 CFR §300.307(a)(1) prohibits the state from requiring the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a learning disability. However, the agency has determined that a significant number of local education agencies across the state are not adequately prepared for the full implementation of an RtI process. Therefore, the agency will allow for the use of either RtI or the discrepancy model when determining learning disability eligibility. Following rule adoption, the agency will provide guidance regarding these issues in order to encourage the accurate determination of learning disabilities. Such guidance should enable districts and evaluators to make informed decisions regarding learning disability eligibility determination. In order to address potential over-identification of students with disabilities, schools will need to carefully monitor identification and eligibility determination for all disabilities.

Comment. A licensed specialist in school psychology expressed concern regarding the ability of evaluators to ensure the correct implementation of pre-referral activities required under federal regulations that are included in the proposed rule change.

Agency Response. The agency disagrees. The rule is sufficiently clear and will not result in incorrect implementation of pre-referral activities. Following rule adoption, the agency will provide guidance regarding learning disability eligibility, including guidance regarding pre-referral activities such as RtI, in order to encourage the accurate determination of learning disabilities.

Comment. An assistant special education director and a parent/licensed specialist in school psychology recommended that the proposed rule specify that a comprehensive evaluation is required for the determination of learning disability eligibility.

Agency Response. The agency disagrees. Federal regulations in 34 CFR §§300.301-300.304 and 300.307-300.311 require a full and individual evaluation, using multiple measures assessing the child in all areas of suspected disability. The agency believes it is unnecessary to repeat these federal requirements.

Comment. One licensed specialist in school psychology, two ARD facilitators, one special education coordinator, and one special education director recommended elimination of subparagraph (B)(ii)(II) regarding a "pattern of strengths and weaknesses."

Agency Response. The agency disagrees. The agency has determined that a significant number of local education agencies across the state are not adequately prepared for the full implementation of an RtI process. Therefore, the agency is making both methods of determining learning disability eligibility available while the state scales up to fully implement RtI. Following rule adoption, the agency will provide guidance to districts and evaluators regarding these issues in order to encourage the accurate determination of learning disabilities.

Comment. Six superintendents, four special education directors, three executive directors, an educational diagnostician, and an individual questioned whether the proposed rule serves a justifiable purpose.

Agency Response. The agency disagrees. The purpose of the rule is to address federal requirements that states develop criteria for learning disability eligibility determination.

Comment. Two educational diagnosticians and an individual recommended that reading fluency be removed from possible criteria for learning disability eligibility.

Agency Response. The agency disagrees. Reading fluency skills are specifically listed in federal regulations at 34 CFR §300.309 addressing learning disability eligibility and are therefore included in rule.

Comment. An education specialist recommended that the rule establish a time frame for phasing out use of IQ/achievement discrepancy and phasing in use of RtI in determining learning disability eligibility.

Agency Response. The agency disagrees. While the agency intends to use policy guidance to encourage the use of RtI in learning disability eligibility determination, the agency has determined that a significant number of local education agencies across the state have yet to adequately prepare for the full implementation of an RtI process. Therefore, the agency is making both methods of determining learning disability eligibility available while the state scales up to fully implement RtI. Following rule adoption, the agency will provide guidance to districts and evaluators regarding these issues in order to encourage the accurate determination of learning disabilities.

Comment. An assistant director of special education recommended that proposed rules require schools to document that students are provided research-based instruction by qualified personnel and repeated assessments.

Agency Response. The agency agrees. The rule includes requirements that schools consider data that demonstrates the child was provided appropriate instruction in reading and/or mathematics within general education settings delivered by qualified personnel and data-based documentation of repeated assessments of achievement at reasonable intervals. In response to public comment, the agency has added additional language to subsection (c)(9)(A)(ii) to clarify the meaning of "repeated assessments." In addition, the rule requires schools to use research-based instruction when implementing an RtI process.

Comment. A licensed specialist in school psychology recommended prohibiting the use of IQ/achievement discrepancy in determining learning disability eligibility.

Agency Response. The agency disagrees. While the agency intends to use policy guidance to encourage the use of an RtI process in lieu of an IQ/Achievement discrepancy in determining learning disability eligibility, the agency has determined that a significant number of local education agencies across the state have yet to adequately prepare for the full implementation of an RtI process. Therefore, the agency has included both the use of a "pattern of strengths and weaknesses," which may include IQ/achievement discrepancy and RtI in rule.

Comment. A special education director recommended adding "to the extent practicable" to subparagraph (B)(ii)(I).

Agency Response. The agency disagrees. Adding "to the extent practicable" to the rule would cause unnecessary confusion because RtI is an option rather than a requirement for learning disability eligibility determination.

Comment. A special education director, an ARD facilitator, an instructional specialist, a consultant, seven educational diagnosticians, two psychologists, a professor, and a special education coordinator recommended adding the requirement that a cognitive processing disorder also be present in order to meet learning disability eligibility requirements.

Agency Response. The agency disagrees. Such a requirement would result in unnecessary evaluation. Learning disability eligibility under the "pattern of strengths and weaknesses" provision in rule may also include a cognitive processing disorder. Following rule adoption, the agency will provide additional guidance regarding this issue in order to encourage the accurate determination of learning disabilities.

Comment. An educational diagnostician and a consultant recommended allowing a transition period before requiring that a learning disability eligibility determination include a response to intervention process.

Agency Response. The agency disagrees. The rule makes an RtI process an option rather than a requirement for learning disability eligibility determination. It is therefore unnecessary to allow a transition period before requiring that learning disability eligibility determination include a response to intervention process.

Comment. An educational diagnostician recommended changing the term learning disability to specific learning disability in order to be consistent with federal regulations.

Agency Response. The agency disagrees. The current term "learning disability" has been in use in commissioner's rules for an extended period and is sufficiently clear. Federal regulations in 34 CFR §300.8(c)(10) is referenced in rule to link the commissioner's rules with the regulation.

Comment. An educational diagnostician recommended adding the federal definition of learning disability to the proposed rules.

Agency Response. The agency disagrees. Federal regulations in 34 CFR §300.8(c)(10) as referenced in rule, define learning disability. As local education agencies are required to follow federal regulations, the agency believes it is unnecessary to repeat these federal regulations in this case.

Comment. An assistant special education director recommended a waiting period prior to the implementation of proposed rules related to learning disability eligibility.

Agency Response. The agency disagrees. Federal regulations at 34 CFR §300.309 regarding learning disability determination, which local education agencies must follow, require states to develop criteria regarding learning disability eligibility determination. The agency sees no benefit in delaying implementation of state rule regarding learning disability eligibility determination.

Comment. A superintendent recommended retaining in §89.1040 only the definition of learning disability as written in federal regulations.

Agency Response. The agency disagrees. Federal regulations at 34 CFR §300.309 regarding learning disability determination, which local education agencies must follow, require states to develop criteria regarding learning disability eligibility determination.

Comment. An educational diagnostician recommended adding the use of "confidence intervals" to learning disability determination.

Agency Response. The agency disagrees. In exercising professional judgment, evaluators often choose to make use of confidence intervals when making a determination regarding learning disability eligibility. Rather than include the option in rule, the agency believes the decision should be left to the discretion of each evaluator.

Comment. The director of professional development of the Texas Classroom Teachers Association recommended that the proposed requirement in subsection (c)(9)(A) to "ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading and mathematics" be changed to "ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading and lack of instruction in mathematics."

Agency Response. The agency disagrees. Federal regulations in 34 CFR §300.309(b) clearly state that in order to ensure underachievement in a child suspected of having a learning disability is not due to lack of appropriate instruction in reading or mathematics, a school must consider data that demonstrates the child was provided appropriate instruction in reading and/or mathematics within general education settings.

Comment. Two special education coordinators, three educational diagnosticians, two psychologists, and a professor recommended adding specific language to proposed rule clarifying requirements related to learning disability eligibility.

Agency Response. The agency agrees. In response to public comment, the agency has added language to subsection (c)(9) clarifying requirements for learning disability eligibility. Following rule adoption, the agency will provide additional guidance regarding these issues in order to encourage the accurate determination of learning disabilities. Such guidance should enable evaluators to make informed decisions regarding eligibility determination.

Comment. A licensed specialist in school psychology recommended adding a definition of "sufficient progress" and clarifying "a pattern of strengths and weaknesses."

Agency Response. The agency disagrees with adding a definition for sufficient progress. The determination of sufficient progress will depend on multiple factors unique to the child and the specific interventions. The agency agrees with adding clarifying language about RtI and "patterns of strengths and weaknesses." In response to public comment, the agency has added language to subsection (c)(9) clarifying requirements for learning disability eligibility. Following rule adoption, the agency will provide additional guidance regarding these issues in order to encourage the accurate determination of learning disabilities. Such guidance should enable evaluators to make informed decisions regarding learning disability eligibility determination.

§89.1040(c)(13)

Comment. Two executive directors recommended allowing students of any age to be found eligible for special education services under a non-specified disability.

Agency Response. The agency disagrees. The eligibility determination of "Noncategorical" should be limited to children between the ages of 3-5 due to the potential difficulty of determining eligibility in very young children.

Comment. One licensed specialist in school psychology, two ARD facilitators, one special education coordinator, and one

special education director recommended that the age range for "Noncategorical" extend to age 9 to be consistent with federal regulations.

Agency Response. The agency disagrees. The eligibility determination of "Noncategorical" should be limited to children between the ages of 3-5 due to the potential difficulty of determining eligibility in very young children.

§89.1045(a), Notice to Parents for Admission, Review, and Dismissal (ARD) Committee Meetings

Comment. An individual recommended adding language to the rule indicating that adult students have the same rights at ARD committee meetings as parents did prior to students reaching the age of majority.

Agency Response. The agency disagrees. The agency believes it is unnecessary to restate 19 TAC §89.1049(a), which outlines the rights of adult students.

§89.1047, Procedures for Surrogate and Foster Parents

§89.1047(a)(1)(D)

Comment. Six special education directors and an executive director questioned requiring transition services to be addressed at age 14 rather than the federal requirement of age 16 because ARD committees have the option of addressing transition at any age.

Agency Response. The agency agrees. In response to public comment, subsection (a)(1)(D) is modified to align state requirements with federal law. The age for transition planning in Texas will be 16 as established in 34 CFR §300.320(b).

§89.1047(a)(3)

Comment. A special education director supported the adoption of the change in §89.1047(a)(3) because it provides flexibility for parents and districts by requiring surrogate parents to complete the surrogate parent training program only one time.

Agency Response. The agency agrees.

Comment. A regional coordinator, two parents, and an attorney recommended that the surrogate parent training program not be limited as to who can provide training but include any person, entity, private provider, or Internet company in order to offer the training at a variety of locations and times.

Agency Response. The agency disagrees. The agency is unable to ensure that surrogate parent training provided by entities other than those listed is consistent with federal and state laws.

§89.1047(b)

Comment. Two executive directors recommended the proposed rule clarify that a surrogate parent must be appointed for a child who is a ward of the state and who is enrolled in school prior to the expiration of the first 60 days of placement with a foster parent.

Agency Response. The agency disagrees. The rule references the TEC, §29.015(b), which specifies that the foster parent may act as a parent of the child with a disability only after the child has been placed with the foster parent for at least 60 days. The agency does not believe it is necessary to restate this requirement in rule.

§89.1047(d)

Comment. A special education coordinator, a licensed specialist in school psychology, two ARD facilitators, and a special education director requested clarification on the district process when foster parents refuse training.

Agency Response. The agency disagrees. A foster parent is required to complete a surrogate parent training program in order to act as the parent of a child with a disability or be appointed surrogate parent for the child. Section 89.1047 describes procedures to be used when a school district denies a foster parent the right to serve as a surrogate parent or parent. The agency believes additional clarification is unnecessary in this case.

§89.1050, The Admission, Review, and Dismissal (ARD) Committee

§89.1050(a)

Comment. One parent requested clarification regarding why Texas does not use the term "Individual Education Plan."

Agency Response. The agency disagrees. The agency has long used language consistent with federal regulations, which specifies an "Individualized Education Program (IEP)." The state has also long used the term "admission, review, and dismissal (ARD) committee" in lieu of the term "Individualized Education Program (IEP) team" used in federal regulations.

§89.1050(a)(1)

Comment. One individual suggested that §89.1050(a)(1) include the full text of 34 CFR §300.323(a) in order to provide further clarification.

Agency Response. The agency disagrees. It is unnecessary to restate federal regulations in this case. Following rule adoption, the agency plans to provide additional clarification and guidance regarding this issue.

§89.1050(c)

Comment. One special education director questioned the necessity of §89.1050(c).

Agency Response. The agency disagrees. The subsection provides clarification as to required ARD committee membership.

Comment. One speech-language pathologist, three educational diagnosticians, two special education directors, five ARD facilitators, one instructional specialist, one teacher, one special education coordinator, and one licensed specialist in school psychology requested guidance regarding ARD committee membership.

Agency Response. Following rule adoption, the agency plans to provide additional clarification and guidance regarding this issue.

§89.1050(c)(1)

Comment. One parent commented that §89.1050(a) should be written to include the full text of 34 CFR §300.321(a)(1) in order to provide clarification.

Agency Response. The agency disagrees. The agency believes it is unnecessary to restate the federal regulations in this case.

Comment. One executive director noted that the proposed rule does not require the presence of the student or the student's Part C service provider/representative if the ARD meeting is an initial ARD meeting for a student previously served under Part C.

Agency Response. The agency disagrees. The student's participation in his/her ARD committee meeting is addressed in §89.1050(c)(1)(G). The attendance of a student's Part C service

provider or representative is addressed in federal regulations 34 CFR §300.321(f).

§89.1050(c)(1)(B)

Comment. One special education coordinator, one licensed specialist in school psychology, two ARD facilitators, and one special education director agreed with language in §89.1050(c)(1)(B).

Agency Response. The agency agrees.

§89.1050(c)(1)(C)

Comment. One executive director commented that the special education teacher attending a student's ARD committee meeting should have expertise in the student's respective disability.

Agency Response. The agency disagrees. Teachers of students with disabilities are required to meet highly qualified standards as described in 34 CFR §300.18 and the agency believes no additional requirement is necessary regarding teacher qualifications.

Comment. Seven special education directors, one director of shared services, one individual, eight superintendents, three attorneys, two educational diagnosticians, and one education specialist indicated that §89.1050(c) should include the required members from 19 TAC §75.1023(d)(1), the career and technical education representative, and 19 TAC §101.1009(b), the language proficiency assessment committee representative.

Agency Response. The agency disagrees. It is unnecessary in this rule to cross reference 19 TAC §75.1023(d)(1) and 19 TAC §101.1009(b), which require career and technical education and language proficiency assessment committee representatives to attend ARD committee meetings under unique circumstances.

Comment. One educational diagnostician, one special education coordinator, one licensed specialist in school psychology, two ARD facilitators, and one special education director agreed with language in §89.1050(c)(1)(C).

Agency Response. The agency agrees.

Comment. One licensed specialist in school psychology and one individual recommended that §89.1050(c)(1) include adult students as members of the ARD committee.

Agency Response. The agency disagrees. It is unnecessary to address this issue in this subsection because the rights of adult students are addressed comprehensively in §89.1049.

§89.1050(c)(1)(D)(iii)

Comment. One educational diagnostician, a special education coordinator, one licensed specialist in school psychology, two ARD facilitators, and one special education director agreed with §89.1050(c)(1)(D)(iii).

Agency Response. The agency agrees.

§89.1050(c)(1)(E)

Comment. One commenter recommended that §89.1050(c)(1)(E) indicate that ARD committees include persons licensed or certified to administer and interpret assessments.

Agency Response. The agency disagrees. Federal regulations in 34 CFR §300.321 require a person who can interpret the instructional implications of evaluations, not a person who is certified to administer evaluations.

Comment. One speech-language pathologist, two ARD facilitators, and one teacher questioned whether §89.1050(c)(1)(E) requires that an individual who could interpret assessment data be present at every ARD committee meeting.

Agency Response. The agency disagrees. 19 TAC §89.1050(c)(1)(E) is consistent with federal regulations in 34 CFR §300.321(a)(5), which requires the attendance of an individual who can interpret the instructional results unless the condition of either 34 CFR §300.321(e)(1), regarding attendance, or 34 CFR §300.321(e)(2), regarding excused, has been met.

§89.1050(c)(1)(G)

Comment. One individual recommended that §89.1050(c)(1)(G) include language to indicate students must be invited to ARD committee meetings where transition services are discussed.

Agency Response. The agency disagrees. Federal regulations in 34 CFR §300.321(b) addresses the participation of students in ARD committee meetings concerning transition services. The agency believes it is unnecessary to repeat federal regulations in this case.

§89.1050(c)(2)

Comment. Nine special education directors, seven superintendents, two attorneys, one education specialist, one assistant director, and two educational diagnosticians recommended that §89.1050(c)(2) be deleted due to the possible confusion resulting from the language and the lack of need for further clarification regarding the issue.

Agency Response. The agency disagrees. The rule changes in this subsection are intended to provide clarification about the participation of regular education teachers in ARD committee meetings.

Comment. One educational specialist indicated agreement with proposed language in §89.1050(c)(2) and (3).

Agency Response. The agency agrees.

Comment. One individual recommended that §89.1050(c)(2) retain current wording as "student" in subsection (c)(1)(G).

Agency Response. The agency disagrees. The term "student" and "child" have long been used interchangeably in commissioner's rule.

Comment. One individual commented that §89.1050(c)(2) should be worded to read as a requirement rather than as a recommendation.

Agency Response. The agency disagrees.

Comment. One director of professional development agreed with the language in §89.1050(c)(2) due to general education teachers who are not teachers of a student being required to attend ARD committee meetings.

Agency Response. The agency agrees.

§89.1050(c)(3)

Comment. One education specialist indicated agreement with §89.1050(c)(3).

Agency Response. The agency agrees.

§89.1050(c)(4)(C)

Comment. Seven teachers, 10 parents, one grandparent, one research assistant, one associate professor, the chair of the Alliance of and for Visually Impaired Texans, one deaf-blind specialist, two individuals, one project manager, one assistant director of special education, three education specialists, one orientation mobility specialist, one past president of the Texas Association for Education and Rehabilitation of the Blind and Visually Impaired, one secretary, one director of an outreach program for students with sensory impairments, and one educational diagnostician requested that §89.1050(c)(4)(C) read, "visual impairments and auditory impairments" as opposed to the current "visual impairments or auditory impairments."

Agency Response. The agency agrees. In response to public comment, the agency has revised subsection (c)(4)(C) to indicate the ARD committee shall include a teacher who is certified in the education of students with visual impairments and a teacher who is certified in the education of students with auditory impairments for a student with suspected or documented deaf-blindness.

§89.1050(c)(5)

Comment. One executive director, one director of family support, and one director of professional development recommended that §89.1050 include language to indicate that the parents and the school must agree to a member being excused from an ARD committee meeting prior to the date of the meeting and that a member may not be routinely or unilaterally excused from ARD committee meetings.

Agency Response. The agency disagrees. It is unnecessary to restate the federal regulations in 34 CFR §300.321 regarding this issue.

Comment. One special education director and two executive directors indicated approval that all members of an ARD committee may be excused from attending the ARD committee meeting.

Agency Response. The agency agrees. The excusal provision in this subsection is consistent with federal regulations in 34 CFR §300.321(e)(2).

Comment. Seven teachers, 10 parents, two education specialists, one research assistant, one associate professor, the Chair of the Alliance of and for Visually Impaired Texans, one commenter, one past president of the Texas Association for Education and Rehabilitation of the Blind and Visually Impaired, one project manager, one secretary, one director of an outreach program for students with sensory impairments, and one educational diagnostician requested that §89.1050(c)(5) be re-written to ensure that teachers for the visually impaired are present at every ARD committee meeting for children who are visually impaired.

Agency Response. The agency disagrees. Such a change would be inconsistent with 34 CFR §300.321(e)(1) and (2), which allows parents to agree to nonattendance or excusal of ARD committee members from ARD committee meetings.

§89.1050(e)

Comment. Two executive directors commented that §89.1050(e) should indicate that meetings may be recorded by either the parent or the district only at the discretion of the district and that secret recordings of meetings should be prohibited.

Agency Response. The agency disagrees. Policies regarding recording of ARD committee meetings should be determined at a local level.

§89.1050(f)

Comment. One regional coordinator, two parents, and one attorney recommended that §89.1050(f) include a provision that would prevent a district's attorney from attending an ARD committee meeting unless required by an agreement resulting from a resolution session, mediation, or due process decision or by agreement of the parties.

Agency Response. The agency disagrees. Determinations regarding specific local education agency representative attendance at ARD committee meetings should be determined by local policy.

§89.1050(f)(1)

Comment. One executive director requested that language be added to subsection (f)(1) that would require the new/receiving school district to complete the evaluation "as soon as possible, but not more than 60 calendar days."

Agency Response. The agency agrees. In response to public comment, the agency has added language to subsection (f)(1) clarifying the evaluation timeline for students transferring from one school district to another.

Comment. One special education coordinator, one licensed specialist in school psychology, three ARD facilitators, four special education directors, two executive directors, two diagnosticians, and one instructional specialist agreed with §89.1050(f).

Agency Response. The agency agrees. However, in response to public comment, the agency has added language to subsection (f)(1) clarifying the evaluation timeline for students transferring from one school district to another.

Comment. One educational diagnostician requested clarification of §89.1050(f)(1), specifically, concerning when the 60-calendar-day timeline begins.

Agency Response. The agency agrees. In response to public comment, the agency has added language to subsection (f)(1) clarifying the evaluation timeline for students transferring from one school district to another.

Comment. One individual recommended that §89.1050(f)(1) and (f)(2) should only read "school" as opposed to "school district" because the proposed language would exclude students transferring into the new district from a private school.

Agency Response. The agency disagrees. The receiving school district should be in contact with the school district that is responsible for the student's evaluation, in addition to representatives of the private school.

Comment. One individual commented that the 60-calendar-day timeline for completion of an initial evaluation that begins once a district receives signed, written consent from a parent should not restart if the student transfers into a new school district before the evaluation is complete.

Agency Response. The agency disagrees. 34 CFR §300.301(d)(2) indicates that the 60-calendar-day timeline running from the date of consent in the sending school district does not apply to the receiving school district.

Comment. One special education director recommended that §89.1050(f)(1)(2) should read in part, "verified in writing by the sending school district."

Agency Response. The agency disagrees. School districts should initially be able to verify previous special education services in writing or by telephone as determined by local policy.

Comment. One licensed specialist in school psychology commented that §89.1050(f)(1) is of concern.

Agency Response. Commissioner's rule in §89.1050(f)(1) provides clarification for requirements found in the federal regulations in 34 CFR §300.304.

§89.1050(f)(2)

Comment. One executive director recommended adding language to specifically state the requirements that a free appropriate public education (FAPE) be provided to the child, "including services comparable to those described in the IEP from the previous school."

Agency Response. The agency disagrees. It is unnecessary to restate federal regulations in 34 CFR §300.323 in this case.

Comment. One assistant director of special education recommended that §89.1050(f)(2) read in part, "comparable special education services."

Agency Response. The agency disagrees. It is unnecessary to restate federal regulations in 34 CFR §300.323 in this case.

Comment. One individual indicated that §89.1050(f)(2) does not take into account those students who transfer after completing a school year. The commenter recommended that §89.1050(f)(2) reference 34 CFR §300.323(a), which requires a district to have an individualized education program in place for each student at the beginning of each school year.

Agency Response. The agency agrees. In response to public comment, the agency has made changes to both §89.1050(f)(2) and (3) clarifying requirements for students transferring from one school district to another.

Comment. One individual indicated concern that in §89.1050(f)(2) the 30 school day timeline conflicts with federal regulations in CFR §300.323(e), which "does not allow for delays."

Agency Response. The agency disagrees. The federal regulations in 34 CFR §300.323 require the receiving school district to provide the student with a FAPE when the student transfers into the school district.

Comment. One individual commented that §89.1050(f)(2) should include language to recognize parents and adult students as having the same rights.

Agency Response. The agency disagrees. It is unnecessary to restate §89.1049(a), which outlines the rights of adult students.

Comment. Three special education directors and one assistant director indicated agreement with §89.1050(f)(2)(3).

Agency Response. The agency agrees.

§89.1050(f)(3)

Comment. Three special education directors and one assistant director indicated agreement with §89.1050(f)(2)(3).

Agency Response. The agency agrees.

§89.1050(g)

Comment. One educational diagnostician, one special education coordinator, one licensed specialist in school psychology, two ARD facilitators, and one special education director requested guidance regarding "who determines appropriate?"

Agency Response. The agency disagrees. The comment has no relation to this subsection.

Comment. Two executive directors recommended that §89.1050(g) indicate that the phrase, "disciplinary actions pertaining to the removal from instruction regarding students with disabilities shall be determined in accordance with," specify federal and state guidelines due to "many disciplinary actions which are not subject to federal or state law but are governed by district policy."

Agency Response. The agency disagrees. Local policies, including those regarding discipline, must be in alignment with federal and state law.

§89.1050(h)(7)

Comment. One individual recommended that §89.1050(h)(7) include language to recognize parents and adult students as having the same rights.

Agency Response. The agency disagrees. It is unnecessary to restate §89.1049(a), which outlines the rights of adult students.

§89.1052(b), Discretionary Placements in Juvenile Justice Alternative Education Programs (JJAEP)

Comment. An executive director agreed with requiring continued involvement of the Juvenile Justice Alternative Education Program (JJAEP) in ARD committee meetings related to placement of students with disabilities in JJAEPs.

Agency Response. The agency agrees.

Comment. Two parents, a regional coordinator, and an attorney recommended that along with a JJAEP official, the parent or designee, surrogate parent, relevant county or district attorney, and child's attorney be required to be given notice if an ARD committee meeting is being convened to consider expulsion.

Agency Response. The agency agrees that the student's parent or surrogate parent must receive notice of an ARD committee meeting, and the notice must comply with all applicable federal and state requirements concerning notice, and those provisions are addressed in the rule. The agency disagrees that the school district should be required to provide notice of the ARD committee meeting to the county or district attorney and the child's attorney because such notice, without parental consent, would violate 34 CFR §300.622(a).

§89.1053, Procedures for Use of Restraint and Time-Out

§89.1053(a)

Comment. The director of family support at the Arc of Texas and an executive director supported leaving this subsection intact, except for technical edits.

Agency Response. The agency agrees.

§89.1053(c)

Comment. An appraisal staff leader/educational diagnostician, a licensed specialist in school psychology, and a special education director expressed concern that students expelled for inappropriate behaviors as outlined in the TEC, §37.007(b), should not be

considered for a change of placement out of JJAEP because as laws get more restrictive there are fewer alternative placement options for these students.

Agency Response. The agency disagrees. The ARD committee must reconsider the JJAEP placement of a student whose educational or behavioral needs cannot be met in the JJAEP.

§89.1053(h)

Comment. Two parents, an attorney, and a regional coordinator recommended that school resource officers and/or police officials who regularly work in schools be required to participate in training on use of time-out.

Agency Response. The agency disagrees. Training requirements of school resource officers and/or police officials are best determined by their licensing agency. Additionally, the TEC, §37.0021(g), specifically exempts peace officers from this rule.

§89.1053(h)(2)

Comment. Two parents and a regional coordinator recommended training in the use of time-out for school personnel before a staff member is assigned responsibility for implementing time-out.

Agency Response. The agency disagrees. Subsection (h)(2) adequately addresses the timing of training for personnel who implement time-out.

§89.1053(h)(4)

Comment. Two parents and a regional coordinator recommended the rule should specify that training in the use of time-out is research-based and includes best practices.

Agency Response. The agency disagrees. It is unnecessary to include these terms in this rule. The phrase in rule, "current professionally accepted practices and standards," includes research-based and best practices.

§89.1055, Content of the Individualized Education Program (IEP)

§89.1055(b)

Comment. Nine superintendents, two executive directors, and two special education directors stated that there is no way to provide a district-wide assessment of student performance to measure "academic and functional" performance of a child and that this is not required in federal law.

Agency Response. The agency disagrees. The proposed rule is aligned with the requirements in 34 CFR §300.320(a)(6) and therefore, consistent with federal regulations. However, in response to public comment, the agency has added language in subsection (b) clarifying that district-wide assessments as described in this section of rule are optional.

Comment. A special education director stated the proposed rule is unclear and unnecessary and recommended to keep the current rule.

Agency Response. The agency disagrees. The rule is aligned with the requirements in 34 CFR §300.320(a)(6) and therefore, consistent with federal regulations.

Comment. A special education director recommended leaving out "appropriate" as substituted for "allowable" since it is confusing.

Agency Response. The agency disagrees. This rule is aligned with the requirements in 34 CFR §300.320(a)(6) and therefore, consistent with federal regulations.

Comment. An educational diagnostician, two special education directors, a licensed school specialist in psychology, a special education coordinator, and two ARD facilitators requested clarification as to whether to do functional assessments for all special education students or just the students not taking the TAKS test. The commenters also requested clarification on the definition of alternate assessment.

Agency Response. The agency disagrees. This rule is aligned with the requirements in 34 CFR §300.320(a)(6) and therefore, consistent with federal regulations. Following rule adoption, the agency plans to provide additional clarification and guidance regarding this issue.

§89.1055(c)

Comment. An educational diagnostician, a special education director, a special education coordinator, a licensed school specialist in psychology, and two ARD facilitators indicated support for this subsection.

Agency Response. The agency agrees.

Comment. An educational diagnostician stated that this subsection of proposed rule goes beyond what is required in federal regulations.

Agency Response. The agency disagrees. The rule is aligned with the requirements in 34 CFR §300.106 and 34 CFR §300.320(a)(2) and therefore, consistent with federal regulations.

Comment. A parent recommended that summer programs include a member of the student's core team and that summer teachers be identified no later than six weeks prior to the end of the school year in order for the teachers to be familiar with the student and the student's program when extended school year begins.

Agency Response. The agency disagrees. Decisions regarding personnel are best left to local school policy.

§89.1055(e)

Comment. Many commenters stated that there would be a significant fiscal impact if the proposed rule is adopted resulting in an increase in the length of ARD committee meetings, amount of paperwork, and litigation. The commenters included: 14 special education directors, a director, 10 individuals, four educational diagnosticians, an instructional specialist, an ARD facilitator, two parents, two school psychologists, four attorneys, nine superintendents, a senator, an educational specialist, an assistant director of special education, a representative of psychological and speech services, and an individual.

Agency Response. The agency agrees. In response to public comment, the agency has revised the subsection (e) to clarify that the 11 items in subsection (e) are to be addressed on an individual basis when needed. Additional revisions clarify that strategies discussed in the 11 items are provided as examples and are not requirements unless the ARD committee determines they are needed by the student. The agency believes these revisions should mitigate some of the commenters' concerns.

Comment. A superintendent and a special education director requested that "may" replace "shall" and "when needed, addressed in the IEP" be added to rule language.

Agency Response. The agency agrees in part and disagrees in part. In response to public comment, the agency has revised subsection (e) to clarify that the 11 items in subsection (e) are to be addressed on an individual basis when needed. Additional revisions at adoption clarify that strategies discussed in the 11 items are provided as examples and not requirements. The use of the word "shall" is consistent with current rule and ensures consideration of the 11 items but does not require their inclusion in the IEP unless the ARD committee determines they are needed by the student.

Comment. A social worker, a parent, and a nurse stated that education is exponentially less expensive than the cost to provide a lifetime of care.

Agency Response. The agency agrees. One of the goals of education is to support students' preparation for postsecondary education and work.

Comment. An individual and a parent trainer expressed concerns regarding a lack of funding for training and the amount of lawyer fees impacting school districts.

Agency Response. The agency disagrees that there is a lack of funding for training. Each of the regional education service centers and school districts in the state uses federal and state funds to make training available regarding the education of students with autism. Recent revisions to federal regulations create additional opportunities to resolve disputes and minimize legal expenses.

Comment. Two parents expressed concerns regarding tolerance in schools for students with Autism Spectrum Disorders (ASD) in order to provide an appropriate and positive environment.

Agency Response. The agency agrees. The rule supports the education of students with autism.

Comment. A parent solicited feedback from parents, educators, public staff, and administrators about the need for better programs and services for the ASD population as input for the Autism Council's 2006 State Plan. The parent supported the adoption of the rules.

Agency Response. The agency agrees. In response to public comment, the agency has revised subsection (e) to provide clarification.

Comment. One state senator, 126 parents, a parent and seven family members, a parent and two family members, eight grandparents, a special education coordinator, a school psychologist, a special education director, two ARD facilitators, four teachers, a psychologist, a nursery coordinator, a social worker, a professor, an associate professor who is a physician, a behavior analyst, a nurse, an executive director, a vice-president, board members of different advocacy organizations, and 15 individuals stated their support of the new commissioner's rules and urged the agency to adopt these rules and implement them as soon as possible.

Agency Response. The agency agrees. In response to public comment, the agency has revised subsection (e) at adoption to clarify that the 11 items in subsection (e) are to be addressed on an individual basis when needed and that strategies discussed in the 11 items are provided as examples and are not requirements unless the ARD committee determines they are needed by the student.

Comment. Three directors, a director and 10 individuals, two attorneys, one educational diagnostician, and eight superintendents expressed concern that, as a result of the proposed rule, a particular category of students have a greater entitlement to specific strategies and that many of the strategies are already required to be in a child's IEP. The commenters stated that this subsection goes beyond what is explicitly required in the federal regulations and the statement "based on peer-reviewed and/or research-based educational programming practices" is unnecessary since it is covered in federal statute. The commenters stated that proposed language in subsection (e)(1) is unclear and makes no sense, subsection (e)(2) through (e)(5) is unnecessary, subsection (e)(6) is unnecessarily burdensome, subsection (e)(7) through (e)(10) is unnecessary, and subsection (e)(11) is inconsistent with existing case law. The commenters stated that litigation regarding the proposed rules will have a fiscal impact. The commenters recommended keeping the existing rule with no changes.

Agency Response. The agency disagrees. However, in response to public comment, the agency has revised subsection (e) to clarify that: (1) peer-reviewed, research-based educational programming practices are to be used to the extent practicable; (2) the 11 items in subsection (e) are to be addressed on an individual basis when needed; and (3) the strategies discussed in the 11 items are provided as examples and are not requirements unless the ARD committee determines they are needed by the student. The agency believes these revisions should mitigate some of the commenters' concerns.

Comment. A chief of developmental pediatrics, a regional coordinator, and a parent quoted proposed rule and stated the need for clarification.

Agency Response. The agency agrees. In response to public comment, the agency has revised subsection (e) to provide clarification.

Comment. A parent quoted the proposed rule and stated that this subsection should include all disabilities.

Agency Response. The agency disagrees. This specific subsection is in part the product of a committee required by the TEC, §29.0051, to study the current rule pertaining to students with autism and their needs.

Comment. One individual and one parent support the proposed rules regarding autism and requested that reading comprehension be included.

Agency Response. The agency disagrees in part. In response to public comment, the agency has revised subsection (e) to provide clarification; however, it is unnecessary to include consideration of specific academic areas such as reading comprehension in this subsection.

Comment. Eleven special education directors, an assistant special education director, six educational diagnosticians, an education specialist, a parent, a speech pathologist, a teacher, an attorney, and three individuals stated that the existing rule is sufficient, that there is no need to expand the current wording, and that this rule needs to align with federal law.

Agency Response. The agency disagrees. This specific subsection is in part the product of a committee required by the TEC, §29.0051, to study the current rule pertaining to students with autism and their needs. However, in response to public comment, the agency has revised subsection (e) to clarify that the 11 items in subsection (e) are to be addressed on an individual

basis when needed. Additional revisions clarify that strategies discussed in the 11 items are provided as examples and not requirements.

Comment. Ten special education directors, an educational diagnostician, instructional coordinator, and a parent recommended deleting this subsection entirely because it exceeds federal requirements and gives entitlement to one disability.

Agency Response. The agency disagrees. This specific subsection is in part the product of a committee required by the TEC, §29.0051, to study the current rule pertaining to students with autism and their needs. However, in response to public comment, the agency has revised subsection (e) to clarify that the 11 items in subsection (e) are to be addressed on an individual basis when needed. Additional revisions clarify that strategies discussed in the 11 items are provided as examples and not requirements.

Comment. A special education director expressed concern that proposed rules give students with ASD a greater entitlement relative to students with other disabilities. The commenter stated that this section of proposed rule increases demands on ARD committees and duplicates IEP requirements. The commenter stated that the proposed rule incorporates 11 additional rules that are not required by federal law and burdens schools with unnecessary paperwork. The commenter questioned methodology in the proposed rule and concluded that the proposed rule is unnecessary.

Agency Response. The agency disagrees. This specific subsection is in part the product of a committee required by the TEC, §29.0051, to study the current rule pertaining to students with autism and their needs. However, in response to public comment, the agency has revised subsection (e) to clarify that: (1) peer-reviewed, research-based educational programming practices are to be used to the extent practicable; (2) the 11 items in subsection (e) are to be addressed on an individual basis when needed; and (3) the strategies discussed in the 11 items are provided as examples and are not requirements unless the ARD committee determines they are needed by the student. The agency believes these revisions should mitigate some of the commenters' concerns.

Comment. Three attorneys, eight special education directors, an executive director, and an individual stated that the proposed rule expands the Autism Supplement and violates federal regulations.

Agency Response. The agency disagrees. This specific subsection is in part the product of a committee required by the TEC, §29.0051, to study the current rule pertaining to students with autism and their needs. However, in response to public comment, the agency has revised subsection (e) to clarify that: (1) peer-reviewed, research-based educational programming practices are to be used to the extent practicable; (2) the 11 items in subsection (e) are to be addressed on an individual basis when needed; and (3) the strategies discussed in the 11 items are provided as examples and are not requirements unless the ARD committee determines they are needed by the student. This subsection supplements, but is not in conflict with federal law.

Comment. A special education director and a parent requested that autism be aligned with the federal wording and that rule be consistent with federal law.

Agency Response. The agency disagrees. This subsection supplements, but is not in conflict with federal law.

Comment. A teacher, two special education directors, three educational diagnosticians, a school psychologist, an ARD facilitator, an instructional specialist, and an individual stated that the proposed new language is excessive and too encompassing and requested that the agency not adopt this rule.

Agency Response. The agency disagrees. However, in response to public comment, the agency has revised subsection (e) to clarify that: (1) peer-reviewed, research-based educational programming practices are to be used to the extent practicable; (2) the 11 items in subsection (e) are to be addressed on an individual basis when needed; and (3) the strategies discussed in the 11 items are provided as examples and are not requirements unless the ARD committee determines they are needed by the student.

Comment. An individual supported the proposed rule changes regarding ASD/IEPs.

Agency Response. The agency agrees in part and disagrees in part. However, in response to public comment, the agency has revised subsection (e) to clarify that: (1) peer-reviewed, research-based educational programming practices are to be used to the extent practicable; (2) the 11 items in subsection (e) are to be addressed on an individual basis when needed; and (3) the strategies discussed in the 11 items are provided as examples and are not requirements unless the ARD committee determines they are needed by the student.

Comment. Three special education directors, two school psychologists, an attorney, a regional coordinator, three parents, and an individual objected to the language "based on peer-reviewed and/or research-based educational programming practices".

Agency Response. The agency agrees. In response to public comment, the agency has revised subsection (e) to clarify that peer-reviewed, research-based educational programming practices are to be used to the extent practicable.

Comment. A parent recommended deleting "and/or" in the phrase "peer-reviewed and/or research-based practices" and replacing it with a comma.

Agency Response. The agency agrees. In response to public comment, the agency has made the recommended change to subsection (e).

§89.1055(e)(1)

Comment. Three special education directors stated that this subsection is unclear and will result in more litigation.

Agency Response. The agency disagrees. This specific subsection is in part the product of a committee required by the TEC, §29.0051, to study the current rule pertaining to students with autism and their needs. However, in response to public comment, the agency has revised subsection (e) to clarify that: (1) peer-reviewed, research-based educational programming practices are to be used to the extent practicable; (2) the 11 items in subsection (e) are to be addressed on an individual basis when needed; and (3) the strategies discussed in the 11 items are provided as examples and are not requirements unless the ARD committee determines they are needed by the student. The agency believes these revisions should mitigate some of the commenters' concerns. Following rule adoption, the agency will provide guidance pertaining to this subsection of rule.

Comment. A school psychologist, an educational specialist, a special education director, and an assistant director stated that

this subsection is unnecessary, has already been addressed, and should be deleted. A parent stated that entitlement was being given to one disability.

Agency Response. The agency disagrees. This specific subsection is in part the product of a committee required by the TEC, §29.0051, to study the current rule pertaining to students with autism and their needs. However, in response to public comment, the agency has revised subsection (e) to clarify that: (1) peer-reviewed, research-based educational programming practices are to be used to the extent practicable; (2) the 11 items in subsection (e) are to be addressed on an individual basis when needed; and (3) the strategies discussed in the 11 items are provided as examples and are not requirements unless the ARD committee determines they are needed by the student. Following rule adoption, the agency will provide guidance pertaining to this subsection of rule.

Comment. A parent asked for clarification of the type of assessment required by the proposed new language and requested that "high probability of progress" be added to this subsection.

Agency Response. The agency disagrees. It is not necessary to prescribe the type of assessment or to add "high probability of progress" to this item. However, in response to public comment, the agency has revised subsection (e) to clarify that: (1) peer-reviewed, research-based educational programming practices are to be used to the extent practicable; (2) the 11 items in subsection (e) are to be addressed on an individual basis when needed; and (3) the strategies discussed in the 11 items are provided as examples and are not requirements unless the ARD committee determines they are needed by the student. Following rule adoption, the agency will provide guidance pertaining to this subsection of rule.

Comment. An educational diagnostician, a special education coordinator, a school psychologist, a special education director, and two ARD facilitators stated that this subsection should be in commentary, not rule.

Agency Response. The agency disagrees. This specific subsection is in part the product of a committee required by the TEC, §29.0051, to study the current rule pertaining to students with autism and their needs. However, in response to public comment, the agency has revised subsection (e) to clarify that: (1) peer-reviewed, research-based educational programming practices are to be used to the extent practicable; (2) the 11 items in subsection (e) are to be addressed on an individual basis when needed; and (3) the strategies discussed in the 11 items are provided as examples and are not requirements unless the ARD committee determines they are needed by the student. Following rule adoption, the agency will provide guidance pertaining to this subsection of rule.

Comment. A parent stated that extended educational programming is vital for students with autism.

Agency Response. The agency agrees. In response to public comment, the agency has revised subsection (e) to clarify that the 11 items in subsection (e) are to be addressed on an individual basis and are not requirements unless the ARD committee determines they are needed by the student.

§89.1055(e)(2)

Comment. A school psychologist, an assistant director, an educational specialist, a special education supervisor, and four special education directors stated that this subsection is unclear, unnecessary, and should be deleted.

Agency Response. The agency disagrees. This specific subsection is in part the product of a committee required by the TEC, §29.0051, to study the current rule pertaining to students with autism and their needs. However, in response to public comments, the agency has revised subsection (e) to clarify that: (1) peer-reviewed, research-based educational programming practices are to be used to the extent practicable; (2) the 11 items in subsection (e) are to be addressed on an individual basis when needed; and (3) the strategies discussed in the 11 items are provided as examples and are not requirements unless the ARD committee determines they are needed by the student. Following rule adoption, the agency will provide guidance pertaining to this subsection of rule.

Comment. A parent stated that this subsection regarding daily schedules is vital for students with autism.

Agency Response. The agency agrees. In response to public comment, the agency has revised subsection (e) to clarify that the 11 items in subsection (e) are to be addressed on an individual basis and are not requirements unless the ARD committee determines they are needed by the student.

§89.1055(e)(3)

Comment. Three special education directors, two school psychologists, an assistant director, a special programs coordinator, and a special education coordinator commented that this section is reportedly unnecessary, vague and unclear, all-encompassing, and will result in more litigation.

Agency Response. The agency disagrees. This specific subsection is in part the product of a committee required by the TEC, §29.0051, to study the current rule pertaining to students with autism and their needs. However, in response to public comment, the agency has revised subsection (e) at adoption to clarify that: (1) peer-reviewed, research-based educational programming practices are to be used to the extent practicable; (2) the 11 items in subsection (e) are to be addressed on an individual basis when needed; and (3) the strategies discussed in the 11 items are provided as examples and are not requirements unless the ARD committee determines they are needed by the student. The agency believes these revisions should mitigate some of the commenters' concerns. Following rule adoption, the agency will provide guidance pertaining to this subsection of rule.

Comment. An education specialist, a special education director, and two parents stated that "viable alternatives" should be deleted because it is redundant and is being used as an escape clause by school districts not to provide services.

Agency Response. The agency disagrees. The "viable alternatives" language is necessary to provide districts with flexibility to address needs on an individualized basis.

Comment. A minister requested that vocational skills be available to all students to this section.

Agency Response. The agency disagrees. Vocational skills, when needed, would be considered under subsection (e)(5).

Comment. A special education director stated that this subsection is already required and that there is no need for expansion.

Agency Response. The agency disagrees. This specific subsection is in part the product of a committee required by the TEC, §29.0051, to study the current rule pertaining to students with autism and their needs. However, in response to public comment, the agency has revised subsection (e) to clarify that: (1) peer-reviewed, research-based educational programming prac-

tices are to be used to the extent practicable; (2) the 11 items in subsection (e) are to be addressed on an individual basis when needed; and (3) the strategies discussed in the 11 items are provided as examples and are not requirements unless the ARD committee determines they are needed by the student. Following rule adoption, the agency will provide guidance pertaining to this subsection of rule.

Comment. A parent stated that in-home trainers need to have knowledge of the instruction for and experience with students with ASD. Another parent stated that this was a vital service for students with ASD.

Agency Response. The agency agrees. Existing federal and state law requires personnel to be certified and qualified to work with students with disabilities including autism. In response to public comment, the agency has revised subsection (e) to clarify that the 11 items in subsection (e) are to be addressed on an individual basis and are not requirements unless the ARD committee determines they are needed by the student.

Comment. A speech-language pathologist, a teacher, and two ARD facilitators inquired whether community-based instruction is for all ages of students with ASD.

Agency Response. The agency disagrees. The ARD committee is responsible for determining appropriate services for an individual child. Following rule adoption, the agency plans to provide additional clarification and guidance regarding this issue.

Comment. A parent requested that the following language be added to this subsection: "acquisition and generalization of skills, to include language, self-help, social, behavioral, academic, reading, math, etc., to the home setting."

Agency Response. The agency disagrees. Subsection (e)(3) sufficiently addresses in-home and community-based training. It is unnecessary to expand the examples because the items listed by the commenter are addressed in the other items contained in subsection (e) and in other components of an IEP.

§89.1055(e)(4)

Comment. Two school psychologists, six special education directors, an assistant director, a special education supervisor, and an education specialist stated that this subsection is already required, is unnecessary, and should be deleted. An individual stated that this subsection makes a school district responsible for implementing the behavior intervention plan of a student with autism in school, the home, and community, which is not possible, and should, therefore, be deleted.

Agency Response. The agency disagrees. This specific subsection is in part the product of a committee required by the TEC, §29.0051, to study the current rule pertaining to students with autism and their needs. However, in response to public comment, the agency has revised subsection (e) to clarify that: (1) peer-reviewed, research-based educational programming practices are to be used to the extent practicable; (2) the 11 items in subsection (e) are to be addressed on an individual basis when needed; and (3) the strategies discussed in the 11 items are provided as examples and are not requirements unless the ARD committee determines they are needed by the student. Following rule adoption, the agency will provide guidance pertaining to this subsection of rule.

Comment. Two special education directors requested that "such as" and subparagraphs (A) and (B) which follow be deleted because it gives the appearance of specifying methodology.

Agency Response. The agency agrees in part. In response to public comment, the agency has revised subsection (e) to clarify that the strategies discussed in this item are provided as examples and are not requirements unless the ARD committee determines they are needed by the student. Following rule adoption, the agency will provide guidance pertaining to this subsection of rule.

§89.1055(e)(4)(A)

Comment. A parent recommended that data be taken at frequent, scheduled times; communicated to ARD committee team members, including the parents; and used in the decision-making process.

Agency Response. The agency disagrees. This additional language is not necessary because these issues are addressed in federal regulations concerning the content and implementation of the IEP.

§89.1055(e)(5)

Comment. Seven special education directors, an assistant director, an educational specialist, and a parent stated that this subsection is unnecessary and duplicative and needs to be deleted.

Agency Response. The agency disagrees. This specific subsection is in part the product of a committee required by the TEC, §29.0051, to study the current rule pertaining to students with autism and their needs. However, in response to public comment, the agency has revised subsection (e) to clarify that: (1) peer-reviewed, research-based educational programming practices are to be used to the extent practicable; (2) the 11 items in subsection (e) are to be addressed on an individual basis when needed; and (3) the strategies discussed in the 11 items are provided as examples and are not requirements unless the ARD committee determines they are needed by the student.

Comment. Two special education directors, a school psychologist, and two educational diagnosticians requested definition and guidance regarding the following: futures planning, minimum age, and "beginning at any age."

Agency Response. The agency disagrees. The rule is sufficiently clear regarding futures planning, minimum age, and "beginning at any age." Following rule adoption, the agency plans to provide additional clarification and guidance regarding these issues.

§89.1055(e)(6)

Comment. Seven special education directors, two school psychologists, four educational diagnosticians, an instructional specialist, an ARD facilitator, an educational specialist, an assistant director, and an individual commented that this subsection is vague, unnecessary, confusing with federal law, and too encompassing and that the entire section needs to be deleted.

Agency Response. The agency disagrees. This specific subsection is in part the product of a committee required by the TEC, §29.0051, to study the current rule pertaining to students with autism and their needs. However, in response to public comment, the agency has revised subsection (e) to clarify that: (1) peer-reviewed, research-based educational programming practices are to be used to the extent practicable; (2) the 11 items in subsection (e) are to be addressed on an individual basis when needed; and (3) the strategies discussed in the 11 items are provided as examples and are not requirements unless the ARD committee determines they are needed by the student. Follow-

ing rule adoption, the agency also will provide guidance pertaining to this subsection of rule.

§89.1055(e)(6)(B)

Comment. Three special education directors, an educational diagnostician, a parent, and two individuals stated that more definition needs to be in rule and that verbiage regarding parent initiative and the child's presence during training should be included.

Agency Response. The agency disagrees. This specific subsection is in part the product of a committee required by the TEC, §29.0051, to study the current rule pertaining to students with autism and their needs. However, in response to public comment, the agency has revised subsection (e) to clarify that: (1) the 11 items in subsection (e) are to be addressed on an individual basis when needed; and (2) the strategies discussed in the 11 items are provided as examples and are not requirements unless the ARD committee determines they are needed by the student. Following rule adoption, the agency will provide guidance pertaining to this subsection of rule.

§89.1055(e)(6)(C)

Comment. A special education director and a nurse recommended keeping subparagraph (C) of this paragraph.

Agency Response. The agency agrees in part. In response to public comment, the agency has revised this item to clarify that the strategies discussed in this item are provided as examples and are not requirements unless the ARD committee determines they are needed by the student.

§89.1055(e)(7)

Comment. Five special education directors, a special education supervisor, and a school psychologist stated that this subsection is redundant, burdensome, and unnecessary as written.

Agency Response. The agency disagrees. This specific subsection is in part the product of a committee required by the TEC, §29.0051, to study the current rule pertaining to students with autism and their needs. However, in response to public comment, the agency has revised subsection (e) to clarify that: (1) peer-reviewed, research-based educational programming practices are to be used to the extent practicable; (2) the 11 items in subsection (e) are to be addressed on an individual basis when needed; and (3) the strategies discussed in the 11 items are provided as examples and are not requirements unless the ARD committee determines they are needed by the student. Following rule adoption, the agency will provide guidance pertaining to this subsection of rule.

Comment. One school psychologist and two special education directors stated that proposed rule raises questions regarding Family Educational Rights and Privacy Act (FERPA) and student-to-staff ratios are a decision of the administrator and the teacher.

Agency Response. The agency disagrees. This item does not raise FERPA issues. Student-to-staff ratios are a consideration/decision of the ARD committee as is specified in this subsection.

Comment. Two parents, a special education director, and an anonymous individual stated that "staff" should be replaced by "Teacher;" ratios be related to all IEP goals, not just social/behavioral; and more definition be included in rule.

Agency Response. The agency disagrees. Consideration of student-to-staff ratios should be limited to teachers. The emphasis in this item on social/behavioral progress is consistent with 34 CFR §300.324(a)(2)(i).

§89.1055(e)(7)(C)

Comment. A nurse stated that student-to-staff ratios are important for students with ASD to achieve results.

Agency Response. The agency agrees in part. In response to public comment, the agency has revised subsection (e) to clarify that this item is to be addressed on an individual basis and is not a requirement unless the ARD committee determines they are needed by the student.

§89.1055(e)(8)

Comment. Seven special education directors, a special education supervisor, and a school psychologist stated that this subsection is unnecessary, duplicative, and goes beyond what is required in IDEA.

Agency Response. The agency disagrees. This specific subsection is in part the product of a committee required by the TEC, §29.0051, to study the current rule pertaining to students with autism and their needs. However, in response to public comment, the agency has revised subsection (e) to clarify that: (1) peer-reviewed, research-based educational programming practices are to be used to the extent practicable; (2) the 11 items in subsection (e) are to be addressed on an individual basis when needed; and (3) the strategies discussed in the 11 items are provided as examples and are not requirements unless the ARD committee determines they are needed by the student. Following rule adoption, the agency will provide guidance pertaining to this subsection of rule.

Comment. Two special education directors and an executive director requested that "such as" and the examples of strategies listed be deleted because it gives the appearance of specifying methodology.

Agency Response. The agency agrees in part. In response to public comment, the agency has revised subsection (e) at adoption to clarify that the strategies discussed in this item are provided as examples and are not requirements unless the ARD committee determines they are needed by the student. Following rule adoption, the agency will provide guidance pertaining to this subsection of rule.

Comment. A parent and a nurse commented that it is a benefit to society when students with ASD communicate.

Agency Response. The agency agrees.

§89.1055(e)(9)

Comment. Seven special education directors, a special education supervisor, an educational specialist, and a school psychologist stated that this subsection is unnecessary, duplicative, and may result in more litigation.

Agency Response. The agency disagrees. This specific subsection is in part the product of a committee required by the TEC, §29.0051, to study the current rule pertaining to students with autism and their needs. However, in response to public comment, the agency has revised subsection (e) to clarify that: (1) peer-reviewed, research-based educational programming practices are to be used to the extent practicable; (2) the 11 items in subsection (e) are to be addressed on an individual basis when needed; and (3) the strategies discussed in the 11 items

are provided as examples and are not requirements unless the ARD committee determines they are needed by the student. The agency believes these revisions should mitigate some of the commenters' concerns. Following rule adoption, the agency will provide guidance pertaining to this subsection of rule.

Comment. Three special education directors and an executive director requested that "such as" and the examples of strategies listed be deleted because it gives the appearance of specifying methodology.

Agency Response. The agency agrees in part. In response to public comment, the agency has revised subsection (e) to clarify that the strategies discussed in this item are provided as examples and are not requirements unless the ARD committee determines they are needed by the student. Following rule adoption, the agency will provide guidance pertaining to this subsection of rule.

Comment. Two parents and an individual commented concerning peer facilitators and social skills, stating that children cannot be forced to be peer facilitators, in-depth training for peer facilitators and social skills is necessary, and social skills assessment needs definition.

Agency Response. The agency agrees. In response to public comment, the agency has revised subsection (e) at adoption to clarify that the strategies discussed in this item are provided as examples and are not requirements unless the ARD committee determines they are needed by the student. Following rule adoption, the agency will provide guidance pertaining to this subsection of rule.

Comment. A nurse commented that all students can benefit from a social skills curriculum.

Agency Response. The agency agrees. Social skills supports and strategies for students with autism are sufficiently addressed in this item.

§89.1055(e)(10)

Comment. Three special education directors, a special education supervisor, an assistant director, an educational specialist, and a school psychologist stated that this section of proposed rule is unnecessary, redundant, and already required in federal regulations.

Agency Response. The agency disagrees. This specific subsection is in part the product of a committee required by the TEC, §29.0051, to study the current rule pertaining to students with autism and their needs. However, in response to public comment, the agency has revised subsection (e) to clarify that: (1) peer-reviewed, research-based educational programming practices are to be used to the extent practicable; (2) the 11 items in subsection (e) are to be addressed on an individual basis when needed; and (3) the strategies discussed in the 11 items are provided as examples and are not requirements unless the ARD committee determines they are needed by the student. Following rule adoption, the agency will provide guidance pertaining to this subsection of rule.

Comment. A school psychologist requested that "such as" and the examples of strategies listed be deleted because it gives the appearance of specifying methodology.

Agency Response. The agency agrees in part. In response to public comment, the agency has revised subsection (e) to clarify that the strategies discussed in this item are provided as examples and are not requirements unless the ARD committee determines they are needed by the student. Following rule adoption, the agency will provide guidance pertaining to this subsection of rule.

Comment. Three parents and a nurse stated that it is extremely important to have trained personnel and that the students and the school system will benefit from having informed and prepared staff.

Agency Response. The agency agrees. Professional educator/staff support is sufficiently addressed in rule.

§89.1055(e)(11)

Comment. Three special education directors, a special education supervisor, and a school psychologist stated that this subsection is inconsistent with case law and will result in more litigation.

Agency Response. The agency disagrees. This specific subsection is in part the product of a committee required by the TEC, §29.0051, to study the current rule pertaining to students with autism and their needs. However, in response to public comment, the agency has revised subsection (e) to clarify that: (1) peer-reviewed, research-based educational programming practices are to be used to the extent practicable; (2) the 11 items in subsection (e) are to be addressed on an individual basis when needed; and (3) the strategies discussed in the 11 items are provided as examples and are not requirements unless the ARD committee determines they are needed by the student. The agency believes these revisions should mitigate some of the commenters' concerns. Following rule adoption, the agency will provide guidance pertaining to this subsection of rule.

Comment. Three special education directors, two educational diagnosticians, an assistant director, and an individual requested that "such as" and the examples of strategies listed be deleted because it gives the appearance of specifying methodology.

Agency Response. The agency agrees in part. In response to public comment, the agency has revised subsection (e) to clarify that the strategies discussed in this item are provided as examples and are not requirements unless the ARD committee determines they are needed by the student. Following rule adoption, the agency will provide guidance pertaining to this subsection of rule.

Comment. Three music therapists, an individual, and two parents requested that music therapy, sensory integration therapy, and strategies additional to applied behavior analysis be included in the list of this proposed rule.

Agency Response. The agency disagrees in part. In response to public comment, the agency has revised subsection (e) to clarify that the strategies discussed in this item are provided as examples and are not requirements unless the ARD committee determines they are needed by the student. The list of strategies in this item is not an exhaustive list of strategies available for consideration by the ARD committee.

Comment. One parent stated that this subsection aligns with IDEA and NCLB.

Agency Response. The agency agrees. In response to public comment, the agency has revised subsection (e) to clarify that the strategies discussed in this item are provided as examples and are not requirements unless the ARD committee determines they are needed by the student.

§89.1055(g)

Comment. A chief of developmental pediatrics quoted proposed rule.

Agency Response. The agency has no response as the comment simply quotes proposed rule.

Comment. A state senator, a transition specialist, the executive director of the Arc of Texas, and three parents recommended keeping transition at age 14.

Agency Response. The agency disagrees. The agency has determined that it is necessary to align state requirements with federal law. The age for transition planning in Texas will be 16 as established in 34 CFR §300.320(b). Subsection (g) is modified to incorporate this alignment.

Comment. Two assistant directors, 15 special education directors, six superintendents, two educational diagnosticians, two executive directors, an education specialist, a director of shared services, and a school district attorney commented that keeping the age of transition at 14 violates the state statute requiring the agency to develop rules to comply with federal law regarding transition services to students, and recommended age 16 as the age of transition.

Agency Response. The agency agrees. The agency has determined that it is necessary to align state requirements with federal law. The age for transition planning in Texas will be 16 as established in 34 CFR §300.320(b). Subsection (g) is modified at adoption to incorporate this alignment.

Comment. An individual recommended removing nine transition issues and replacing them with two critical provisions: (1) parent friendly information about the transition process, and (2) an age-appropriate transition assessment upon which the goals must be written to actually be done and considered in the development of post-school goals.

Agency Response. The agency disagrees. The nine requirements for transition planning are found in the TEC, §29.011, and therefore, cannot be removed from this subsection. The agency believes this subsection is sufficiently clear.

Comment. One special education director requested a rationale for a higher standard than is required by federal regulations.

Agency Response. The agency agrees. The agency has determined that it is necessary to align state requirements with federal law. The age for transition planning in Texas will be 16 as established in 34 CFR §300.320(b). Subsection (g) is modified to incorporate this alignment.

Comment. An individual noted that the proposed §89.1055(g) needs clarification "of which requirements come at which age and clarity that our 'age 14' rule does not negate the CFR 'age 16' rule."

Agency Response. The agency disagrees. The agency has determined that it is necessary to align state requirements with federal law. The age for transition planning in Texas will be 16 as established in 34 CFR §300.320(b). Subsection (g) is modified to incorporate this alignment.

Comment. An educational diagnostician commented that the proposed §89.1055(g) violates federal law in the change of the transition age of 16 to age 14, and stated that the federal regulations also discourage requiring ARD committees to include additional information in a child's IEP under 34 CFR §300.320(d)(1).

Agency Response. The agency agrees in part. The agency has determined that it is necessary to align state requirements with federal law. The age for transition planning in Texas will be 16 as established in 34 CFR §300.320(b). Subsection (g) is modified to incorporate this alignment.

Comment. A transition specialist supported the proposed transition rule for the age of 14 or younger and requests the inclusion of 34 CFR §300.320(b)-(c).

Agency Response. The agency disagrees. The agency has determined that it is necessary to align state requirements with federal law. The age for transition planning in Texas will be 16 as established in 34 CFR §300.320(b). Subsection (g) is modified to incorporate this alignment.

§89.1055(g)(4)

Comment. An executive director with an advocacy organization recommended that language be added to the proposed rule to require appropriate, measurable post-secondary goals in the IEP.

Agency Response. The agency disagrees. It is unnecessary to restate the federal regulations at 34 CFR §300.320(b).

§89.1055(g)(9)

Comment. One special education director expressed difficulties working with other agencies regarding post-secondary goals.

Agency Response. The agency disagrees. Federal regulations in 34 CFR §300.324(c) state, "If the participating agency, other than the public agency, fails to provide the transition services described in the IEP in accordance with §300.320(b), the public agency must reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in the IEP."

§89.1056(b)(2), Transfer of Assistive Technology Devices

Comment. An individual asked for language clarification to ensure that parents and adult students are recognized as having the same rights rather than leaving it open for interpretation.

Agency Response. The agency disagrees. It is unnecessary to restate §89.1049(a), which outlines the rights of adult students.

§89.1065, Extended School Year Services (ESY Services)

§89.1065(1)(A)

Comment. One educational diagnostician, one special education coordinator, one licensed specialist in school psychology, two ARD facilitators, and one special education director commented that §89.1065(1)(a) contradicts the autism section.

Agency Response. The agency disagrees. Section 89.1065(1) indicates that ESY services for a student must be determined on an individual basis. Section 89.1055 indicates that ESY services for students with autism shall be considered in developing the IEP.

§89.1065(2)

Comment. The executive director of the ARC of Texas and one individual recommended that regression no longer be used as a standard for determining ESY services.

Agency Response. The agency disagrees. Regression serves as a specific, quantitative and/or qualitative measurement that ARD committees use in order to determine the necessity of ESY services.

Comment. The executive director of the ARC of Texas commented that if regression remains a standard for determining

ESY services, the section should include language to indicate that services cannot be denied due to absence of data regarding regression.

Agency Response. The agency disagrees that this clarification is necessary. All ARD committee decisions regarding IEP development should be based on quantitative and/or qualitative data, which districts collect and maintain in order to determine the progression or regression of a student toward his/her annual IEP goals.

Comment. One individual commented that §89.1065(2) should include language to ensure that parents and adult students are recognized as having the same rights.

Agency Response. The agency disagrees. It is unnecessary to restate §89.1049(a), which outlines the rights of adult students.

§89.1065(3)

Comment. One parent commented that the eight-week recoupment standard for ESY service determination is too long.

Agency Response. The agency disagrees. This is a reasonable period of time for recoupment of acquired critical skills.

Comment. One regional coordinator, two parents, and one attorney recommended that emotional harm also be a consideration in determining ESY services.

Agency Response. The agency disagrees. In developing an IEP, it is the responsibility of the ARD committee to determine the impact of a student's IEP upon the student. It is unnecessary to include additional language in this case.

§89.1065(6)

Comment. One parent commented that §89.1065(6) regarding ESY services allows for a student to not receive services.

Agency Response. The agency disagrees. It is the responsibility of the student's ARD committee to review and revise the student's IEP on an individual basis in order to determine appropriate services, including ESY services.

§89.1070, Graduation Requirements

§89.1070(a)

Comment. The executive director of the Arc of Texas, the Texas Council of Administrators of Special Education, and a special education director commented that §89.1070 should be revised in light of Senate Bill (SB) 673, affecting the participation of students with disabilities in graduation ceremonies.

Agency Response. The agency disagrees. It is not within the scope of this rule-making process to make changes in relation to SB 673. Following rule adoption, the agency plans to provide additional clarification and guidance regarding this issue.

Comment. One individual commented that the agency should clarify language related to dismissal of services under IDEA versus dismissal of services under TEC/TAC upon receipt of a high school diploma.

Agency Response. The agency disagrees. The rule language is sufficiently clear.

Comment. One individual, one educational diagnostician, one special education coordinator, one licensed specialist in school psychology, two ARD facilitators, and two special education directors commented that the agency should clarify the regulatory section with regard to changes in the state assessment system.

Agency Response. The agency agrees. In response to public comment, the agency has revised subsection (b)(2) at adoption to remove the word "alternate" and to add language to address high school graduation requirements.

§89.1070(b)

Comment. One individual commented that the agency should clarify "same" curriculum and state assessment issues (which assessments related to which options). The same commenter stated that the agency should clarify "graduation types" outlined in §89.1070(b).

Agency Response. The agency agrees. In response to public comment, the agency has revised subsection (b) to add language that addresses high school graduation programs.

§89.1070(c)

Comment. One individual questioned whether §89.1070(c) should include a requirement to pass an assessment. The commenter also requested that the subsection be renumbered to provide further clarity. Clarification was also requested regarding "graduation types." Finally, the commenter requested that the term "full-time" be removed due to the fact that it does not necessarily equate to 40 hours of work per week.

Agency Response. The agency disagrees. The rule language is sufficiently clear. Following rule adoption, the agency plans to provide additional clarification and guidance regarding this issue.

§89.1070(c)(1)

Comment. One special education director requested that the word "and" be added to the end of §89.1070(c)(1) for further clarity.

Agency Response. The agency disagrees. The punctuation at the end of each paragraph within subsection (c) coupled with the "and" at the end of paragraph (3) provides ample clarity.

§89.1070(c)(4)

Comment. One individual requested that the rule provide clarification between modifications and accommodations.

Agency Response. The agency disagrees. The rule language is sufficiently clear. Following rule adoption, the agency plans to provide additional clarification and guidance regarding this issue.

§89.1070(d)

Comment. One educational diagnostician, one special education coordinator, one licensed specialist in school psychology, two ARD facilitators, and one special education director commented that the agency should clarify whether §89.1070(d) is an FIE or a REED.

Agency Response. The agency disagrees. The rule language is sufficiently clear. Following rule adoption, the agency plans to provide additional clarification and guidance regarding this issue.

Comment. One individual commented that §89.1070(d) requires clarification regarding whether the student graduating under this subsection would be required to have received credits/curriculum and whether the student would have been required to pass a state assessment.

Agency Response. The agency disagrees. Federal regulations in 34 CFR §300.101(a) clearly state that FAPE must be available to all children through age 21. Following rule adoption, the agency plans to provide additional clarification and guidance regarding this issue.

§89.1070(e)

Comment. One attorney commented that, with regard to §89.1070(e), 34 CFR §300.305 does not require a summary of performance for students who graduate having fulfilled their IEP requirements. This commenter suggested that subsection (e) be rewritten to read, "all students graduating under §89.1070(b) or (d) shall be provided with a summary of academic achievement." The commenter further suggested that the final sentence of the proposed rule read, "An evaluation as required by 34 CFR §300.205(e)(1) shall be conducted for a student graduating under subsection (c) of this section."

Agency Response. The agency disagrees. The summary of educational performance required by 34 CFR §300.305(e)(3) and subsection (e) of this section is important to all students graduating from high school or leaving school due to age eligibility requirements as they plan for post-secondary activities. Following rule adoption, the agency plans to provide additional clarification and guidance regarding this issue.

Comment. One special education director commented that the last sentence in §89.1070(e) should be removed because 34 CFR §300.305(e)(2) is "more appropriate" due to the fact that ARD committees are determining a change in eligibility status, not in disability status.

Agency Response. The agency disagrees. An evaluation is required for students graduating under subsection (c) of this section in order to determine that the students have met the requirements of their IEP and are no longer in need of special education services. A summary of educational performance required by 34 CFR §300.305(e)(3) and subsection (e) of this section is important to all students graduating from high school or leaving school due to age eligibility requirements as they plan for post-secondary activities. Following rule adoption, the agency plans to provide additional clarification and guidance regarding this issue.

Comment. The executive director of the Texas Council of Special Education Administrators of Special Education, seven special education directors, nine superintendents, and three educational diagnosticians commented that §89.1070(e) exceeds federal law by requiring the recommendation and views from adult service agencies and the student's parents be included in a student's summary of performance. The commenters indicated that this requirement would be difficult for a district to meet and requested guidance on how to meet said obligations.

Agency Response. The agency disagrees. The rule requires the views from the parents and adult services agencies "as appropriate." The ARD committee will need to determine when such input is meaningful and appropriate. If the input will facilitate planning for post-secondary activities, the ARD committee will likely rule that the input is appropriate. Following rule adoption, the agency plans to provide additional clarification and guidance regarding this issue.

§89.1070(f)

Comment. One individual commented that §89.1070(f) should be revised in light of SB 673 to address students who have completed four years of high school but who have not completed their IEP requirements.

Agency Response. The agency disagrees. It is not within the scope of this rulemaking process to make changes in relation to SB 673.

Comment. One individual commented that §89.1070(f) should include language to clarify the rights of adult students and parents.

Agency Response. The agency disagrees. It is unnecessary to restate §89.1049(a), which outlines the rights of adult students.

§89.1075, General Program Requirements and Local District Procedures

§89.1075(a)

Comment. A regional coordinator for the PATH Project and two parents recommended adding the words "information, letters, notes from the parent given to the school concerning the child's education" to the subsection.

Agency Response. The agency disagrees. The language "must include, but need not be limited to," is inclusive and allows for many types of documentation to be included in the eligibility folder.

Comment. A parent expressed concern that public schools fail to provide the same level of services and accommodations found in the private school system or the home schooling environment.

Agency Response. The agency disagrees. The programs and services available in the public schools are in alignment with the federal regulations.

§89.1076(12), Interventions and Sanctions

Comment. One licensed specialist in school psychology and one educational diagnostician commented that there should be a system of checks and balances as opposed to free reign as defined in §89.1076(12).

Agency Response. The agency disagrees. The language in §89.1076 acknowledges that the list of interventions and sanctions included in paragraphs (1)-(11) is not exhaustive and that the commissioner may use other interventions and sanctions authorized under federal or state statutes and/or regulations. Previously adopted rule language also stated that the commissioner has available sanctions and interventions that included, but were not limited to, those listed in §89.1076(1)-(11). The new language adds clarity by specifically referencing that the commissioner has the authority to take actions granted by federal and state statutes and regulations that are not specifically listed in §89.1076.

§89.1085, Referral for the Texas School for the Blind and Visually Impaired (TSBVI) and the Texas School for the Deaf Services (TSD)

§89.1085(c)

Comment. Two superintendents, four teachers, a special education coordinator, a licensed specialist in school psychology, two ARD facilitators and a special education director expressed support of the proposed change in subsection (c)(1).

Agency Response. The agency agrees. The elimination of the requirement that schools list services the schools cannot appropriately provide these students in a local program will eliminate a potential barrier to ARD committees considering student placement at the TSD or the TSBVI.

Comment. One teacher for the visually impaired expressed opposition to the proposed change in subsection (c)(1) due to a concern that students will have less access to a least restrictive environment as a result of the change.

Agency Response. The agency disagrees. Federal regulations in CFR §§300.114-300.120 require ARD committees to consider least restrictive environment in determining any educational placement for an eligible student.

Comment. Two superintendents recommended eliminating subsection (c)(1) and (c)(2) as no longer necessary due to the proposed change.

Agency Response. The agency disagrees. Requiring ARD committees to list potential student special education services ensures collaboration between school representatives and representatives from the TSD or TSBVI. Schools should also continue to have the option of making an on-site visit to the TSD or TSBVI on an individual case-by-case basis.

Comment. Two assistant special education directors and two special education directors recommended deleting subsection (c)(3) as the requirement is addressed annually by the ARD committee.

Agency Response. The agency disagrees. Current rule requiring ARD committees to determine criteria and estimate timelines for a student's return to the resident school district ensures collaboration between school representatives and representatives from the TSD or TSBVI at the beginning of a student's placement. This requirement establishes a foundation for the successful transition of a student to the school of residence.

Comment. Two special education directors recommended deleting subsection (c)(2) as unnecessary.

Agency Response. The agency disagrees. Schools should continue to have the option of making an on-site visit to the TSD or TSBVI on an individual case-by-case basis.

§89.1096, Provision of Services for Students Placed by their Parents in Private Schools or Facilities

Comment. Sixteen directors of special education, eight superintendents, one educational specialist, two educational diagnosticians, and the executive director of the Texas Council of Special Education Administrators of Special Education commented that the dual-enrollment provision in §89.1096 exceeds the federal law and should be eliminated.

Agency Response. The agency disagrees. The dual-enrollment provision addresses the state's critical need of serving students with disabilities ages 3-4 in the least restrictive environment.

Comment. A special education director questioned the removal of the dual-enrollment provision.

Agency Response. The agency disagrees. The dual-enrollment provision has not been removed. The provision has been amended by language in subsection (c) to reflect IDEA 2004 statute and federal regulations.

§89.1096(a)

Comment. An educational diagnostician supported the proposed rule language in §89.1096(a)(1)-(2).

Agency Response. The agency agrees. In response to public comment, the agency has revised subsection (a) at adoption to ensure consistency with federal regulations concerning students with disabilities enrolled by the parents in private schools.

§89.1096(a)(1)

Comment. Eighteen directors of special education, nine superintendents, one assistant director, one school district attorney, two educational diagnosticians, and the executive director of the Texas Council of Special Education Administrators of Special Education commented that the inclusion of pre-school and day care facilities exceeds and conflicts with federal law.

Agency Response. The agency disagrees that the inclusion of pre-school and day care exceeds and conflicts with federal law. However, in response to public comment and to avoid confusion, the agency has revised subsection (a)(1) to remove the specific reference to day care in the rule. Following rule adoption, the agency will provide further guidance related to day care.

Comment. A special education director supported the proposed rule language.

Agency Response. The agency agrees. In response to public comment, the agency has revised subsection (a) at adoption to ensure consistency with federal regulations concerning students with disabilities enrolled by the parents in private schools.

Comment. A special education director commented that the inclusion of day cares and pre-schools will present a hardship for local education agencies to provide services to significantly more students.

Agency Response. The agency disagrees. In response to public comment and to avoid confusion, the agency has removed the specific reference to day care in the rule. Following rule adoption, the agency will provide further guidance related to day care. Only eligible students attending a preschool that meets the narrow definition of private school in this subsection, including the nonprofit requirement, will have the option to select a services plan under subsection (d) of this section.

Comment. A special education director commented on the absence of home schools in the definition of private school.

Agency Response. The agency disagrees. Home schools are addressed in subsection (a)(2).

Comment. A lead diagnostician, director of special education, ARD facilitator, instructional specialist, and diagnostician commented that day care should be removed from the list since day cares cannot be considered a school.

Agency Response. The agency disagrees. However, in response to public comment and to avoid confusion, the agency has removed the specific reference to day care in the rule. Following rule adoption, the agency will provide further guidance related to day care.

§89.1096(a)(1)(B)

Comment. A special education director requested additional clarification on interpreting §89.1096(a)(1)(B).

Agency Response. Following rule adoption, the agency will provide additional guidance on parentally-placed private school students with disabilities, including the implementation of §89.1096.

Comment. A special education director requested additional clarification on the term "elementary education" related to students ages 3-5.

Agency Response. Following rule adoption, the agency will provide additional guidance on parentally-placed private school students with disabilities, including the implementation of §89.1096.

§89.1096(a)(2)

Comment. Eighteen directors of special education, nine superintendents, two educational diagnosticians, one assistant director,

and the executive director of the Texas Council of Special Education Administrators of Special Education commented that the exceptions made for home schools are not clear or supported in case law.

Agency Response. The agency disagrees. The United States Office of Special Education Programs (OSEP) Analysis of Comments and Changes concerning 34 CFR §300.133 published in 71 Federal Register 46594, indicates that the question of whether a home school is considered a private school is a matter left to state law. The agency has also confirmed with OSEP that a home school need not have nonprofit status in order to qualify as a private school.

§89.1096(b)

Comment. An education service center special education administrator commented that §89.1096(b) implies a requirement for an ARD committee meeting for every private school student upon referral to the local school district. The commenter stated that OSEP guidance states that the local education agency need not make FAPE available to the child.

Agency Response. The agency disagrees. The intent of §89.1096(b) is for local school districts to convene an ARD committee meeting to determine whether FAPE can be offered upon referral of the parentally-placed private school students with disabilities for dual enrollment. Following rule adoption, the agency plans to provide additional clarification and guidance regarding this issue.

§89.1096(c)

Comment. A special education director supported the proposed rule language.

Agency Response. The agency agrees.

Comment. A parent requested clarification on dual enrollment.

Agency Response. The agency agrees. In response to public comment, the agency added clarification regarding a school district's responsibilities in providing special education and related services.

Comment. A lead diagnostician, director of special education, ARD facilitator, instructional specialist, and diagnostician commented that services need to be provided by one district, either where the family resides or where the private school is located.

Agency Response. The agency disagrees. The rule addresses two distinct instances in which a school district's responsibilities differ. In the instance where parents of an eligible student ages 3 or 4 "dual enroll" their child in both the public school and the private school, "The public school district where a student resides is responsible for providing special education and related services to a student whose parents choose dual enrollment" [§89.1096(c)]. In the instance where parents of an eligible student ages 3 or 4 decline dual enrollment for their student and request a services plan, "The public school district where the private school is located is responsible for the development of a services plan, if the student is designated to receive services under 34 CFR, §300.132" [§89.1096(d)].

§89.1096(d)

Comment. Sixteen directors of special education, nine superintendents, two educational diagnosticians, one educational specialist, and the executive director of the Texas Council of Special Education Administrators of Special Education commented that §89.1096(d) allows the students of parents who decline dual enrollment to be counted in proportionate share calculations, which conflicts with OSEP and previous TEA guidance.

Agency Response. The agency disagrees. This subsection is in alignment with changes in federal regulations. Following rule adoption, the agency will address this issue in guidance on the proportionate share calculation concerning parentally-placed private school students with disabilities.

Comment. The executive director of the Arc of Texas proposed amending rule language to read, "Parents of an eligible student ages 3 or 4 who decline dual enrollment for their student must be told of their right to request a services plan...."

Agency Response. The agency disagrees. The LEA's responsibility concerning the development of a services plan is clear in 34 CFR §300.132(a) and 300.137 through 300.139 [OSEP Guidance, November 2006]. Adding a verbal notification requirement exceeds federal requirements and would be problematic for the state to monitor. The parent will receive information about special education services through the LEA's Child Find responsibility reflected in 34 CFR §300.131.

Comment. Two special education directors supported the proposed rule language.

Agency Response. The agency agrees.

Comment. A special education director requested clarification on the responsibilities of the school in the student's attendance zone.

Agency Response. The agency agrees. The rule addresses two distinct instances in which a public school district's responsibilities differ. In the instance where parents of an eligible student ages 3 or 4 "dual enroll" their child in both the public school and the private school, "The public school district where a student resides is responsible for providing special education and related services to a student whose parents choose dual enrollment" [§89.1096(c)]. In the instance where parents of an eligible student ages 3 or 4 decline dual enrollment for their student and request a services plan, "The public school district where the private school is located is responsible for the development of a services plan, if the student is designated to receive services under 34 CFR, §300.132" [§89.1096(d)].

Comment. A special education director requested adding language from 34 CFR §300.132 to the proposed rule.

Agency Response. The agency disagrees. The reference to 34 CFR §300.132 is sufficient and consistent with CFR references throughout the rules.

§89.1096(f)

Comment. One individual commented that §89.1096(f) should include language to recognize parents and adult students as having the same rights.

Agency Response. The agency disagrees. It is unnecessary to restate §89.1049(a), which outlines the rights of adult students.

§89.1131, Qualifications of Special Education, Related Service, and Paraprofessional Personnel

§89.1131(b)(1)

Comment. Two speech-language pathologists and an interested stakeholder requested that the phrase "speech therapy instructional services" be changed to read "speech-language pathology services" in order to indicate a broader scope or services available to students.

Agency Response. The agency disagrees. The rule language is sufficiently clear regarding speech services. Following rule adoption, the agency plans to provide additional clarification and guidance regarding this issue. It is unnecessary to revise rule in order to provide this clarification.

§89.1131(b)(3)

Comment. An educational diagnostician, a teacher, a special education coordinator, a licensed specialist in school psychology, two ARD facilitators, and a special education director asked whether teachers of students with visual impairments (VI) have to attend ARD committee meetings. The commenters implied that the proposed removal of language contradicts VI teacher standards. A teacher made a similar comment stating that VI teachers have specific training designed to meet the needs of students with visual impairments and should be required to attend ARD committee meetings.

Agency Response. The agency disagrees. Provisions addressing the attendance of these professionals at ARD committee meetings is found in §89.1050(c)(4)(A). Following rule adoption, the agency plans to provide additional clarification and guidance regarding this issue.

§89.1131(d)

Comment. A lead interpreter, two educational consultants in deaf education, a special education coordinator, a program coordinator, and another concerned stakeholder encouraged the agency to recognize the Educational Interpreter Performance Assessment (EIPA) as criteria for educational interpreter certification.

Agency Response. The agency agrees. Even though the entity that provides the EIPA does not provide certification or licensure for educational interpreters, the agency has revised subsection (d) in response to public comment. The agency has added language in subsection (d) indicating the agency recognizes as Registry of Interpreters for the Deaf (RID) certified, any interpreter who is certified by or a certified member of the RID based on performance on the EIPA. The RID certified member will be required to maintain certified member status in the RID in order to be eligible to provide interpreting services to students who are deaf or hard of hearing in Texas. Following rule adoption, the agency plans to provide additional clarification and guidance regarding this issue.

Comment. An educational consultant in deaf education encouraged recognition of the EIPA, noting that 14 states have recognized the EIPA and recommending that the proficiency score should be at least 3.0. A special education coordinator also recommended a score of 3.0 on the EIPA as an acceptable passing standard.

Agency Response. The agency disagrees. However, in response to public comment, the agency has revised subsection (d) indicating the agency recognizes as RID certified any interpreter who is certified by or a certified member of the RID based on performance on the EIPA. The agency will recognize an interpreter who is certified by or a certified member of the RID based on EIPA performance as eligible to provide interpreting services to students who are deaf or hard of hearing in Texas as long as that interpreter maintains certified member status through the RID.

Comment. Two education consultants in deaf education stated that recognition of the EIPA would facilitate the hiring of out-of-state interpreters. One commenter also pointed out that the EIPA allows the interpreter to be assessed in American Sign Language (ASL) or Manually Coded English (MCE). The other commenter further proposed that since the EIPA is only a performance standard, reassessment every three to five years to ensure maintenance of proficiency levels should occur.

Agency Response. The agency agrees in part. In response to public comment, the agency has revised subsection (d) indicating the agency recognizes as RID certified, any interpreter who is certified by or a certified member of the RID based on performance on the EIPA. The agency anticipates that recognition of RID certified member status will facilitate hiring interpreters from other states. The agency agrees that the EIPA does not provide certification and that continuing education is an important part of remaining certified. The RID has a rigorous continuing education requirement and so recognition of a certified RID member based on EIPA skills will ensure that continuing education remains a priority. The agency recognizes the RID and the Texas Board for Evaluation of Interpreters (BEI) as the authorized entities to provide interpreter certification.

Comment. A special education director recommended adding the phrase "or other national educational interpreter certification" to the rule stating that finding qualified interpreters is difficult and this rule will make it even more difficult. A program coordinator encouraged recognition of the educational sign skill evaluation.

Agency Response. The agency disagrees. An interpreter must be a certified member of the RID or have a certificate issued by the BEI to provide interpreting services to students who are deaf or hard of hearing in Texas. The RID also recognizes the National Association of the Deaf (NAD) assessment. In response to public comment, the agency has revised subsection (d) indicating the agency recognizes as RID certified, any interpreter who is certified by or a certified member of the RID based on performance on the EIPA.

Comment. A special education coordinator, an interested stakeholder, and a program coordinator expressed concern that wait time for interpreter testing is a significant problem. The program coordinator also stated that limited interpreter testing sites are causing a real crisis. The special education coordinator expressed concern that the state is in danger of losing educational interpreters who are trying to pass the test.

Agency Response. The agency agrees and is aware of the critical timelines involved with certification of educational interpreters. The agency is gathering stakeholder input to address these concerns in the future.

Comment. The president of the Texas Association of the Deaf (TAD), a regional coordinator, two parents, and a former executive director of a center for the deaf and hard of hearing who is also a parent of a deaf daughter expressed supported for this rule change. The TAD commenter also encouraged the agency not to recognize other certification entities. One of the parents also mentioned that recognizing other assessments might lower the standard and lead to use of interpreters who are not qualified.

Agency Response. The agency agrees. An interpreter must be certified by or a certified member of the RID or have a certificate issued by the BEI to provide interpreting services to students who are deaf or hard of hearing in Texas. In response to public comment, the agency has revised subsection (d) at adoption indicating the agency recognizes as RID certified, any interpreter who is certified by or a certified member of the RID based on performance on the EIPA.

Comment. A special education director expressed concern that this rule eliminates emergency permits for interpreters and encouraged continuation of these permits as previously stated in rule, allowing districts to "home grow" interpreters.

Agency Response. The agency disagrees. Federal regulation in 34 CFR §300.156(a)(2)(ii) makes it clear that certification or licensure requirements may not be waived on an emergency, temporary, or provisional basis. In response to public comment, the agency has revised subsection (d) at adoption indicating the agency recognizes as RID certified, any interpreter who is certified by or a certified member of the RID based on performance on the EIPA.

Comment. A special education coordinator expressed concern that districts will have few options in providing appropriate services to students who are deaf or hard of hearing. The commenter stated, "We can not close our doors or NOT provide interpreting services!" An interested stakeholder also mentioned that the rule is restrictive and might result in students not having access to interpreters which could force them back into segregated, self-contained classes. Another concerned stakeholder stated that a decrease in interpreters in border and rural areas might force districts to place fewer students in general education classroom settings.

Agency Response. Federal regulation in 34 CFR §300.156(a)(2)(ii) makes it clear that interpreter certification or licensure requirements may not be waived on an emergency, temporary, or provisional basis. In response to public comment, the agency has revised subsection (d) indicating the agency recognizes as RID certified, any interpreter who is certified by or a certified member of the RID based on performance on the EIPA.

Comment. A special services provider encouraged using the State Board for Educator Certification (SBEC) to certify educational interpreters and not the BEI, because the Department of Assistive and Rehabilitative Services (DARS) has a role in assisting individuals to become productive members in the community. The commenter further suggested that if SBEC was involved in the certification of educational interpreters, more out-of-state interpreters would be available to students in Texas.

Agency Response. The agency disagrees. Recognizing interpreters who are certified members of the RID or the BEI is sufficient in ensuring that educational interpreters are available to students who are deaf or hard of hearing. The agency has determined that additional certification agencies are not required. In response to public comment, the agency has revised subsection (d) indicating the agency recognizes as RID certified, any interpreter who is certified by or a certified member of the RID based on performance on the EIPA.

Comment. A certified interpreter commented that requiring interpreters to be certified is great but expressed concern regarding the lack of training opportunities, especially in the Rio Grande Valley where there are only a few certified interpreters. This commenter stated that funding for training and certification maintenance are the key issues. A BEI level one interpreter mentioned the shortage of interpreters in the Valley and across the state; encouraged the development of additional training programs; and mentioned support of the requirement for interpreters to be certified. A former executive director of a center for the deaf and hard of hearing who is also the parent of a deaf adult daughter expressed a need for additional interpreter training opportunities.

Agency Response. The agency agrees that interpreters must be certified and agrees that additional training opportunities throughout the state are important. The agency is proposing stakeholder activity to address training issues in the future.

Comment. Two concerned stakeholders expressed concern regarding BEI testing of interpreters.

Agency Response. The agency agrees. The agency is proposing stakeholder activity to address this issue in the future.

§89.1180, Pre-hearing Procedures

§89.1180(c)

Comment. Two executive directors commented that transcription is a positive addition to the rules.

Agency Response. The agency agrees that transcription of the pre-hearing conference is positive procedure to be added to the hearing process.

Comment. One individual and one educational diagnostician commented that subsection (c) should not be eliminated.

Agency Response. The agency agrees. Subsection (c) was not proposed for repeal.

Comment. Three special education directors and one assistant director commented that recording and transcribing the pre-hearing is positive.

Agency Response. The agency agrees.

Comment. One education specialist urged the agency to adopt the proposed rule.

Agency Response. The agency agrees.

§89.1180(g)

Comment. One regional coordinator, two parents, and one attorney proposed that the agency change the authority of the hearing officer to limit discovery from "shall" to "may" and permit the hearing officer to expand the scope of discovery beyond the limits of the APA.

Agency Response. The agency disagrees. The rule is consistent with rules governing discovery in other federal and state administrative hearings.

§89.1180(h)

Comment. Two executive directors and one superintendent commented that the rule should not be eliminated.

Agency Response. The agency agrees. As proposed, language related to dismissal or nonsuit after the Disclosure Deadline was to be deleted. In response to public comment, however, language is reinstated as new subsection (i).

Comment. One attorney, 15 special education directors, eight superintendents, one special education supervisor, and one special education diagnostician commented that the rule has been beneficial and that the agency should retain it as it is currently in the rules.

Agency Response. The Agency agrees. In response to public comment, language is reinstated as new subsection (i).

Comment. Two special education directors commented that the current rule keeps expenses down for districts and urged the agency not to delete the rule.

Agency Response. The agency agrees. In response to public comment, language is reinstated as new subsection (i).

Comment. One attorney and one special education director commented that the current rule prevents abuse of system and urged the agency to retain the rule.

Agency Response. The agency agrees. In response to public comment, language is restated as new subsection (i).

Comment. One special education director commented that the rule eliminated excessive expenses and legal hassles and urged the agency to reinstate the rule.

Agency Response. The agency agrees. In response to public comment, language is reinstated as new subsection (i).

Comment. One special education director commented that elimination of the rule would allow for re-filings of same issue and urged that the agency retain the rule.

Agency Response. The agency agrees. In response to public comment, language is reinstated as new subsection (i).

General Comments

Comment. A special education director, a special education coordinator, a licensed specialist in school psychology, and two ARD facilitators commented that an unidentified rule change hinders meeting timelines and is very time consuming.

Agency Response. The agency is unable to respond due to the lack of specificity in the comment.

Comment. An educational diagnostician expressed concern that the rules do not address accessibility of textbooks and supported materials referenced in federal regulations.

Agency Response. The agency disagrees. It is unnecessary to repeat federal requirements in commissioner's rules in this case.

Comment. A special education student commented on the importance of the IEP stating that the IEP is about respect and creativity. The student also commented that it is clear to everyone and talking together really helps.

Agency Response. The adopted rule actions implementing federal regulations will result in improved services for students with disabilities.

Comment. A parent commented on the experiences of her daughter in different schools in several states with early intervention. The parent expressed concern about available funding and wasteful spending on ineffective special education programs. The parent also commented that the best interests of children served through programs at the best price could make things happen for special education students.

Agency Response. The adopted rule actions implementing federal regulations will result in improved services for students with disabilities.

DIVISION 2. CLARIFICATION OF PROVISIONS IN FEDERAL REGULATIONS AND STATE LAW

19 TAC §§89.1011, 89.1040, 89.1045, 89.1047, 89.1049, 89.1050, 89.1052, 89.1053, 89.1055, 89.1056, 89.1065, 89.1070, 89.1075, 89.1076, 89.1085, 89.1090, 89.1096

The amendments are adopted under 34 CFR, Part 300, which requires states to have policies and procedures in place to ensure the following: 34 CFR, §§300.100, the provision of a free appropriate public education to children with disabilities; 300.111, all children with disabilities are identified, located, and evaluated; 300.114, public agencies meet least restrictive environment requirements; 300.121, children with disabilities and their parents are afforded procedural safeguards; 300.124, the effective transition of children with disabilities from early intervention programs under Part C of the Individuals with Disabilities Education Act 2004 (IDEA 2004) to preschool programs under Part B of IDEA 2004; 300.129, local educational agencies meet requirements for parentally-placed private school children with disabilities; and 300.307, which requires states to adopt criteria for determining whether a child has a specific learning disability as defined in 34 CFR, §300.8(c)(10); and TEC, §§29.001, which authorizes the commissioner of education to adopt rules for the administration and funding of the special education program; 29.003, which authorizes the commissioner to develop specific eligibility criteria for the special education program; 29.005, which authorizes the commissioner to adopt a rule concerning requirements for the individualized education program of a student with autism or another pervasive developmental disorder; 29.010, which authorizes the commissioner to adopt rules to implement a system of sanctions for school districts whose most recent monitoring visit shows a failure to comply with major requirements of the IDEA, federal regulations, state statutes, or agency requirements necessary to carry out federal law or regulations or state law relating to special education; 29.011, which authorizes the commissioner to by rule adopt procedures for compliance with federal requirements relating to transition; 29.015, which authorizes the commissioner to adopt a rule that sets standards for foster and surrogate parent training; 29.017, which authorizes the commissioner to adopt rules concerning the transfer of parental rights to students with disabilities who are 18 years of age; 30.0015, which authorizes the commissioner to adopt a rule that sets standards for the transfer of assistive technology devices; 30.002, which authorizes the commissioner to adopt rules for the administration of the statewide plan for education students with visual impairments; 30.083, which authorizes the commissioner to adopt rules for the administration of the statewide plan for educating students who are deaf or hard of hearing; and 37.0021, which authorizes the commissioner to by rule adopt procedures for the use of restraint and time-out.

The amendments implement 34 CFR, §§300.100; 300.111; 300.114; 300.121; 300.124; 300.129; 300.307; and TEC, §§29.001; 29.003; 29.005; 29.010; 29.011; 29.015; 29.017; 30.0015; 30.002; 30.083; and 37.0021.

§89.1040. Eligibility Criteria.

(a) Special education services. To be eligible to receive special education services, a student must be a "child with a disability," as defined in 34 Code of Federal Regulations (CFR), §300.8(a), subject to the provisions of 34 CFR, §300.8(c), the Texas Education Code (TEC), §29.003, and this section. The provisions in this section specify criteria to be used in determining whether a student's condition meets one or more of the definitions in federal regulations or in state law.

(b) Eligibility determination. The determination of whether a student is eligible for special education and related services is made by the student's admission, review, and dismissal (ARD) committee. Any evaluation or re-evaluation of a student shall be conducted in accordance with 34 CFR, §§300.301-300.306 and 300.122. The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility must include, but is not limited to, the following:

(1) a licensed specialist in school psychology (LSSP), an educational diagnostician, or other appropriately certified or licensed practitioner with experience and training in the area of the disability; or

(2) a licensed or certified professional for a specific eligibility category defined in subsection (c) of this section.

(c) Eligibility definitions.

(1) Autism. A student with autism is one who has been determined to meet the criteria for autism as stated in 34 CFR, §300.8(c)(1). Students with pervasive developmental disorders are included under this category. The team's written report of evaluation shall include specific recommendations for behavioral interventions and strategies.

(2) Deaf-blindness. A student with deaf-blindness is one who has been determined to meet the criteria for deaf-blindness as stated in 34 CFR, §300.8(c)(2). In meeting the criteria stated in 34 CFR, §300.8(c)(2), a student with deaf-blindness is one who, based on the evaluations specified in subsections (c)(3) and (c)(12) of this section:

(A) meets the eligibility criteria for auditory impairment specified in subsection (c)(3) of this section and visual impairment specified in subsection (c)(12) of this section;

(B) meets the eligibility criteria for a student with a visual impairment and has a suspected hearing loss that cannot be demonstrated conclusively, but a speech/language therapist, a certified speech and language therapist, or a licensed speech language pathologist indicates there is no speech at an age when speech would normally be expected;

(C) has documented hearing and visual losses that, if considered individually, may not meet the requirements for auditory impairment or visual impairment, but the combination of such losses adversely affects the student's educational performance; or

(D) has a documented medical diagnosis of a progressive medical condition that will result in concomitant hearing and visual losses that, without special education intervention, will adversely affect the student's educational performance.

(3) Auditory impairment. A student with an auditory impairment is one who has been determined to meet the criteria for deafness as stated in 34 CFR, §300.8(c)(3), or for hearing impairment as stated in 34 CFR, §300.8(c)(5). The evaluation data reviewed by the multidisciplinary team in connection with the determination of a student's eligibility based on an auditory impairment must include an otological examination performed by an otologist or by a licensed medical doctor, with documentation that an otologist is not reasonably available. An audiological evaluation by a licensed audiologist shall also be conducted. The evaluation data shall include a description of the implications of the hearing loss for the student's hearing in a variety of circumstances with or without recommended amplification.

(4) Emotional disturbance. A student with an emotional disturbance is one who has been determined to meet the criteria for emotional disturbance as stated in 34 CFR, §300.8(c)(4). The written report of evaluation shall include specific recommendations for behavioral supports and interventions.

(5) Mental retardation. A student with mental retardation is one who has been determined to meet the criteria for mental retardation as stated in 34 CFR, §300.8(c)(6). In meeting the criteria stated in 34 CFR, §300.8(c)(6), a student with mental retardation is one who:

(A) has been determined to have significantly sub-average intellectual functioning as measured by a standardized, individually administered test of cognitive ability in which the overall test score is at least two standard deviations below the mean, when taking into consideration the standard error of measurement of the test; and

(B) concurrently exhibits deficits in at least two of the following areas of adaptive behavior: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety.

(6) Multiple disabilities.

(A) A student with multiple disabilities is one who has been determined to meet the criteria for multiple disabilities as stated in 34 CFR, §300.8(c)(7). In meeting the criteria stated in 34 CFR, §300.8(c)(7), a student with multiple disabilities is one who has a combination of disabilities defined in this section and who meets all of the following conditions:

(i) the student's disability is expected to continue indefinitely; and

(ii) the disabilities severely impair performance in two or more of the following areas:

(I) psychomotor skills;

(II) self-care skills;

(III) communication;

(IV) social and emotional development; or

(V) cognition.

(B) Students who have more than one of the disabilities defined in this section but who do not meet the criteria in subparagraph (A) of this paragraph shall not be classified or reported as having multiple disabilities.

(7) Orthopedic impairment. A student with an orthopedic impairment is one who has been determined to meet the criteria for orthopedic impairment as stated in 34 CFR, §300.8(c)(8). The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on an orthopedic impairment must include a licensed physician.

(8) Other health impairment. A student with other health impairment is one who has been determined to meet the criteria for other health impairment due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette's Disorder as stated in 34 CFR, §300.8(c)(9). The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on other health impairment must include a licensed physician.

(9) Learning disability.

(A) Prior to and as part of the evaluation described in subparagraph (B) of this paragraph and 34 CFR, §§300.307-300.311, and in order to ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or mathematics, the following must be considered:

(i) data that demonstrates the child was provided appropriate instruction in reading (as described in 20 USC, §6368(3)), and/or mathematics within general education settings delivered by qualified personnel; and

(ii) data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal evaluation of student progress during instruction. Data-based documentation of repeated assessments may include, but is not limited to, response to intervention progress monitoring results, in-class tests on grade-level curriculum, or other regularly administered assessments. Intervals are considered reasonable if consistent with the assessment requirements of a student's specific instructional program.

(B) A student with a learning disability is one who:

(i) has been determined through a variety of assessment tools and strategies to meet the criteria for a specific learning disability as stated in 34 CFR, §300.8(c)(10), in accordance with the provisions in 34 CFR, §§300.307-300.311; and

(ii) does not achieve adequately for the child's age or meet state-approved grade-level standards in oral expression, listening comprehension, written expression, basic reading skill, reading fluency skills, reading comprehension, mathematics calculation, or mathematics problem solving when provided appropriate instruction, as indicated by performance on multiple measures such as in-class tests; grade average over time (e.g. six weeks, semester); norm- or criterion-referenced tests; statewide assessments; or a process based on the child's response to scientific, research-based intervention; and

(I) does not make sufficient progress when provided a process based on the child's response to scientific, research-based intervention (as defined in 20 USC, §7801(37)), as indicated by the child's performance relative to the performance of the child's peers on repeated, curriculum-based assessments of achievement at reasonable intervals, reflecting student progress during classroom instruction; or

(II) exhibits a pattern of strengths and weaknesses in performance, achievement, or both relative to age, grade-level standards, or intellectual ability, as indicated by significant variance among specific areas of cognitive function, such as working memory and verbal comprehension, or between specific areas of cognitive function and academic achievement.

(10) Speech impairment. A student with a speech impairment is one who has been determined to meet the criteria for speech or language impairment as stated in 34 CFR, §300.8(c)(11). The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on a speech impairment must include a certified speech and hearing therapist, a certified speech and language therapist, or a licensed speech/language pathologist.

(11) Traumatic brain injury. A student with a traumatic brain injury is one who has been determined to meet the criteria for traumatic brain injury as stated in 34 CFR, §300.8(c)(12). The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on a traumatic brain injury must include a licensed physician, in addition to the licensed or certified practitioners specified in subsection (b)(1) of this section.

(12) Visual impairment.

(A) A student with a visual impairment is one who has been determined to meet the criteria for visual impairment as stated in 34 CFR, §300.8(c)(13). The visual loss should be stated in exact measures of visual field and corrected visual acuity at a distance and at close range in each eye in a report by a licensed ophthalmologist or optometrist. The report should also include prognosis whenever possible. If exact measures cannot be obtained, the eye specialist must so state and provide best estimates. In meeting the criteria stated in 34 CFR, §300.8(c)(13), a student with a visual impairment is one who:

(i) has been determined by a licensed ophthalmologist or optometrist:

(I) to have no vision or to have a serious visual loss after correction; or

(II) to have a progressive medical condition that will result in no vision or a serious visual loss after correction.

(ii) has been determined by the following evaluations to have a need for special services:

(I) a functional vision evaluation by a professional certified in the education of students with visual impairments or a certified orientation and mobility instructor. The evaluation must include the performance of tasks in a variety of environments requiring the use of both near and distance vision and recommendations concerning the need for a clinical low vision evaluation and an orientation and mobility evaluation; and

(II) a learning media assessment by a professional certified in the education of students with visual impairments. The learning media assessment must include recommendations concerning which specific visual, tactual, and/or auditory learning media are appropriate for the student and whether or not there is a need for ongoing evaluation in this area.

(B) A student with a visual impairment is functionally blind if, based on the preceding evaluations, the student will use tactual media (which includes Braille) as a primary tool for learning to be able to communicate in both reading and writing at the same level of proficiency as other students of comparable ability.

(13) Noncategorical. A student between the ages of 3-5 who is evaluated as having mental retardation, emotional disturbance, a specific learning disability, or autism may be described as noncategorical early childhood.

§89.1047. Procedures for Surrogate and Foster Parents.

(a) An individual assigned to act as a surrogate parent for a student with a disability, in accordance with 34 Code of Federal Regulations (CFR), §300.519, relating to surrogate parents, must comply with the requirements specified in Texas Education Code (TEC), §29.001(10).

(1) Pursuant to TEC, §29.001(10)(A), an individual assigned to act as a surrogate parent must complete a training program in which the individual is provided with an explanation of the provisions of federal and state laws, rules, and regulations relating to:

(A) the identification of a student with a disability;

(B) the collection of evaluation and re-evaluation data relating to a student with a disability;

(C) the admission, review, and dismissal (ARD) committee process;

(D) the development of an individualized education program (IEP), including the consideration of transition services for a student who is at least 16 years of age;

(E) the determination of least restrictive environment;

(F) the implementation of an IEP;

(G) the procedural rights and safeguards available under 34 CFR, §§300.148, 300.151-300.153, 300.229, 300.300, 300.500-300.520, 300.530-300.537, and 300.610-300.627, relating to the issues described in 34 CFR, §300.504(c); and

(H) the sources that the surrogate parent may contact to obtain assistance in understanding the provisions of federal and state laws, rules, and regulations relating to students with disabilities.

(2) The training program described in subsection (a)(1) of this section must be provided in the native language or other mode of communication used by the individual who is to serve as a surrogate parent.

(3) The individual assigned to act as a surrogate parent must complete the training program described in subsection (a)(1) of this section within 90 calendar days after the date of initial assignment as a surrogate parent. Once an individual has completed a training program conducted or provided by or through the Texas Department of Family and Protective Services (TDFPS), a school district, an education service center, or any entity that receives federal funds to provide Individuals with Disabilities Education Act (IDEA) training to parents, the individual shall not be required by any school district to complete additional training in order to continue serving as the student's surrogate parent or to serve as the surrogate parent for other students with disabilities. School districts may provide ongoing or additional training to surrogate parents and/or parents; however, a district cannot deny an individual who has received the training as described in subsection (a)(1) of this section from serving as a surrogate parent on the grounds that the individual has not been trained.

(4) A school district should provide or arrange for the provision of the training program described in subsection (a)(1) of this section prior to assigning an individual to act as a surrogate parent but no later than 90 calendar days after assignment.

(b) A foster parent may act as a parent of a child with a disability, in accordance with 34 CFR, §300.30, relating to the definition of parent, if he/she complies with the requirements of TEC, §29.015(b), relating to foster parents, including the completion of the training program described in subsection (a)(1) of this section.

(1) The foster parent must complete the training program described in subsection (a)(1) of this section within 90 calendar days after the date of initial assignment as the parent. Once a foster parent has completed a training program conducted or provided by the TDFPS, a school district, an education service center, or any entity that receives federal funds to provide IDEA training to parents, the foster parent shall not be required by any school district to complete additional training in order to continue serving as his/her child's surrogate parent or parent or to serve as the surrogate parent or parent for other students with disabilities. School districts may provide ongoing or additional training to foster parents and/or parents; however, a district cannot deny an individual who has received the training as described in subsection (a)(1) of this section from serving as the parent on the grounds that the individual has not been trained.

(2) A school district should provide or arrange for the provision of the training program described in subsection (a)(1) of this section prior to assigning a foster parent to act as a parent but no later than 90 calendar days after assignment.

(c) Each school district or shared services arrangement shall develop and implement procedures for conducting an analysis of whether a foster parent or potential surrogate parent has an interest that conflicts with the interests of his/her child. A foster parent in a home which is verified by the TDFPS or a child-placing agency shall not be deemed to have a financial conflict of interest by virtue of serving as the foster parent in that home. These homes include, but are not limited to, basic, habilitative, primary medical, or therapeutic foster or foster group homes. In addition, issues concerning quality of care of the child do not constitute a conflict of interest. Concerns regarding quality of care of the child should be communicated, and may be statutorily required to be reported, to TDFPS.

(d) If a school district denies a foster parent the right to serve as a surrogate parent or parent, the school district must provide the foster parent with written notice of such denial within seven calendar days after the date on which the decision is made. The written notice shall:

(1) specify the reason(s) the foster parent is being denied the right to serve as the surrogate parent or parent (the notice must specifically explain the interests of the foster parent that conflict with the interests of his/her child); and

(2) inform the foster parent of his/her right to file a complaint with the Texas Education Agency in accordance with 34 CFR, §§300.151-300.153, relating to complaint procedures.

§89.1050. The Admission, Review, and Dismissal (ARD) Committee.

(a) Each school district shall establish an admission, review, and dismissal (ARD) committee for each eligible student with a disability and for each student for whom a full and individual initial evaluation is conducted pursuant to §89.1011 of this title (relating to Referral for Full and Individual Initial Evaluation). The ARD committee shall be the individualized education program (IEP) team defined in federal law and regulations, including, specifically, 34 Code of Federal Regulations (CFR), §300.321. The school district shall be responsible for all of the functions for which the IEP team is responsible under federal law and regulations and for which the ARD committee is responsible under state law, including, specifically, the following:

(1) 34 CFR, §§300.320-300.325, and Texas Education Code (TEC), §29.005 (individualized education programs);

(2) 34 CFR, §§300.145-300.147 (relating to placement of eligible students in private schools by a school district);

(3) 34 CFR, §§300.132, 300.138, and 300.139 (relating to the development and implementation of service plans for eligible students placed by parents in private school who have been designated to receive special education and related services);

(4) 34 CFR, §300.530 and §300.531, and TEC, §37.004 (disciplinary placement of students with disabilities);

(5) 34 CFR, §§300.302-300.306 (relating to evaluations, re-evaluations, and determination of eligibility);

(6) 34 CFR, §§300.114-300.117 (relating to least restrictive environment);

(7) TEC, §28.006 (Reading Diagnosis);

(8) TEC, §28.0211 (Satisfactory Performance on Assessment Instruments Required; Accelerated Instruction);

(9) TEC, §28.0212 (Personal Graduation Plan);

(10) TEC, §28.0213 (Intensive Program of Instruction);

(11) TEC, Chapter 29, Subchapter I (Programs for Students Who Are Deaf or Hard of Hearing);

(12) TEC, §30.002 (Education of Children with Visual Impairments);

(13) TEC, §30.003 (Support of Students Enrolled in the Texas School for the Blind and Visually Impaired or Texas School for the Deaf);

(14) TEC, §33.081 (Extracurricular Activities);

(15) TEC, Chapter 39, Subchapter B (Assessment of Academic Skills); and

(16) TEC, §42.151 (Special Education).

(b) For a child from birth through two years of age with visual and/or auditory impairments, an individualized family services plan (IFSP) meeting must be held in place of an ARD committee meeting in accordance with 34 CFR, §§300.320-300.324, and the memorandum of understanding between the Texas Education Agency (TEA) and Texas Interagency Council on Early Childhood Intervention. For students three years of age and older, school districts must develop an IEP.

(c) ARD committee membership.

(1) ARD committees shall include those persons identified in 34 CFR, §300.321(a), as follows:

(A) the parent(s) of the child;

(B) not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);

(C) not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;

(D) a representative of the school district who:

(i) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

(ii) is knowledgeable about the general education curriculum; and

(iii) is knowledgeable about the availability of resources of the school district;

(E) an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in subparagraphs (B)-(F) of this paragraph;

(F) at the discretion of the parent or the school district, other individuals who have knowledge or special expertise regarding the child, including related services personnel, as appropriate; and

(G) whenever appropriate, the child with a disability.

(2) The regular education teacher who serves as a member of a student's ARD committee should be a regular education teacher who is responsible for implementing a portion of the student's IEP.

(3) The special education teacher or special education provider that participates in the ARD committee meeting in accordance with 34 CFR, §300.321(a)(3), must be appropriately certified or licensed as required by 34 CFR, §300.18 and §300.156.

(4) If the student is:

(A) a student with a suspected or documented visual impairment, the ARD committee shall include a teacher who is certified in the education of students with visual impairments;

(B) a student with a suspected or documented auditory impairment, the ARD committee shall include a teacher who is certified in the education of students with auditory impairments; or

(C) a student with suspected or documented deaf-blindness, the ARD committee shall include a teacher who is certified in the education of students with visual impairments and a teacher who is certified in the education of students with auditory impairments.

(5) An ARD committee member, including a member described in subsection (c)(4) of this section, is not required to attend an ARD committee meeting if the conditions of either 34 CFR, §300.321(e)(1), regarding attendance, or 34 CFR, §300.321(e)(2), regarding excusal, have been met.

(d) The ARD committee shall make its decisions regarding students referred for a full and individual initial evaluation within 30 calendar days from the date of the completion of the written full and individual initial evaluation report. If the 30th day falls during the summer and school is not in session, the ARD committee shall have until the first day of classes in the fall to finalize decisions concerning the initial eligibility determination, the IEP, and placement, unless the full and individual initial evaluation indicates that the student will need extended school year (ESY) services during that summer.

(e) The written report of the ARD committee shall document the decisions of the committee with respect to issues discussed at the meeting. The report shall include the date, names, positions, and signatures of the members participating in each meeting in accordance with 34 CFR, §§300.321, 300.322, 300.324, and 300.325. The report shall also indicate each member's agreement or disagreement with the committee's decisions. In the event TEC, §29.005(d)(1), applies, the district shall provide a written or audio-taped copy of the student's IEP, as defined in 34 CFR, §300.324 and §300.320. In the event TEC, §29.005(d)(2), applies, the district shall make a good faith effort to provide a written or audio-taped copy of the student's IEP, as defined in 34 CFR, §300.324 and §300.320.

(f) A school district shall comply with the following for a student who is newly enrolled in a school district.

(1) If the student was in the process of being evaluated for special education eligibility in the student's previous school district, the student's current school district shall coordinate with the student's previous school district as necessary and as expeditiously as possible to ensure a prompt completion of the evaluation in accordance with 34 CFR, §300.301(d)(2) and (e) and §300.304(c)(5). The evaluation shall be completed not later than the 60th calendar day following the date on which the current school district receives written consent as required by the TEC, §29.004.

(2) When a student transfers within the state and the parents verify that the student was receiving special education services in the previous school district or the previous school district verifies in writing or by telephone that the student was receiving special education services, the school district must meet the requirements of 34 CFR, §300.323(a) and (e), regarding the provision of special education services. The timeline for completing the requirements outlined in 34 CFR, §300.323(e)(1) or (2), shall be 30 school days from the date the student is verified as being a student eligible for special education services.

(3) When a student transfers from another state and the parents verify that the student was receiving special education services in the previous school district or the previous school district verifies in writing or by telephone that the student was receiving special education services, the school district must meet the requirements of 34 CFR, §300.323(a) and (f), regarding the provision of special education services. The timeline for completing the requirements outlined in 34 CFR, §300.323(f)(1) and (2), shall be 30 school days from the date the student is verified as being a student eligible for special education services.

(4) In accordance with TEC, §25.002, and 34 CFR, §300.323(g), the school district in which the student was previously enrolled shall furnish the new school district with a copy of the student's records, including the child's special education records, not later than the 30th calendar day after the student was enrolled in the new school district. The Family Educational Rights and Privacy Act (FERPA), 20 United States Code, §1232g, does not require the stu-

dent's current and previous school districts to obtain parental consent before requesting or sending the student's special education records if the disclosure is conducted in accordance with 34 CFR, §99.31(a)(2) and §99.34.

(g) All disciplinary actions regarding students with disabilities shall be determined in accordance with 34 CFR, §§300.101(a) and 300.530-300.536 (relating to disciplinary actions and procedures), the TEC, Chapter 37, Subchapter A (Alternative Settings for Behavior Management), and §89.1053 of this title (relating to Procedures for Use of Restraint and Time-Out).

(h) All members of the ARD committee shall have the opportunity to participate in a collaborative manner in developing the IEP. A decision of the committee concerning required elements of the IEP shall be made by mutual agreement of the required members if possible. The committee may agree to an annual IEP or an IEP of shorter duration.

(1) When mutual agreement about all required elements of the IEP is not achieved, the party (the parents or adult student) who disagrees shall be offered a single opportunity to have the committee recess for a period of time not to exceed ten school days. This recess is not required when the student's presence on the campus presents a danger of physical harm to the student or others or when the student has committed an expellable offense or an offense which may lead to a placement in an alternative education program (AEP). The requirements of this subsection (h) do not prohibit the members of the ARD committee from recessing an ARD committee meeting for reasons other than the failure of the parents and the school district from reaching mutual agreement about all required elements of an IEP.

(2) During the recess the committee members shall consider alternatives, gather additional data, prepare further documentation, and/or obtain additional resource persons which may assist in enabling the ARD committee to reach mutual agreement.

(3) The date, time, and place for continuing the ARD committee meeting shall be determined by mutual agreement prior to the recess.

(4) If a ten-day recess is implemented as provided in paragraph (1) of this subsection and the ARD committee still cannot reach mutual agreement, the district shall implement the IEP which it has determined to be appropriate for the student.

(5) When mutual agreement is not reached, a written statement of the basis for the disagreement shall be included in the IEP. The members who disagree shall be offered the opportunity to write their own statements.

(6) When a district implements an IEP with which the parents disagree or the adult student disagrees, the district shall provide prior written notice to the parents or adult student as required in 34 CFR, §300.503.

(7) Parents shall have the right to file a complaint, request mediation, and request a due process hearing at any point when they disagree with decisions of the ARD committee.

§89.1055. Content of the Individualized Education Program (IEP).

(a) The individualized education program (IEP) developed by the admission, review, and dismissal (ARD) committee for each student with a disability shall comply with the requirements of 34 Code of Federal Regulations (CFR), §300.320 and §300.324.

(b) The IEP must include a statement of any individual appropriate and allowable accommodations in the administration of assessment instruments developed in accordance with Texas Education Code (TEC), §39.023(a)-(c), or district-wide assessments of student achievement (if the district administers such optional assessments) that are necessary to measure the academic achievement and functional performance of the child on the assessments. If the ARD committee determines that the student will not participate in a general state-wide assessment or district-wide assessment of student achievement (or part of an assessment), the IEP must include a statement of:

(1) why the child cannot participate in the regular assessment; and

(2) why the particular alternate assessment selected is appropriate for the child.

(c) If the ARD committee determines that the student is in need of extended school year (ESY) services, as described in §89.1065 of this title (relating to Extended School Year Services (ESY Services)), then the IEP must also include goals and objectives for ESY services from the student's current IEP.

(d) For students with visual impairments, from birth through 21 years of age, the IEP or individualized family services plan (IFSP) shall also meet the requirements of TEC, §30.002(e).

(e) For students eligible under §89.1040(c)(1) of this title (relating to Eligibility Criteria), the strategies described in paragraphs (1)-(11) of this subsection shall be considered, based on peer-reviewed, research-based educational programming practices to the extent practicable and, when needed, addressed in the IEP:

(1) extended educational programming (for example: extended day and/or extended school year services that consider the duration of programs/settings based on assessment of behavior, social skills, communication, academics, and self-help skills);

(2) daily schedules reflecting minimal unstructured time and active engagement in learning activities (for example: lunch, snack, and recess periods that provide flexibility within routines; adapt to individual skill levels; and assist with schedule changes, such as changes involving substitute teachers and pep rallies);

(3) in-home and community-based training or viable alternatives that assist the student with acquisition of social/behavioral skills (for example: strategies that facilitate maintenance and generalization of such skills from home to school, school to home, home to community, and school to community);

(4) positive behavior support strategies based on relevant information, for example:

(A) antecedent manipulation, replacement behaviors, reinforcement strategies, and data-based decisions; and

(B) a Behavior Intervention Plan developed from a Functional Behavioral Assessment that uses current data related to target behaviors and addresses behavioral programming across home, school, and community-based settings;

(5) beginning at any age, consistent with subsections (g) of this section, futures planning for integrated living, work, community, and educational environments that considers skills necessary to function in current and post-secondary environments;

(6) parent/family training and support, provided by qualified personnel with experience in Autism Spectrum Disorders (ASD), that, for example:

(A) provides a family with skills necessary for a child to succeed in the home/community setting;

(B) includes information regarding resources (for example: parent support groups, workshops, videos, conferences, and

materials designed to increase parent knowledge of specific teaching/management techniques related to the child's curriculum); and

(C) facilitates parental carryover of in-home training (for example: strategies for behavior management and developing structured home environments and/or communication training so that parents are active participants in promoting the continuity of interventions across all settings);

(7) suitable staff-to-student ratio appropriate to identified activities and as needed to achieve social/behavioral progress based on the child's developmental and learning level (acquisition, fluency, maintenance, generalization) that encourages work towards individual independence as determined by, for example:

(A) adaptive behavior evaluation results;

(B) behavioral accommodation needs across settings; and

(C) transitions within the school day;

(8) communication interventions, including language forms and functions that enhance effective communication across settings (for example: augmentative, incidental, and naturalistic teaching);

(9) social skills supports and strategies based on social skills assessment/curriculum and provided across settings (for example: trained peer facilitators (e.g., circle of friends), video modeling, social stories, and role playing);

(10) professional educator/staff support (for example: training provided to personnel who work with the student to assure the correct implementation of techniques and strategies described in the IEP); and

(11) teaching strategies based on peer reviewed, research-based practices for students with ASD (for example: those associated with discrete-trial training, visual supports, applied behavior analysis, structured learning, augmentative communication, or social skills training).

(f) If the ARD committee determines that services are not needed in one or more of the areas specified in subsection (e)(1)-(11) of this section, the IEP must include a statement to that effect and the basis upon which the determination was made.

(g) For each student with a disability, beginning at age 16 (prior to the date on which a student turns 16 years of age) or younger, if determined appropriate by the ARD committee, the following issues must be considered in the development of the IEP, and, if appropriate, integrated into the IEP:

(1) appropriate student involvement in the student's transition to life outside the public school system;

(2) if the student is younger than 18 years of age, appropriate parental involvement in the student's transition;

(3) if the student is at least 18 years of age, appropriate parental involvement in the student's transition, if the parent is invited to participate by the student or the school district in which the student is enrolled;

(4) any postsecondary education options;

(5) a functional vocational evaluation;

(6) employment goals and objectives;

(7) if the student is at least 18 years of age, the availability of age-appropriate instructional environments;

(8) independent living goals and objectives; and

(9) appropriate circumstances for referring a student or the student's parents to a governmental agency for services.

§89.1070. Graduation Requirements.

(a) Graduation with a regular high school diploma under subsection (b) or (d) of this section terminates a student's eligibility for special education services under this subchapter and Part B of the Individuals with Disabilities Education Act (IDEA), 20 United States Code, §§1400 et seq. In addition, as provided in Texas Education Code (TEC), §42.003(a), graduation with a regular high school diploma under subsection (b) or (d) of this section terminates a student's entitlement to the benefits of the Foundation School Program.

(b) A student receiving special education services may graduate and be awarded a regular high school diploma if:

(1) the student has satisfactorily completed the state's or district's (whichever is greater) minimum curriculum and credit requirements for graduation (under the recommended or distinguished achievement high school programs in Chapter 74 of this title (relating to Curriculum Requirements)) applicable to students in general education, including satisfactory performance on the exit level assessment instrument; or

(2) the student has satisfactorily completed the state's or district's (whichever is greater) minimum curriculum and credit requirements for graduation (under the minimum high school program in Chapter 74 of this title) applicable to students in general education, including participation in required state assessments. The student's admission, review, and dismissal (ARD) committee shall determine whether satisfactory performance on a required state assessment shall also be required for graduation.

(c) A student receiving special education services may also graduate and receive a regular high school diploma when the student's ARD committee has determined that the student has successfully completed:

(1) the student's individualized education program (IEP);

(2) one of the following conditions, consistent with the student's IEP:

(A) full-time employment, based on the student's abilities and local employment opportunities, in addition to sufficient self-help skills to enable the student to maintain the employment without direct and ongoing educational support of the local school district;

(B) demonstrated mastery of specific employability skills and self-help skills which do not require direct ongoing educational support of the local school district; or

(C) access to services which are not within the legal responsibility of public education, or employment or educational options for which the student has been prepared by the academic program;

(3) the state's or district's (whichever is greater) minimum credit requirements for students without disabilities; and

(4) the state's or district's minimum curriculum requirements to the extent possible with modifications/substitutions only when it is determined necessary by the ARD committee for the student to receive an appropriate education.

(d) A student receiving special education services may also graduate and receive a regular high school diploma upon the ARD committee determining that the student no longer meets age eligibility requirements and has completed the requirements specified in the IEP.

(e) All students graduating under this section shall be provided with a summary of academic achievement and functional performance as described in 34 Code of Federal Regulations (CFR), §300.305(e)(3). This summary shall consider, as appropriate, the views of the parent and student and written recommendations from adult service agencies on how to assist the student in meeting postsecondary goals. An evaluation as required by 34 CFR, §300.305(e)(1), shall be included as part of the summary for a student graduating under subsection (c) of this section.

(f) Students who participate in graduation ceremonies but who are not graduating under subsection (c) of this section and who will remain in school to complete their education do not have to be evaluated in accordance with subsection (e) of this section.

(g) Employability and self-help skills referenced under subsection (c) of this section are those skills directly related to the preparation of students for employment, including general skills necessary to obtain or retain employment.

(h) For students who receive a diploma according to subsection (c) of this section, the ARD committee shall determine needed educational services upon the request of the student or parent to resume services, as long as the student meets the age eligibility requirements.

§89.1096. Provision of Services for Students Placed by their Parents in Private Schools or Facilities.

(a) Except as specifically provided in this section, in accordance with 34 Code of Federal Regulations (CFR), §300.137, no eligible student who has been placed by his or her parent(s) in a private school or facility has an individual right to receive some or all of the special education and related services that the student would receive if he or she were enrolled in a public school district. Except as specifically set forth in this section, a school district's obligations with respect to students placed by their parents in private schools are governed by 34 CFR, §§300.130-300.144.

(1) For purposes of subsections (a) and (d) of this section only, private school is defined as a private elementary or secondary school, including any pre-school, religious school, and institutional day or residential school, that:

(A) as required by 34 CFR, §300.13 and §300.130, is a nonprofit entity that meets the definition of nonprofit in 34 CFR, §77.1; and

(B) provides elementary or secondary education that incorporates an adopted curriculum designed to meet basic educational goals, including scope and sequence of courses, and formal review and documentation of student progress.

(2) A home school must meet the requirements of paragraph (1)(B) of this subsection, but not paragraph (1)(A) of this subsection, to be considered a private school for purposes of subsections (a) and (d) of this section.

(b) When a student with a disability who has been placed by his or her parents directly in a private school or facility is referred to the local school district, the local district shall convene an admission, review, and dismissal (ARD) committee meeting to determine whether the district can offer the student a free appropriate public education (FAPE). If the district determines that it can offer a FAPE to the student, the district is not responsible for providing educational services to the student, except as provided in 34 CFR, §§300.130-300.144, or subsection (e) of this section, until such time as the parents choose to enroll the student in public school full time.

(c) Parents of an eligible student ages 3 or 4 shall have the right to "dual enroll" their student in both the public school and the private school beginning on the student's third birthday and continuing until the end of the school year in which the student turns five or until the student is eligible to attend a district's public school kindergarten program, whichever comes first, subject to paragraphs (1)-(3) of this subsection. The public school district where a student resides is responsible for providing special education and related services to a student whose parents choose dual enrollment.

(1) The student's ARD committee shall develop an individualized education program (IEP) designed to provide the student with a FAPE in the least restrictive environment appropriate for the student.

(2) From the IEP, the parent and the district shall determine which special education and/or related services will be provided to the student and the location where those services will be provided, based on the requirements concerning placement in the least restrictive environment set forth in 34 CFR, §§300.114-300.120, and the policies and procedures of the district.

(3) For students served under the provisions of this subsection, the school district shall be responsible for the employment and supervision of the personnel providing the service, providing the needed instructional materials, and maintaining pupil accounting records. Materials and services provided shall be consistent with those provided for students enrolled only in the public school and shall remain the property of the school district.

(d) Parents of an eligible student ages 3 or 4 who decline dual enrollment for their student may request a services plan as described in 34 CFR, §§300.130-300.144. The public school district where the private school is located is responsible for the development of a services plan, if the student is designated to receive services under 34 CFR, §300.132.

(e) The school district shall provide special transportation with federal funds only when the ARD committee determines that the condition of the student warrants the service in order for the student to receive the special education and related services (if any) set forth in the IEP.

(f) Complaints regarding the implementation of the components of the student's IEP that have been selected by the parent and the district under subsection (c) of this section may be filed with the Texas Education Agency under the procedures in 34 CFR, §§300.151-300.153. Additionally, parents may request mediation as outlined in 34 CFR, §300.506. The procedures in 34 CFR, §§300.300, 300.504, 300.507, 300.508, and 300.510-300.518 (relating to due process hearings) do not apply to complaints regarding the implementation of the components of the student's IEP that have been selected by the parent and the district under subsection (c).

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

Filed with the Office of the Secretary of State on October 22, 2007.

TRD-200705090
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: November 11, 2007
Proposal publication date: April 20, 2007
For further information, please call: (512) 475-1497

19 TAC §89.1060

The repeal is adopted under 34 CFR, §300.100, which requires states to have policies and procedures in place to ensure the provision of a free appropriate public education to children with disabilities; and TEC, §29.001, which authorizes the commissioner of education to adopt rules for the administration and funding of the special education program; and TEC, §30.083, which authorizes the commissioner to adopt rules for the administration of the statewide plan for educating students who are deaf or hard of hearing.

The repeal implements 34 CFR, §300.100; and TEC, §29.001, and §30.083.

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 October 22, 2007.

TRD-200705091
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: November 11, 2007
Proposal publication date: April 20, 2007
For further information, please call: (512) 475-1497

♦ ♦ ♦

DIVISION 4. SPECIAL EDUCATION FUNDING

19 TAC §89.1125

The amendment is adopted under 34 CFR, §300.100, which requires states to have policies and procedures in place to ensure the provision of a free appropriate public education to children with disabilities; and TEC, §29.001, which authorizes the commissioner of education to adopt rules for the administration and funding of the special education program.

The amendment implements 34 CFR, §300.100; and TEC, §29.001.

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 October 22, 2007.

TRD-200705092
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: November 11, 2007
Proposal publication date: April 20, 2007
For further information, please call: (512) 475-1497

♦ ♦ ♦

DIVISION 5. SPECIAL EDUCATION AND RELATED SERVICE PERSONNEL

19 TAC §89.1131

The amendment is adopted under 34 CFR, §300.100, which requires states to have policies and procedures in place to ensure the provision of a free appropriate public education to children with disabilities; and TEC, §29.001, which authorizes the commissioner of education to adopt rules for the administration and funding of the special education program.

The amendment implements 34 CFR, §300.100; and TEC, §29.001.

§89.1131. Qualifications of Special Education, Related Service, and Paraprofessional Personnel.

(a) All special education and related service personnel shall be certified, endorsed, or licensed in the area or areas of assignment in accordance with 34 Code of Federal Regulations (CFR), §300.156; the Texas Education Code (TEC), §§21.002, 21.003, and 29.304; or appropriate state agency credentials.

(b) A teacher who holds a special education certificate or an endorsement may be assigned to any level of a basic special education instructional program serving eligible students 3-21 years of age, as defined in §89.1035(a) of this title (relating to Age Ranges for Student Eligibility), in accordance with the limitation of their certification, except for the following.

(1) Persons assigned to provide speech therapy instructional services must hold a valid Texas Education Agency (TEA) certificate in speech and hearing therapy or speech and language therapy, or a valid state license as a speech/language pathologist.

(2) Teachers holding only a special education endorsement for early childhood education for children with disabilities shall be assigned only to programs serving infants through Grade 6.

(3) Teachers certified in the education of students with visual impairments must be available to students with visual impairments, including deaf-blindness, through one of the school district's instructional options, a shared services arrangement with other school districts, or an education service center (ESC).

(4) Teachers certified in the education of students with auditory impairments must be available to students with auditory impairments, including deaf-blindness, through one of the school district's instructional options, a regional day school program for the deaf, or a shared services arrangement with other school districts.

(5) The following provisions apply to physical education.

(A) When the ARD committee has made the determination and the arrangements are specified in the student's individualized education program (IEP), physical education may be provided by the following personnel:

(i) special education instructional or related service personnel who have the necessary skills and knowledge;

(ii) physical education teachers;

(iii) occupational therapists;

(iv) physical therapists; or

(v) occupational therapy assistants or physical therapy assistants working under supervision in accordance with the standards of their profession.

(B) When these services are provided by special education personnel, the district must document that they have the necessary skills and knowledge. Documentation may include, but need not be limited to, inservice records, evidence of attendance at seminars or workshops, or transcripts of college courses.

(6) Teachers assigned full-time or part-time to instruction of students from birth through age two with visual impairments, including deaf-blindness, shall be certified in the education of students with visual impairments. Teachers assigned full-time or part-time to instruction of students from birth through age two who are deaf, including deaf-blindness, shall be certified in education for students who are deaf and severely hard of hearing.

(7) Teachers with secondary certification with the generic delivery system may be assigned to teach Grades 6-12 only.

(c) Paraprofessional personnel must be certified and may be assigned to work with eligible students, general and special education teachers, and related service personnel. Aides may also be assigned to assist students with special education transportation, serve as a job coach, or serve in support of community-based instruction. Aides paid from state administrative funds may be assigned to the Special Education Resource System (SERS), the Special Education Management System (SEMS), or other special education clerical or administrative duties.

(d) Interpreting services for students who are deaf shall be provided by an interpreter who is certified in the appropriate language mode(s), if certification in such mode(s) is available. If certification is available, the interpreter must be a certified member of or certified by the Registry of Interpreters for the Deaf (RID) or the Texas Board for Evaluation of Interpreters (BEI), Department of Assistive and Rehabilitative Services (DARS), Office for Deaf and Hard of Hearing Services (DHHS).

(e) Orientation and mobility instruction must be provided by a certified orientation and mobility specialist (COMS) who is certified by the Academy for Certification of Vision Rehabilitation and Education Professionals.

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 October 22, 2007.

TRD-200705093
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: November 11, 2007
Proposal publication date: April 20, 2007
For further information, please call: (512) 475-1497

♦ ♦ ♦

DIVISION 6. REGIONAL EDUCATION SERVICE CENTER SPECIAL EDUCATION PROGRAMS

19 TAC §89.1141

The amendment is adopted under 34 CFR, §300.100, which requires states to have policies and procedures in place to ensure the provision of a free appropriate public education to children with disabilities; and TEC, §§29.001, which authorizes the commissioner of education to adopt rules for the administration and funding of the special education program; 30.001, which authorizes the commissioner to adopt rules concerning the coordination of services to children with disabilities in each region served by a regional education service center; and 30.002, which authorizes the commissioner to adopt rules for the administration of the statewide plan for education students with visual impairments.

The amendment implements 34 CFR, §300.100; and TEC, §§29.001; 30.001, and 30.002.

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 October 22, 2007.

TRD-200705094
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: November 11, 2007
Proposal publication date: April 20, 2007
For further information, please call: (512) 475-1497

♦ ♦ ♦

DIVISION 7. RESOLUTION OF DISPUTES BETWEEN PARENTS AND SCHOOL DISTRICTS

19 TAC §§89.1150, 89.1151, 89.1165, 89.1180, 89.1185, 89.1191

The amendments are adopted under 34 CFR, §300.100, which requires states to have policies and procedures in place to ensure the provision of a free appropriate public education to children with disabilities; and §300.121, which requires states to have policies and procedures in place to ensure children with disabilities and their parents are afforded procedural safeguards; and TEC, §29.001, which authorizes the commissioner of education to adopt rules for the administration and funding of the special education program.

The amendments implement 34 CFR, §300.100; and §300.121; and TEC, §29.001.

§89.1180. Prehearing Procedures.

(a) Promptly upon being assigned to a hearing, the hearing officer will forward to the parties a scheduling order which sets the time, date, and location of the hearing and contains the timelines for the following actions, as applicable:

(1) Response to Complaint (34 Code of Federal Regulations (CFR), §300.508(f));

(2) Resolution Meeting (34 CFR, §300.510(a));

(3) Contesting Sufficiency of the Complaint (34 CFR, §300.508(d));

(4) Resolution Period (34 CFR, §300.510(b));

(5) Five-Business Day Disclosure (34 CFR, §300.512 (a)(3)); and

(6) the date by which the final decision of the hearing officer shall be issued (34 CFR, §300.515 and §300.532(c)(2)).

(b) The hearing officer shall schedule a prehearing conference to be held at a time reasonably convenient to the parties to the hearing. The prehearing conference shall be held by telephone unless the

hearing officer determines that circumstances require an in-person conference.

(c) The prehearing shall be recorded and transcribed by a reporter, who shall immediately prepare a transcript of the prehearing for the hearing officer with copies to each of the parties.

(d) The purpose of the prehearing conference shall be to consider any of the following:

(1) specifying issues as set forth in the due process complaint notice;

(2) admitting certain assertions of fact or stipulations;

(3) establishing any limitation of the number of witnesses and the time allotted for presenting each party's case; and/or

(4) discussing other matters which may aid in simplifying the proceeding or disposing of matters in controversy, including settling matters in dispute.

(e) Promptly upon the conclusion of the prehearing conference, the hearing officer will issue and deliver to the parties, or their legal representatives, a written prehearing order which confirms and/or identifies:

(1) the time, place, and date of the hearing;

(2) the issues to be adjudicated at the hearing;

(3) the relief being sought at the hearing;

(4) the deadline for disclosure of evidence and identification of witnesses, which must be at least five business days prior to the scheduled date of the hearing (hereinafter referred to as the "Disclosure Deadline");

(5) the date by which the final decision of the hearing officer shall be issued; and

(6) other information determined to be relevant by the hearing officer.

(f) No pleadings, other than the request for hearing, and Response to Complaint, if applicable, are mandatory, unless ordered by the hearing officer. Any pleadings after the request for a due process hearing shall be filed with the hearing officer. Copies of all pleadings shall be sent to all parties of record in the hearing and to the hearing officer. If a party is represented by an attorney, all copies shall be sent to the attorney of record. Telephone facsimile copies may be substituted for copies sent by other means. An affirmative statement that a copy of the pleading has been sent to all parties and the hearing officer is sufficient to indicate compliance with this rule.

(g) Discovery methods shall be limited to those specified in the Administrative Procedure Act (APA), Texas Government Code, Chapter 2001, and may be further limited by order of the hearing officer. Upon a party's request to the hearing officer, the hearing officer may issue subpoenas and commissions to take depositions under the APA. Subpoenas and commissions to take depositions shall be issued in the name of the Texas Education Agency.

(h) On or before the Disclosure Deadline (which must be at least five business days prior to a scheduled due process hearing), each party must disclose and provide to all other parties and the hearing officer copies of all evidence (including, without limitation, all evaluations completed by that date and recommendations based on those evaluations) which the party intends to use at the hearing. An index of the documents disclosed must be included with and accompany the documents. Each party must also include with the documents disclosed a list of all witnesses (including their names, addresses, phone numbers, and professions) which the party anticipates calling to testify at the hearing.

(i) A party may request a dismissal or nonsuit of a due process hearing to the same extent that a plaintiff may dismiss or nonsuit a case under Texas Rules of Civil Procedure, Rule 162. However, if a party requests a dismissal or nonsuit of a due process hearing after the Disclosure Deadline has passed and, at any time within one year thereafter requests a subsequent due process hearing involving the same or substantially similar issues as those alleged in the hearing which was dismissed or nonsuited, then, absent good cause or unless the parties agree otherwise, the Disclosure Deadline for the subsequent due process hearing shall be the same date as was established for the hearing that was dismissed or nonsuited.

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 October 22, 2007.

TRD-200705095
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: November 11, 2007
Proposal publication date: April 20, 2007
For further information, please call: (512) 475-1497

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.11

The Texas Board of Nursing adopts the amendments to 22 TAC §217.11, concerning Standards of Nursing Practice, with changes to the proposed text as published in the August 3, 2007, issue of the *Texas Register* (32 TexReg 4707).

The amendments are adopted pursuant to bills passed in the 80th Legislative Session and the Board's Sunset Review. Senate Bill 993 amended the "conduct subject to reporting" definition, and included a "minor incident" definition, and House Bill 2426 (Board's Sunset Bill) added a requirement that a suspected impaired nurse who commits a practice violation must be reported to the Board and not a peer assistance program. The adopted amendments implement these changes. The proposal amended paragraph (1)(K) and in response to a comment received a change was made to that paragraph.

One comment was received from Jim Willmann of the Texas Nurses Association. The comment stated that it would be helpful to nurses to identify the references to Chapter 301 and "this chapter" as references to the Nursing Practice Act (NPA). Nurses may not know that Chapter 301 is in fact the Nursing Practice Act. The Board agrees with this comment and will make the requested change.

The amendments are adopted pursuant to the authority of Texas Occupations Code §301.151 and §301.152 which authorizes the

Texas Board of Nursing to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

§217.11. Standards of Nursing Practice.

The Texas Board of Nursing is responsible for regulating the practice of nursing within the State of Texas for Vocational Nurses, Registered Nurses, and Registered Nurses with advanced practice authorization. The standards of practice establish a minimum acceptable level of nursing practice in any setting for each level of nursing licensure or advanced practice authorization. Failure to meet these standards may result in action against the nurse's license even if no actual patient injury resulted.

(1) Standards Applicable to All Nurses. All vocational nurses, registered nurses and registered nurses with advanced practice authorization shall:

(A) Know and conform to the Texas Nursing Practice Act and the board's rules and regulations as well as all federal, state, or local laws, rules or regulations affecting the nurse's current area of nursing practice;

(B) Implement measures to promote a safe environment for clients and others;

(C) Know the rationale for and the effects of medications and treatments and shall correctly administer the same;

(D) Accurately and completely report and document:

(i) the client's status including signs and symptoms;

(ii) nursing care rendered;

(iii) physician, dentist or podiatrist orders;

(iv) administration of medications and treatments;

(v) client response(s); and

(vi) contacts with other health care team members concerning significant events regarding client's status;

(E) Respect the client's right to privacy by protecting confidential information unless required or allowed by law to disclose the information;

(F) Promote and participate in education and counseling to a client(s) and, where applicable, the family/significant other(s) based on health needs;

(G) Obtain instruction and supervision as necessary when implementing nursing procedures or practices;

(H) Make a reasonable effort to obtain orientation/training for competency when encountering new equipment and technology or unfamiliar care situations;

(I) Notify the appropriate supervisor when leaving a nursing assignment;

(J) Know, recognize, and maintain professional boundaries of the nurse-client relationship;

(K) Comply with mandatory reporting requirements of Texas Occupations Code Chapter 301 (Nursing Practice Act), Subchapter I, which include reporting a nurse:

(i) who violates the Nursing Practice Act or a board rule and contributed to the death or serious injury of a patient;

(ii) whose conduct causes a person to suspect that the nurse's practice is impaired by chemical dependency or drug or alcohol abuse;

(iii) whose actions constitute abuse, exploitation, fraud, or a violation of professional boundaries; or

(iv) whose actions indicate that the nurse lacks knowledge, skill, judgment, or conscientiousness to such an extent that the nurse's continued practice of nursing could reasonably be expected to pose a risk of harm to a patient or another person, regardless of whether the conduct consists of a single incident or a pattern of behavior.

(v) except for minor incidents (Texas Occupations Code §§301.401(2), 301.419, 22 TAC §217.16), peer review (Texas Occupations Code §§301.403, 303.007, 22 TAC §217.19), or peer assistance if no practice violation (Texas Occupations Code §301.410) as stated in the Nursing Practice Act and Board rules (22 TAC Chapter 217).

(L) Provide, without discrimination, nursing services regardless of the age, disability, economic status, gender, national origin, race, religion, health problems, or sexual orientation of the client served;

(M) Institute appropriate nursing interventions that might be required to stabilize a client's condition and/or prevent complications;

(N) Clarify any order or treatment regimen that the nurse has reason to believe is inaccurate, non-efficacious or contraindicated by consulting with the appropriate licensed practitioner and notifying the ordering practitioner when the nurse makes the decision not to administer the medication or treatment;

(O) Implement measures to prevent exposure to infectious pathogens and communicable conditions;

(P) Collaborate with the client, members of the health care team and, when appropriate, the client's significant other(s) in the interest of the client's health care;

(Q) Consult with, utilize, and make referrals to appropriate community agencies and health care resources to provide continuity of care;

(R) Be responsible for one's own continuing competence in nursing practice and individual professional growth;

(S) Make assignments to others that take into consideration client safety and that are commensurate with the educational preparation, experience, knowledge, and physical and emotional ability of the person to whom the assignments are made;

(T) Accept only those nursing assignments that take into consideration client safety and that are commensurate with the nurse's educational preparation, experience, knowledge, and physical and emotional ability;

(U) Supervise nursing care provided by others for whom the nurse is professionally responsible; and

(V) Ensure the verification of current Texas licensure or other Compact State licensure privilege and credentials of personnel for whom the nurse is administratively responsible, when acting in the role of nurse administrator.

(2) Standards Specific to Vocational Nurses. The licensed vocational nurse practice is a directed scope of nursing practice under the supervision of a registered nurse, advanced practice registered nurse, physician's assistant, physician, podiatrist, or dentist. Supervision is the process of directing, guiding, and influencing the outcome of an individual's performance of an activity. The licensed vocational

nurse shall assist in the determination of predictable healthcare needs of clients within healthcare settings and:

(A) Shall utilize a systematic approach to provide individualized, goal-directed nursing care by:

(i) collecting data and performing focused nursing assessments;

(ii) participating in the planning of nursing care needs for clients;

(iii) participating in the development and modification of the comprehensive nursing care plan for assigned clients;

(iv) implementing appropriate aspects of care within the LVN's scope of practice; and

(v) assisting in the evaluation of the client's responses to nursing interventions and the identification of client needs;

(B) Shall assign specific tasks, activities and functions to unlicensed personnel commensurate with the educational preparation, experience, knowledge, and physical and emotional ability of the person to whom the assignments are made and shall maintain appropriate supervision of unlicensed personnel.

(C) May perform other acts that require education and training as prescribed by board rules and policies, commensurate with the licensed vocational nurse's experience, continuing education, and demonstrated licensed vocational nurse competencies.

(3) Standards Specific to Registered Nurses. The registered nurse shall assist in the determination of healthcare needs of clients and shall:

(A) Utilize a systematic approach to provide individualized, goal-directed, nursing care by:

(i) performing comprehensive nursing assessments regarding the health status of the client;

(ii) making nursing diagnoses that serve as the basis for the strategy of care;

(iii) developing a plan of care based on the assessment and nursing diagnosis;

(iv) implementing nursing care; and

(v) evaluating the client's responses to nursing interventions;

(B) Delegate tasks to unlicensed personnel in compliance with Chapter 224 of this title, relating to clients with acute conditions or in acute are environments, and Chapter 225 of this title, relating to independent living environments for clients with stable and predictable conditions.

(4) Standards Specific to Registered Nurses with Advanced Practice Authorization. Standards for a specific role and specialty of advanced practice nurse supersede standards for registered nurses where conflict between the standards, if any, exist. In addition to paragraphs (1) and (3) of this subsection, a registered nurse who holds authorization to practice as an advanced practice nurse (APN) shall:

(A) Practice in an advanced nursing practice role and specialty in accordance with authorization granted under Board Rule Chapter 221 of this title (relating to practicing in an APN role; 22 TAC Chapter 221) and standards set out in that chapter.

(B) Prescribe medications in accordance with prescriptive authority granted under Board Rule Chapter 222 of this title (relating to APNs prescribing; 22 TAC Chapter 222) and standards set out in that chapter and in compliance with state and federal laws and regulations relating to prescription of dangerous drugs and controlled substances.

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 October 26, 2007.

TRD-200705162
Katherine Thomas
Executive Director
Texas Board of Nursing
Effective date: November 15, 2007
Proposal publication date: August 3, 2007
For further information, please call: (512) 305-6823

22 TAC §217.17

The Texas Board of Nursing adopts new rule 22 Texas Administrative Code §217.17 (Texas Nursing Jurisprudence Exam (NJE)) with changes pertaining to Licensure, Peer Assistance and Practice. Section 217.17 was proposed pursuant to bills passed in the 80th Legislative Session and the Board's Sunset Review. House Bill 2426 (Sunset Bill) amends the Nursing Practice Act by amending section 301.252 (License Application) of the Texas Occupations Code. This amendment requires all applicants for licensure after September 1, 2008, to take and pass a Jurisprudence Exam prior to licensure. The jurisprudence exam would encompass the Nursing Practice Act and the rules and regulations of the Board. Although the jurisprudence exam has not yet been developed and cannot be implemented until September 1, 2008, or later, the Sunset Bill requires the Board to adopt all rules required by the Sunset Bill by January 1, 2008. In response to comments, changes were made to subsections (a) and (e) of this section. This adopted rule complies with this requirement. The proposed rule was published in the August 17, 2007, edition of the *Texas Register* (32 TexReg 5150).

A comment was received from Jim Willmann of the Texas Nurses Association (TNA) and an individual in response to proposed §217.17.

Comment: Proposed Subsection (a) states that if an applicant fails to achieve a minimum grade of 75 on the nursing jurisprudence exam (NJE) that the he or she "shall retake the NJE until such time as a "minimum average grade of 75 is achieved." TNA is not entirely sure what the term "minimum average grade" means but assumes it means that if the applicant retakes the exam that the applicant's score for meeting the 75 minimum score will be calculated as the average score on all of the exams taken/retaken and not just on the most recent exam.

TNA is concerned that if an applicant makes a low grade the first time she/he takes the exam that it may be difficult to achieve a "minimum average score" of 75 unless the exam is a relatively easy exam. The "minimum average score of 75" would mean that if an applicant makes a 60 on the exam, then she/he would have to make a 90 on the first retake to achieve an average score of 75. If makes only an 80 on the first retake, then would have to make an 85 on the second retake to average 75 over the three exams. If the nurse makes a 50 on the exam she/he would have

to make a 100 on the first retake to achieve an average score of 75. If made only an 85 on the first retake, would have to make a 90 on the second retake to average 75 over the three exams.

The achieving of such high scores on retakes may require a relatively easy exam. Otherwise a low score on the exam may make it very difficult to achieve a 75 average score. While TNA believes that, assuming adequate preparation, the exam should generally be passable by a nurse that can pass NCLEX, it does believe the exam should be a rigorous examination of the jurisprudence knowledge necessary to be a competent nurse and patient advocate.

Another option for the board to consider would be to set a higher minimum score on retakes such as: Exam - 75; 1st Retake - 80; 2nd Retake - 85; 3rd and Subsequent Retakes - ??

Response: The Board agrees regarding the difficulty of averaging scores; therefore, the rule will be revised to require that an applicant must achieve a passing score of 75. Once an applicant receives a 75 on the NJE, the requirements of this rule will be met.

Comment: Commenter expressed concern regarding phrase, "...should fail one of the examinations" and requested clarification regarding what exams the Board was referencing, NCLEX or Nursing Jurisprudence Exam.

Response: The Board agrees; therefore, language will be inserted to clarify that it means the Nursing Jurisprudence Exam (NJE).

The adoption is pursuant to the authority of Texas Occupations Code §301.151 and §301.152 which authorizes the Texas Board of Nursing to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

§217.17. Texas Nursing Jurisprudence Exam (NJE).

(a) In this chapter, when applicants are required to pass the NJE exam, applicants must pass the NJE with a score of 75 or better. Should the applicant fail to achieve a minimum grade of 75 on the NJE, such applicant, in order to be licensed, shall retake the NJE until such time as a grade of 75 is achieved.

(b) An examinee shall not utilize a proxy or bring books, notes, or other help into the examination room, nor be allowed to communicate by word or sign with another examinee while the examination is in progress.

(c) Irregularities during an examination such as giving or obtaining unauthorized information or aid as evidenced by observation or subsequent statistical analysis of answer sheets, shall be sufficient cause to terminate an applicant's participation in an examination, invalidate the applicant's examination results, or take other appropriate action.

(d) A person who has passed the NJE shall not be required to retake the NJE for another or similar license, except as a specific requirement of the board.

(e) If the applicant should fail one of the Nursing Jurisprudence examinations, the grade of the examination which the applicant initially passed may be used for the purpose of licensure by examination for a period of two years from the date of passing the initial examination.

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 October 26, 2007.

TRD-200705163
Katherine Thomas
Executive Director
Texas Board of Nursing
Effective date: November 15, 2007
Proposal publication date: August 17, 2007
For further information, please call: (512) 305-6823

♦ ♦ ♦

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 15. TEXAS VETERANS COMMISSION

CHAPTER 452. ADMINISTRATION GENERAL PROVISIONS

40 TAC §452.2

The Texas Veterans Commission (TVC) adopts new §452.2, concerning advisory committees. The new rule is adopted without changes to the proposal as published in the September 7, 2007, issue of the *Texas Register* (32 TexReg 6099).

The new rule is adopted because Government Code §2110.005 requires an agency that establishes an advisory committee to adopt rules for the establishment of those committees.

The new rule establishes the responsibilities, composition, and terms for agency advisory committees.

No comments were received regarding adoption of the new rule.

The rule is adopted under Texas Government Code §434.010 which provides general authority for the commission to adopt rules necessary for its administration; HB 3426; Government Code §436.0101 providing for the creation of advisory committees; and Government Code, Chapter 2110, regarding the establishment of agency advisory committees.

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 October 26, 2007.

TRD-200705157
Tina Coronado
General Counsel
Texas Veterans Commission
Effective date: November 15, 2007
Proposal publication date: September 7, 2007
For further information, please call: (512) 463-1981

♦ ♦ ♦

40 TAC §452.3

The Texas Veterans Commission (TVC) adopts rule §452.3, concerning negotiated rulemaking. The new rule is adopted without

changes to the proposal as published in the September 7, 2007, issue of the *Texas Register* (32 TexReg 6100).

The new rule is authorized under Government Code §434.077, directing the commission to develop and implement a policy to encourage the use of negotiated rulemaking.

No comments were received regarding adoption of the new rule.

The rule is adopted under Texas Government Code §434.010 which provides general authority for the commission to adopt rules necessary for its administration; and Government Code, §434.077, which directs the commission to develop and implement a policy to encourage the use of negotiated rulemaking.

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 October 26, 2007.

TRD-200705158
Tina Coronado
General Counsel
Texas Veterans Commission
Effective date: November 15, 2007
Proposal publication date: September 7, 2007
For further information, please call: (512) 463-1981

♦ ♦ ♦

40 TAC §452.4

The Texas Veterans Commission (TVC) adopts rule §452.4, concerning Alternative Dispute Resolution (ADR). The new rule is adopted without changes to the proposal as published in the September 7, 2007, issue of the *Texas Register* (32 TexReg 6100).

The new rule is authorized under HB 3426 and Government Code §434.077, directing the commission to develop and implement a policy to encourage the use ADR.

No comments were received regarding adoption of the new rule.

The rule is adopted under Texas Government Code §434.010 which provides general authority for the commission to adopt rules necessary for its administration; HB 3426; and Government Code, §434.077, which directs the commission to develop and implement a policy to encourage the use ADR.

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 October 26, 2007.

TRD-200705159
Tina Coronado
General Counsel
Texas Veterans Commission
Effective date: November 15, 2007
Proposal publication date: September 7, 2007
For further information, please call: (512) 463-1981

♦ ♦ ♦

40 TAC §452.5

The Texas Veterans Commission (TVC) adopts rule §452.5, concerning Petition for Adoption of Rules. The new rule is adopted without changes to the proposal as published in the September 7, 2007, issue of the *Texas Register* (32 TexReg 6101).

The new rule is authorized under HB 3426 and Government Code §434.010, directing the commission to develop procedures for receiving input and recommendations from interested persons regarding the development of rules and policies.

No comments were received regarding adoption of the new rule.

The rule is adopted under Texas Government Code §434.010 which provides general authority for the commission to adopt rules necessary for its administration; HB 3426; and Government Code, §434.077, which directs the commission to develop procedures for receiving input and recommendations from interested parties regarding development of rules and policies.

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 October 26, 2007.

TRD-200705160
Tina Coronado
General Counsel
Texas Veterans Commission
Effective date: November 15, 2007
Proposal publication date: September 7, 2007
For further information, please call: (512) 463-1981

♦ ♦ ♦

40 TAC §452.6

The Texas Veterans Commission (TVC) adopts rule §452.6, concerning public participation at commission meetings. The new rule is adopted without changes to the proposal as published in the September 7, 2007, issue of the *Texas Register* (32 TexReg 6102).

The new rule is authorized under HB 3426 and Government Code §434.0151, directing the commission to develop and implement a policy for public participation at commission meetings.

No comments were received regarding adoption of the new rule.

The rule is adopted under Texas Government Code §434.010 which provides general authority for the commission to adopt rules necessary for its administration; HB 3426; and Government Code, §434.0151, which directs the commission to develop and implement a policy for public participation at commission meetings.

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 October 26, 2007.

TRD-200705161

Tina Coronado
General Counsel
Texas Veterans Commission
Effective date: November 15, 2007
Proposal publication date: September 7, 2007
For further information, please call: (512) 463-1981

♦ ♦ ♦

TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the ***Texas Register*** publishes notice of proposed actions by the Texas Department of Insurance. Notice of action proposed under Article 5.96 must be published in the ***Texas Register*** not later than the 30th day before the proposal is adopted. Notice of action proposed under Article 5.97 must be published in the ***Texas Register*** not later than the 10th day before the proposal is adopted. The Administrative Procedure Act, Government Code, Chapters 2001 and 2002, does not apply to department action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

Final Action on Rules

EXEMPT FILING NOTIFICATION PURSUANT TO THE INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96 ADOPTION OF REVISED WORKERS' COMPENSATION CLASSIFICATION RELATIVITIES AND AMENDMENTS TO THE TEXAS BASIC MANUAL OF RULES, CLASSIFICATIONS AND EXPERIENCE RATING PLAN FOR WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE UPDATING THE EXPECTED LOSS RATES AND DISCOUNT RATIOS TABLE

The Commissioner of Insurance (Commissioner) adopts the amendments proposed by the Texas Department of Insurance (Department) staff in a petition (Ref. No. W-0907-10-I) filed on September 4, 2007. Notice of the proposal was published in the September 14, 2007, issue of the *Texas Register* (32 TexReg 6381). The amendments were considered at a public hearing held under Docket No. 2671 on October 3, 2007, at 9:30 a.m., in Room 100 of the William P. Hobby Building, 333 Guadalupe Street in Austin, Texas. No comments were received on the proposed changes. The amendments are adopted without changes to the proposed amendments.

The adopted amendments include revised Texas Workers' Compensation Classification Relativities (classification relativities) to replace those adopted pursuant to Commissioner's Order No. 06-1309, dated December 15, 2006; and a revised table concerning the Expected Loss Rates and Discount Ratios by classification used in experience rating, which is contained in the Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance (Basic Manual).

The Commissioner has jurisdiction over this matter pursuant to Article 5.96 and §2053.051 and §2053.052 of the Insurance Code. Section 2053.051 requires the Department to determine hazards by classification and establish classification relativities applicable to the payroll in each classification for workers' compensation insurance. Section 2053.052 requires the Commissioner to adopt a uniform experience rating plan for workers' compensation insurance. Section 2053.051 and §2053.052 provide that the classification system and experience rating plan be revised at least once every five years. Article 5.96 authorizes the Department to prescribe, promulgate, adopt, approve, amend, or repeal standard and uniform manual rules, rating plans, classification plans, statistical plans, and policy and endorsement forms for various lines of insurance, including workers' compensation insurance.

The Commissioner has determined that it is necessary to revise the classification relativities and the Basic Manual as proposed by staff in the petition so that the classification relativities and the Basic Manual are based on the most recent experience data available.

The revised classification relativities schedule and Basic Manual table have been on file with the Office of the Chief Clerk of the Department since September 4, 2007, and are incorporated by reference into this Commissioner's Order.

This adoption is made pursuant to Article 5.96 of the Insurance Code, which exempts actions taken under it from the requirements of the Administrative Procedures Act (Government Code, Title 10, Chapter 2001).

The Department hereby certifies that the amendments to the classification relativities and the Basic Manual have been reviewed by legal counsel and found to be a valid exercise of the Department's authority.

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that the amendments to the classification relativities and the Basic Manual proposed by the staff petition (Ref. No. W-0907-10-I) are adopted.

IT IS FURTHER ORDERED that the revised classification relativities are available for immediate use by insurers and that their use is mandatory for all policies with an effective date on or after January 1, 2008, unless the insurer makes an independent filing to justify insurer-specific classification relatives.

IT IS FURTHER ORDERED that the amendments to the Basic Manual apply to all policies with an effective date on or after January 1, 2008. AND IT IS SO ORDERED.

TRD-200705139
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: October 24, 2007

♦ ♦ ♦

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Review

Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) proposes the review of rules in 19 TAC Chapter 102, Educational Programs, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the TEA in 19 TAC Chapter 102 are organized under the following subchapters: Subchapter AA, Commissioner's Rules Concerning Head Start Educational Component Grant Program; Subchapter BB, Commissioner's Rules Concerning Master Teacher Grant Programs; Subchapter CC, Commissioner's Rules Concerning Coordinated Health Programs; Subchapter DD, Commissioner's Rules Concerning the Texas Accelerated Science Achievement Program Grant; Subchapter EE, Commissioner's Rules Concerning Pilot Programs; Subchapter FF, Commissioner's Rules Concerning Governor's Educator Excellence Award Programs; and Subchapter GG, Commissioner's Rules Concerning Early College Education Program.

As required by the Texas Government Code, §2001.039, the TEA will accept comments as to whether the reasons for adopting 19 TAC Chapter 102, Subchapters AA-GG, continue to exist.

The public comment period on the review of 19 TAC Chapter 102, Subchapters AA-GG, begins November 9, 2007, and ends December 9, 2007. Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028.

TRD-200705206
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: October 29, 2007

♦ ♦ ♦

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §12.688

Table 1 - Determination of Amount of Penalty

Points	Dollars	Points	Dollars	Points	Dollars
1	50	21	1,050	41	5,250
2	100	22	1,100	42	5,500
3	150	23	1,150	43	5,750
4	200	24	1,200	44	6,000
5	250	25	1,250	45	6,250
6	300	26	1,500	46	6,500
7	350	27	1,750	47	6,750
8	400	28	2,000	48	7,000
9	450	29	2,250	49	7,250
10	500	30	2,500	50	7,500
11	550	31	2,750	51	7,750
12	600	32	3,000	52	8,000
13	650	33	3,250	53	8,250
14	700	34	3,500	54	8,500
15	750	35	3,750	55	8,750
16	800	36	4,000	56	9,000
17	850	37	4,250	57	9,250
18	900	38	4,500	58	9,500
19	950	39	4,750	59	9,750
20	1,000	40	5,000	60	10,000

Figure: 19 TAC §4.28(b)

Chart I - Institutions must select 36 semester credit hours of the core curriculum according to the parameters described below:

Component Area	**Required Semester Credit Hours**
010** Communication (Englishrhetoric/composition)	6
020** Mathematics (the first college-level math course a student completes, including but not limited to introductory statistics, logic, college [~~level~~] algebra, or any more advanced math course for which the student is qualified upon enrollment [~~equivalent, or above~~])	3
030** Natural Sciences	6
Humanities & Visual and Performing Arts Must include: 050** Visual/Performing Arts 040** Other (literature, philosophy, modern or classical language/literature and cultural studies*)	6 (3) (3)
Social/Behavioral Sciences Must include: 060** U.S. History (legislatively mandated) 070** Political Science (legislatively mandated) 080** Social/Behavioral Science	15 (6) (6) (3)
Total Minimum Requirements	36

* **Humanities** application of language skills includes a study of literature in the original language, and/or the cultural studies related to a modern or classical language.

** Identifying numbers recommended by the Texas Association of Collegiate Registrars and Admissions Officers (TACRAO) for use on students transcripts, in order to indicate courses utilized to satisfy core curriculum component area requirements. Student transcripts should also indicate whether a student has completed the core curriculum satisfactorily.

Chart II - To complete the required 42-semester-credit-hour core curriculum, institutions shall select an additional 6 semester credit hours from one or more of the following:

Component Area	**Possible Additional Semester Credit Hours (6 Minimum)**
011*** Communication (composition, speech, modern language communication skills*)	Up to 6
021*** Mathematics (the second college-level math course a student completes, including but not limited to finite math, statistics, calculus, or above)	Up to 3
031*** Natural Sciences	Up to 3
041*** Humanities (literature, philosophy, modern or classical language/literature and cultural studies**) & 051*** Visual and Performing Arts	Up to 3
081*** Social and Behavioral Sciences	Up to 3
090*** Institutionally Designated Option (may include additional semester credit hours in the categories listed above, computer literacy, health/wellness, kinesiology, capstone or interdisciplinary courses, etc.	Up to 6
Total Additional Hours	6

* **Communication** application of a modern language means the basic proficiency skills acquired during introductory courses and including a working competency in grammar, writing, speaking, and listening/comprehension in a foreign language.

** **Humanities** application of language skills includes a study of literature in the original language, and/or the cultural studies related to a modern or classical language.

*** Identifying numbers recommended by the Texas Association of Collegiate Registrars and Admissions Officers (TACRAO) for use on students transcripts, in order to indicate courses utilized to satisfy core curriculum component area requirements. Student transcripts should also indicate whether a student has completed the core curriculum satisfactorily.

Figure: 28 TAC §1.602(b)(1)(B)

1 **IMPORTANT NOTICE**	**AVISO IMPORTANTE**
To obtain information or make a complaint:	Para obtener informacion o para someter una queja:
2 You may contact your (title) at (telephone number).	Puede comunicarse con su (title) al (telephone number).
3 You may call (company)'s toll-free telephone number for information or to make a complaint at:	Usted puede llamar al numero de telefono gratis de (company)'s para informacion o para someter una queja al:
1-XXX-XXX-XXXX	**1-XXX-XXX-XXXX**
4 You may also write to (company) at:	Usted tambien puede escribir a (company):
5 You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at:	Puede comunicarse con el Departamento de Seguros de Texas para obtener informacion acerca de companias, coberturas, derechos o quejas al:
1-800-252-3439	**1-800-252-3439**
6 You may write the Texas Department of Insurance:	Puede escribir al Departamento de Seguros de Texas:
P.O. Box 149104 Austin, TX 78714-9104 Fax: (512) 475-1771 Web: http://www.tdi.state.tx.us E-mail: ConsumerProtection@tdi.state.tx.us	P.O. Box 149104 Austin, TX 78714-9104 Fax: (512) 475-1771 Web: http://www.tdi.state.tx.us E-mail: ConsumerProtection@tdi.state.tx.us
To obtain price and policy form comparisons and other information relating to residential property insurance and personal automobile insurance, you may visit the Texas Department of Insurance/Office of Public Insurance Counsel website:	Para obtener formas de comparacion de precios y poliza y otra informacion acerca del seguro de propiedad residencial y del seguro de automóvil, visite el sitio web del Departamento de Seguros de Texas y la Oficina del Asesor Publico de Seguros:
www.helpinsure.com	**www.helpinsure.com**
7 **PREMIUM OR CLAIM DISPUTES:** Should you have a dispute concerning your premium or about a claim you should contact the (agent) (company) (agent or the company) first. If the dispute is not resolved, you may contact the Texas Department of Insurance.	**DISPUTAS SOBRE PRIMAS O RECLAMOS:** Si tiene una disputa concerniente a su prima o a un reclamo, debe comunicarse con el (agente) (la compania) (agente o la compania) primero. Si no se resuelve la disputa, puede entonces comunicarse con el departamento (TDI).
8 **ATTACH THIS NOTICE TO YOUR POLICY:** This notice is for information only and does not become a part or condition of the attached document.	**UNA ESTE AVISO A SU POLIZA:** Este aviso es solo para proposito de informacion y no se convierte en parte o condicion del documento adjunto.

Figure: 28 TAC §1.602(b)(2)

INSURANCE WEBSITE NOTICE

To obtain price and policy form comparisons and other information relating to residential property insurance and personal automobile insurance, you may visit the Texas Department of Insurance/Office of Public Insurance Counsel website: www.helpinsure.com.

ANUNCIO DEL SITIO WEB DE SEGUROS

Para obtener formas de comparación de precios y póliza y otra información acerca del seguro de propiedad residencial y del seguro de automóvil, visite el sitio web del Departamento de Seguros de Texas y la Oficina del Asesor Público de Seguros: www.helpinsure.com.

Figure: 40 TAC §455.5(b)

TEXAS VETERANS COMMISSION
"TAPS CERTIFICATION"

Texas Government Code, Chapter 434, §434.072(b) states, in pertinent part: "The commission may establish a program to issue vouchers to be exchanged for an exemption from the payment of tuition and required fees at an institution of higher education as provided by §54.215, Education Code, to students in grades 6 through 12 or at postsecondary educational institutions who sound "Taps" on a bugle, trumpet, or cornet during military honors funerals held in this state for deceased veterans. A voucher must be issued in the amount of $25 for each time a student sounds "Taps" as described by this subsection..."

As outlined above, the student identified below:
(To be completed by student.)
*******************PLEASE PRINT CLEARLY. THE VOUCHER WILL BE MAILED TO THIS ADDRESS*******************

Student Name: ____________________

Student Address: ____________________

____

Phone Number: ____________________

School Attended: ____________________

School Address: ____________________

____

Date of Birth: ____________________

Signature of Student: ____________________

Signature of Parent/Guardian: ____________________
(If Student Under 18)

****

Provided the services of sounding "Taps" for the military funeral of:
(To be completed by funeral home)

Veteran's Name: ____________________

Date of Funeral Service: ____________________

Place of Funeral Service: ____________________

Funeral Home Name: ____________________

Address: ____________________

____

Funeral Director License No.: ____________________

I HEREBY CERTIFY THAT THE ABOVE NAMED STUDENT PERFORMED TAPS AT THIS SERVICE AND THAT THIS DOCUMENT IS TRUE AND CORRECT.

Signature of Funeral Director: ____________________

Funeral Director Telephone Number: ____________________

****

PLEASE RETURN THIS FORM TO THE TEXAS VETERANS COMMISSION, P.O. BOX 12277, AUSTIN, Texas 78711-2277. A voucher in the amount of $25 for use in the payment of tuition and/or required fees at an institution of higher education will be issued to the above student upon receipt of this completed document and verification that this service was provided.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Department of Agriculture

Request for Proposals: Economic Research for the Texas Wine Industry

Statement of Purpose.

The Texas Department of Agriculture (TDA) is issuing this Request for Proposals (RFP) inviting proposals for an economic study that will create four models that will help develop the Texas wine industry.

Two that will position the industry at a possible $3 billion in economic impact.

Two that will position the industry at a possible $5 billion in economic impact.

To ensure the future success of the Texas wine and grape industry, the need exists to accurately and thoroughly research, develop and evaluate a comprehensive economic study to position the industry to take advantage of market trends, growth and growth opportunities.

Funding for this market research study is provided from the Texas Wine Industry Development Fund (WIDF). Section 50B.002 of the Texas Agriculture Code provides that under the direction of TDA and the Commissioner of Agriculture, WIDF funds may be used for this project. This study's information will help increase the economic impact of the Texas wine producing industry.

Eligibility.

Funds may be awarded to institutions of higher education or other research entities. An RFP may include a request for funding of a project to be conducted by more than one entity.

Objective and Scope of Work.

To ensure the future success and growth of the Texas wine and grape industry, this research study will examine a multitude of economic factors and develop a realistic plan for TDA and the Texas wine industry to execute. Within this plan, the questions below would have to be specifically addressed.

1. Job creation: In order to reach the $3 billion dollar plateau, how many new jobs would have to be created (for $5 billion dollars). What industries would be able to create those jobs?

2. Increased production: Texas currently produces 1 million gallons of wine per year with an estimated retail value of $180 million. How long would it take to double or triple production? Would the characteristics of the product and how it was produced need to change? Where would it be sold? Would the grapes needed to achieve this level of production be Texas-grown fruit? How much in-state grape production is feasible?

3. Role of technology: How could a growing industry benefit from technology? What technology could be used to support the industry? Are their any existing technology companies in the state that can expand into serving a role in the Texas wine industry?

4. Relationship with tourism: What type of progressive tourism approaches can be implemented within Texas? How would tourism affect winery direct sales? What tourism considerations would affect the industry in the most positive and efficient ways?

5. Points of sales: What adjustments would be needed if more wine was to be sold through retail and restaurant channels? Would the price structure of Texas wines need to change, at both the winery and retail levels? What impact would this have on sales and/or production? Would a larger volume of lower- to mid-priced wine be a strategy to consider?

6. Marketing: What kind of promotional program would give Texas wines the attention they deserve and consumer demand they seek? What does the Texas wine industry need to do to support such a program?

7. Role of experts: Texas recently secured a few Texas viticulture and enology specialists to help develop the industry. What would be needed in terms of research, support and education in order to help these experts in their efforts?

8. Additional research: Are there areas of additional research that could benefit the industry?

Proposal Limitations.

If funding becomes unavailable during the project term and TDA is unable to obtain sufficient funds, the project amount may be reduced or terminated.

Proposal/Funding Revisions.

TDA reserves the right to fund proposals partially or fully. Where more than one proposal is acceptable for funding, TDA may request cooperation between grantees or revision/adjustment to a proposal in order to avoid duplication and to realize the maximum benefit to the state.

Submission Requirements.

Each proposal must include the following information:

1. A cover sheet with names, titles, addresses, telephone and fax numbers, and email addresses of the principal researchers. Indicate who is designated as the lead point of contact.

2. Identification of the key personnel to be funded and/or involved in operations funded, including information on their experience, such as a brief professional biography and academic background and how it relates to the project for which that key personnel with be associated.

3. Additional information on the submitting entity's unique capabilities and/or resources to complete the tasks outlined in the RFP, any other value-added services that can be offered to further the intent of the outlined tasks, and any additional ideas or input to contribute to the goals of the project.

4. A detailed timeline with dates for specific deliverables.

5. A detailed, line-item budget that outlines costs for staff time, resources and other items.

6. The total amount for this study shall not exceed $15,000.

In addition, the Texas Department of Agriculture (TDA) requests the following:

The project team must work collaboratively with other individuals and organizations conducting research or projects with funding provided

through the Wine Industry Development Fund. That includes the Texas Wine and Grape Growers Association.

TDA reserves the right to evaluate the qualifications and experience of any respondents, to reject any and/or all responses, and to negotiate specific terms of an agreement that is in the best interest of the state. All awards are subject to the availability of appropriations and authorizations by the Texas Legislature. Any information or documentation submitted to TDA is subject to disclosure under the Texas Public Information Act. Awarded projects must remain in full compliance with state and federal laws and regulations or be subject to termination at the discretion of TDA.

Reporting Requirements.

Operations approved for funding are required to submit the following reports:

1. A preliminary report of findings, completed within approximately 2 weeks of the contract award.

2. A Final Report on all project components, completed approximately 4 weeks after the contract award. Reports must be submitted in both a hard copy format and an electronic format utilizing Word.

The Final Report of this study should include:

Highlights - Summarize the key metric impacts and some of the alternative scenarios of this research for the Texas wine industry.

Executive Summary - Summarize the findings and implications of the alternative scenarios for the Texas wine industry.

Research Methodology - Explain the source of the data and the methods used in explaining them.

All reports must include an Executive Summary of no more than 4 pages long.

General Compliance Information.

All awards are subject to the availability of appropriations and authorizations by the Texas Legislature.

Any information or documentation submitted to TDA is subject to disclosure under the Texas Public Information Act.

Awarded projects must remain in full compliance with state and federal laws and regulations or be subject to termination at the discretion of TDA.

Deadline and Submission Information.

Proposals should be submitted to Bobby Champion Jr., State Coordinator for Wine Marketing, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. The street address is 1700 North Congress, 11th Floor, Austin, Texas 78701.

Proposals must be received no later than **5:00 p.m., November 23, 2007.** One original and seven copies must be submitted. Fax copies will not be accepted. Please contact Bobby Champion Jr. at (512) 463-3303 or by e-mail at Robert.champion@tda.state.tx.us with any questions you may have.

Evaluation and Award Information.

All proposals will be subject to evaluation based on the criteria set forth in this RFP. TDA shall not pay for any costs incurred by any entity in responding to this RFP. TDA reserves the right to accept or reject any or all proposals submitted. TDA is under no legal or other obligation to award funds on the basis of this RFP or any other RFP. The Commissioner will make final funding decisions.

Texas Public Information Act.

All proposals shall be deemed, once submitted, to be the property of the TDA and are subject to the Texas Public Information Act, Texas Government Code, Chapter 552.

TRD-200705266
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: October 31, 2007

♦ ♦ ♦

Request for Proposals: Enology and Viticulture Education and Research Grants

Statement of Purpose.

In accordance with Texas Agriculture Code, Chapter 50B and Texas Alcoholic Beverage Code, Section 205.03, the Texas Department of Agriculture (TDA) seeks to fund grant proposals for enology and viticulture education and research.

Eligibility.

The grant funds may be awarded to public or private entities, including institutions of higher education and governmental entities. Joint efforts between eligible entities will be considered, and a project proposal may include a request for funding of a project to be conducted by more than one entity.

Eligible Projects.

The project must meet at least one topical area listed below:

1. Developing and maintaining viticulture and enology-related education programs;

2. Eliminating diseases and pests that negatively impact the production of grapes and wine in the United States;

3. Developing technologies or practices that will increase grape production in Texas and will have an overall benefit to the production of grapes and wine; and

4. Conducting research in the areas of enology and viticulture to support the continued growth of the grape and wine industry.

Objectives and Criteria.

1. Projects funded must be dedicated to education and/or conducting research in the areas of enology and viticulture to support the continued growth of the grape and wine industry.

2. Criteria that will be used in evaluating the proposal include:

a. Extent to which the proposal benefits and supports the growth of the wine grape and wine industry;

b. Extent to which the proposal contributes to a coordinated effort to address issues faced by the wine grape and wine industry, including the need for more educational and research opportunities in enology and viticulture, and increases the economic impact of the wine industry;

c. Ability of the applicant institution to sustain an enology and/or viticulture program; and

d. Detail and reasonableness of project budget submitted, including justification for proposed line item expenditures.

Proposal Limitations.

1. Projects may not exceed 2 years.

2. Proposals may not include more than 10% in indirect costs.

Proposal/Funding Revisions.

TDA reserves the right to fund projects partially or fully. Where more than one proposal is acceptable for funding, TDA may request cooperation between grantees or revision/adjustment to a proposal in order to avoid duplication and to realize the maximum benefit to the state.

Eligible Expenses.

Expenses that are necessary and reasonable for proper and efficient performance and administration of a project are eligible; however, these expenses must be properly documented with sufficient backup detail, including copies of paid invoices in accordance with grant agreement. Examples of eligible expenditures are:

1. Personnel costs - both salary and benefits;

2. Travel - domestic travel for employees only; out-of-state and international travel must be pre-approved;

3. Equipment - nonexpendable, tangible personal property that has a useful life of more than one year and costs $5,000 or more (vehicle(s) purchase is not an eligible expenditure);

4. Supplies and direct operating expenses - equipment that costs less than $5,000, such as research and office supplies, postage, telecommunications, printing, etc.;

5. Contracts - agreements made with other universities or private parties to perform a portion of the project; and

6. Indirect costs - no more than 10%.

Ineligible Expenses.

Expenses that are prohibited by state or federal law are ineligible. Refer to the Uniform Grant Management Standards for more detailed information. http://www.governor.state.tx.us/divisions/stategrants/guidelines/files/UGMS062004.doc.

The following are some examples of these ineligible expenses:

1. Alcoholic beverages;

2. Entertainment;

3. Contributions - charitable or political;

4. Expenses falling outside of the project grant agreement period;

5. Expenditures not specifically listed in the project budget; and

6. Expenses that are not adequately documented.

Submission Requirements.

Each proposal may not exceed fifteen (15) pages and must include the following information:

1. Cover sheet with names, titles, addresses, telephone and fax numbers, and email addresses of the principal researchers. Indicate who is designated as the lead researcher and point of contact;

2. Proposal summary, not to exceed one page. Include a statement about how the proposal benefits the wine grape and wine industry;

3. Identification of the key personnel to be funded and/or involved in the project, including information on their experience;

4. Performance objectives;

5. Work plan;

6. Detailed description of the anticipated beneficial impact on the wine and grape industry; and

7. Detailed project budget outlining anticipated expenses including but not limited to: personnel, travel, supplies, contracts and equipment costs along with justification for proposed line item expenditures.

Reporting Requirements.

Approved projects are required to submit the following reports:

1. Project reports on a quarterly basis detailing specific, deliverable accomplishment of project objectives for the time periods specified in the project grant agreement;

2. Final compliance project report due either upon completion of the project or thirty days after the termination of the project grant agreement. The final report shall be submitted in a hard copy format and an electronic format utilizing Word. The final report shall contain:

a. A project summary -history of the project, its objectives, importance, effort, results, and commercial applications of the project;

b. A description of the successes, challenges, and any limitations of the program;

c. Technical and economic content - overall background of the project and the part (if any) that research plays in providing results, discussion of the technical, social and other benefits to the local community and to Texas, discussion of the economics of the project, including direct impact on local communities (jobs) and/or indirect impact (related businesses), and commercialization of the project; and

d. A description of future plans, including how the project will continue after the grant is expended and how additional funding might address expansion efforts.

3. Budget reports on a quarterly basis for the time periods specified in the project grant agreement that details the grant award spent to date;

4. A final budget report due forty-five days after the completion of the project or the termination of the project grant agreement; and

5. Subject to call of committee for presentations to provide specific reports on how the project is accomplishing this program's objectives with tangible results.

General Compliance Information.

1. All grant awards are subject to the availability of appropriations and authorizations by the Texas Legislature. If funds become unavailable during the term of the project, the amount of the resulting project agreement may be reduced or the agreement terminated.

2. Any delegation by the Grantee to a subcontractor regarding any duties and responsibilities imposed by the grant award shall be approved in advance by TDA and shall not relieve the Grantee of its responsibilities to TDA for the performance thereof.

3. Grant recipients must submit information on their project to an agriculture database at the direction of TDA.

4. Any information or documentation submitted to TDA is subject to disclosure under the Texas Public Information Act.

5. While TDA attempts to observe the strictest confidence in handling the research proposals, it cannot guarantee complete confidentiality on any matters that lie beyond its control. The confidentiality of recipient's "proprietary data" so designated shall be strictly observed to the extent permitted by appropriate Texas laws, including the Texas Public Information Act. There shall be no restriction on the publication of research results except when taking into consideration effects of prior publication on possible subsequent patent and license to use copyrighted material.

6. Control of the ownership and disposition of all patentable products and inventories shall be agreed to by Grantee and TDA. A copy of the intellectual property policy should be made available to the TDA upon request.

7. Awarded grant projects must remain in full compliance with state and federal laws and regulations and be subject to termination at the discretion of TDA.

8. Grant recipients must keep a separate bookkeeping account with a complete record of all expenditures relating to the research project. Records shall be maintained for three years after the completion of the research project or as otherwise agreed upon with TDA. TDA and the Texas State Auditor's Office reserve the right to examine all books, documents, records, and accounts relating to the research project at any time throughout the duration of the agreement and for three years immediately thereafter. If there has been any litigation, claim, negotiation, audit or other action started prior to the expiration of the three-year period involving the records, then the records must be retained until the completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later. TDA and the Texas State Auditor's Office reserve the right to inspect the research locations and to obtain from the research team full information regarding all project activities.

9. If the Grantee has a financial audit performed in any year during which Grantee receives funds from Grantor, and if the Grantor requests information about the audit, the Grantee shall provide such information to TDA or provide information as to where the audit report can be publicly viewed, including the audit transmittal letter, management letter, and any schedules in which the Grantee's funds are included.

10. Grant awards to Texas institutions shall comply in all respects with the Uniform Grant Management Standards (UGMS). A copy may be downloaded from the following website: www.governor.state.tx.us/divisions/stategrants/guidelines/files/UGMS012001.doc

Deadline and Submission Information.

Proposals should be submitted to Karen Reichek, Grants Coordinator, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. The street address is 1700 North Congress, 11th Floor, Austin, Texas 78701.

Proposals must be received no later than 5:00 p.m. January 15, 2008. One original and seven copies must be submitted. Additionally, an electronic copy should be e-mailed to Karen.Reichek@tda.state.tx.us. Fax copies will not be accepted.

Please contact Karen Reichek at (512) 936-2450 or by e-mail at: Karen.Reichek@tda.state.tx.us with any questions you may have.

Evaluation and Award Information.

All proposals will be subject to evaluation based on the criteria set forth in this RFP. TDA shall not pay for any costs incurred by any entity in responding to this RFP. TDA reserves the right to accept or reject any or all proposals submitted; and to partially fund proposals. TDA is under no legal or other obligation to award a grant on the basis of this RFP or any other RFP. The Commissioner will make final funding decisions.

Texas Public Information Act.

All proposals shall be deemed, once submitted, to be the property of the TDA and are subject to the Texas Public Information Act, Texas Government Code, Chapter 552.

TRD-200705253
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: October 31, 2007

♦ ♦ ♦

Comptroller of Public Accounts

Notice of Award

The Comptroller of Public Accounts (Comptroller), State Energy Conservation Office, announces this notice of contract award in connection with the Request for Proposals (RFP #180c) for technical assistance and services for the Texas Energy Partnership Program.

Comptroller announces that a contract was awarded to Lockheed Martin Services, Inc., 2339 Route 70 West, Cherry Hill, New Jersey 08002-3315. The total amount of the contract is not to exceed $198,200.00. The term of the contract is October 22, 2007 to August 31, 2008.

The notice of request for proposals (RFP #180c) was published in the August 17, 2007, issue of the *Texas Register* (32 TexReg 5202).

TRD-200705151
Pamela Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: October 25, 2007

♦ ♦ ♦

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 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of November 5, 2007 - November 11, 2007 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of November 5, 2007 - November 11, 2007 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200705218
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: October 30, 2007

♦ ♦ ♦

Texas Council for Developmental Disabilities

Request for Proposals

The Texas Council for Developmental Disabilities (TCDD) announces the availability of funds to establish up to seven different types of projects that are interrelated and jointly advance leadership and advocacy skills training efforts in Texas. Projects funded under this Announcement are intended to develop a comprehensive network of training programs and resources to assist individuals to find and access, in a timely manner, leadership development training, advocacy skills training, and/or some of the supports that they need to be successful leaders and advocates. There will be a statewide network that includes regional networks of diverse advocacy organizations that collaborate with each other as well as with other community organizations.

The Council has approved funds of up to $500,000 per year that are expected to be available for all projects funded under this Announcement. Initial funding for the projects will be determined through an independent review process established by the TCDD and in consideration of the availability of funds. Each type of project has specific

funding limitations that must be followed. Continuation funding for subsequent years will not be automatic, but will be based on a review of the project's accomplishments and other items. Non-federal matching funds of at least 10% of total project costs are required for projects in federally designated poverty areas. Non-federal matching funds of at least 25% of total project costs are required for projects in other areas.

TCDD is soliciting proposals for all seven RFP Titles at this time so that all interested parties have an opportunity to review the intended overall structure and goals of the "Advocacy U" project and to understand the importance of collaborating with other organizations as early as possible.

RFP 2007-1: Local Basic Advocacy Training Projects (Options A & B)

RFP 2007-2: Specialized Advocacy Training Projects

RFP 2007-3: Expansion of Existing Training Programs

RFP 2007-4: "Advocacy U" Resource Center

RFP 2007-5: Regional Network Development

RFP 2007-6: Statewide Advanced Leadership Training Project

RFP 2007-7: Statewide Advocacy Network Development

Additional information concerning this request for proposal or more information about TCDD may be obtained through TCDD's Web site at **http://www.txddc.state.tx.us.** All questions pertaining to this RFP should be directed to Joanna Cordry, Planning Specialist, at (512) 437-5410 or by e-mail to **Joanna.cordry@tcdd.state.tx.us.**

The application packet may be obtained on TCDD's Web site or by requesting a copy in writing by U.S. mail, fax, or E-mail from Barbara Booker at the Texas Council for Developmental Disabilities, 6201 E. Oltorf, Suite 600, Austin, TX 78741-7509; fax number (512) 437-5434; e-mail address **Barbara.booker@tcdd.state.tx.us.** Applications must be requested in writing unless downloaded from the Internet.

Deadline: Two hard copies, one with the original signatures, must be submitted. All proposals must be received by TCDD not later than 4:00 p.m., Central Standard Time, Tuesday, January 22, 2008, or, if mailed, postmarked prior to midnight on the date specified above. Proposals may be delivered by hand or mailed to TCDD at 6201 East Oltorf, Suite 600, Austin, TX 78741-7509 to the attention of Barbara Booker. Faxed proposals cannot be accepted. TCDD also requests that applicants send an electronic copy at the same time the hard copies are submitted. Electronic copies should be addressed to **Barbara.booker@tcdd.state.tx.us.**

Proposals will not be accepted after the due date.

Grant Proposers' Workshops: The Texas Council for Developmental Disabilities will conduct telephone conferences or workshop(s) to help potential applicants understand the grant application process and this specific RFP. In addition, answers to frequently asked questions will be posted on the TCDD Web site. Please check the TCDD Web site at **http://www.txddc.state.tx.us** for a schedule of conference calls or workshops for this RFP.

TRD-200705183
Roger Webb
Executive Director
Texas Council for Developmental Disabilities
Filed: October 29, 2007

♦ ♦ ♦

Employees Retirement System of Texas

Request for Proposal

TEXAS EMPLOYEES GROUP BENEFITS PROGRAM

PHARMACY BENEFIT MANAGEMENT

In accordance with Texas Insurance Code, Chapter 1551, the Employees Retirement System of Texas ("ERS") is issuing a Request for Proposals ("RFP") for qualified Pharmacy Benefit Managers ("PBM") to provide pharmacy benefit management services to the HealthSelect of Texas ("HealthSelect"), currently a self-funded, managed care, point-of-service ("POS") health plan throughout Texas under the Texas Employees Group Benefits Program ("GBP"), beginning September 1, 2008 through August 31, 2012. PBMs must provide the level of benefits required in the RFP and meet other requirements that are in the best interest of the GBP participants and ERS, and shall be required to execute a Contractual Agreement ("Contract") provided by and satisfactory to ERS relating to the services to be provided.

A PBM wishing to respond to the RFP must: 1.) maintain its principal place of business in the United States of America and shall have a current license from the Texas Department of Insurance ("TDI") to serve in Texas as a Third Party Administrator ("TPA"), if applicable; 2.) have been providing prescription benefit management services for an organization with a member participation of no less than 100,000 or an aggregate of 1,000,000 covered lives for a minimum of three (3) years; 3.) reflect a pharmacy network capable of servicing the GBP membership (approximately 500,000 lives) without member access disruption by March 31, 2008; and 4.) have a current net worth of $50 million as evidenced by a 2006 audited financial statement. The Contractual Agreement is a separate document from the proposal and must be taken separately from ERS' web site. The Contractual Agreement must be signed in blue ink, with all required exhibits completed and attached and without amendment or revision, by a duly authorized officer of the PBM and returned with the PBM's proposal.

The RFP will be available on or after November 14, 2007, from ERS' web site, (www.ers.state.tx.us). To access the secured portion of the RFP website, interested PBMs must email their request to the attention of Darlene Hall at: darlene.hall@ers.state.tx.us. The email request must include the PBM's legal name, street address, phone and fax numbers, and email address for the organization's direct point of contact. Upon receipt of your emailed request, a user ID and password will be issued to the requesting organization that will permit access to the secured RFP. General questions concerning the RFP should be sent to the IVendor Mailbox: http://www.ers.state.tx.us/vendorbid/general_info/default.aspx. Inquires and responses, if applicable, are updated frequently. The RFP will be discussed at a mandatory PBM web conference on December 6, 2007, beginning at 2:00 p.m. (CST). PBMs are required to register for participation in the web conference no later than 4:00 p.m. on December 3, 2007, by emailing Ms. Hall as provided above.

To be eligible for consideration, the PBM is required to submit a total of six (6) copies of the proposal. One (1) "Original" with the fully executed Contractual Agreement and Business Associate Agreement ("BAA"), both signed in blue ink, and without amendment or revision with all required completed exhibits attached and an additional two (2) bound duplicates of the proposal, including all required exhibits must be provided in printed format. The remaining three (3) copies must be submitted in CD-ROM format using Word or Excel applications (no information submitted in PDF format will be accepted). All materials must be executed as noted above and must be received by ERS by 12:00 Noon (CST) on December 19, 2007.

ERS will base its evaluation and selection of a PBM on factors including, but not limited to the following, which are not necessarily listed in order of priority: compliance with the RFP, operating requirements, references, pharmacy network, experience serving large group programs, past experience, administrative quality, program fees and other relevant criteria. Each proposal will be evaluated both individually and relative to the proposal of other qualified PBMs. Complete specifications will be included with the RFP.

ERS reserves the right to reject any and/or all proposals and/or call for new proposals if deemed by ERS to be in the best interests of the GBP, its participants or ERS. ERS also reserves the right to reject any proposal submitted that does not fully comply with the RFP's instructions and criteria. ERS is under no legal requirement to execute a Contractual Agreement on the basis of this notice or upon issuance of the RFP and will not pay any costs incurred by any entity in responding to this notice or the RFP or in connection with the preparation thereof. ERS specifically reserves the right to vary all provisions set forth at any time prior to execution of a contract where ERS deems it to be in the best interest of the GBP, its participants or ERS.

TRD-200705250
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Filed: October 31, 2007

♦ ♦ ♦

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 10, 2007**. 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 December 10, 2007**. 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: Barten Industrial Coatings, LLC; DOCKET NUMBER: 2007-1108-AIR-E; IDENTIFIER: RN105211007; LOCATION: Columbus, Colorado County, Texas; TYPE OF FACILITY: sandblasting and surface coating plant; RULE VIOLATED: 30 Texas Administrative Code (TAC) §116.110(a) and Texas Health and Safety Code (THSC), §382.085(b), by failing to obtain authorization to operate a sandblasting and surface coating plant; PENALTY: $3,960; ENFORCEMENT COORDINATOR: Roshondra Lowe, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Baylor College of Medicine; DOCKET NUMBER: 2007-1432-AIR-E; IDENTIFIER: RN100216324; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: educational institution; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2) and THSC, §382.085(b), by failing to timely submit an annual permit compliance certification (PCC); PENALTY: $1,925; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Berry Cleaners, Inc.; DOCKET NUMBER: 2006-0818-DCL-E; IDENTIFIER: RN101630440; LOCATION: Spearman, Hansford County, Texas; TYPE OF FACILITY: dry cleaner; 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: $1,067; ENFORCEMENT COORDINATOR: Deana Holland, (512) 239-2504; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(4) COMPANY: Bloomington Independent School District; DOCKET NUMBER: 2007-1050-MWD-E; IDENTIFIER: RN101274140; LOCATION: Victoria County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014578001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permit effluent limits; PENALTY: $1,240; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(5) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2007-0993-AIR-E; IDENTIFIER: RN102320850; LOCATION: Borger, Hutchinson County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), Permit Number 7719A, Special Condition Number 8D, and THSC, §382.085(b), by failing to note the date and time of each audio, visual, and olfactory check for hydrogen sulfide leaks; 30 TAC §122.145(2) and THSC, §382.085(b), by failing to report in writing all instances of deviations; and 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to obtain permit authorization prior to the construction or modification of a facility which may emit air contaminants; PENALTY: $45,474; Supplemental Environmental Project (SEP) offset amount of $18,190 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Unauthorized Trash Dump Clean-Up; ENFORCEMENT COORDINATOR: Lindsey Jones, (512) 239-4930; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(6) COMPANY: DCP Midstream, LP; DOCKET NUMBER: 2007-1171-AIR-E; IDENTIFIER: RN100219278; LOCATION: Crockett County, Texas; TYPE OF FACILITY: oil and gas transmission plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c), New Source Review (NSR) Permit Number 18370, Special Condition Numbers 7 and 8, and THSC, §382.085(b), by failing to prevent unauthorized emissions and by failing to take actions necessary to

ensure that the 29 pounds per hour hydrogen sulfide limit is not exceeded; PENALTY: $4,450; ENFORCEMENT COORDINATOR: Jessica Rhodes, (512) 239-2878; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(7) COMPANY: Eldon Blount Construction; DOCKET NUMBER: 2007-1703-WQ-E; IDENTIFIER: RN104934484; LOCATION: Ector County, Texas; TYPE OF FACILITY: construction company; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(8) COMPANY: Fritz Industries, Inc.; DOCKET NUMBER: 2007-1389-AIR-E; IDENTIFIER: RN100218023; LOCATION: Mesquite, Dallas County, Texas; TYPE OF FACILITY: cement additive manufacturing plant; RULE VIOLATED: 30 TAC §122.146(2) and THSC, §382.085(b), by failing to timely submit an annual PCC; PENALTY: $1,925; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: GSW Cleaners, Inc. dba GSW Cleaners; DOCKET NUMBER: 2007-0984-DCL-E; IDENTIFIER: RN104896428; LOCATION: Grand Prairie, Tarrant County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; and 30 TAC §337.14(c) and the Code, §5.702, by failing to pay outstanding dry cleaner fees; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: City of Gustine; DOCKET NUMBER: 2007-0916-PWS-E; IDENTIFIER: RN101384204; LOCATION: Gustine, Comanche County, Texas; TYPE OF FACILITY: municipal public water supply; RULE VIOLATED: 30 TAC §290.43(c)(2), by failing to design the roof opening on each of the water system's two ground storage tanks in accordance with American Water Works Association (AWWA) standards; 30 TAC §290.46(f)(2) and (f)(3)(E)(i), by failing to maintain the water system's monthly operating reports so that these records can be made available for review by commission personnel; 30 TAC §290.46(s)(1), by failing to calibrate the well meters on the master well and wells one and three at least once every three years; 30 TAC §290.45(b)(1)(D)(i) and THSC, §341.0315(c), by failing to provide two or more wells having a total minimum well capacity of 0.6 gallons per minute (gpm) per connection; 30 TAC §290.45(b)(1)(D)(iii) and THSC, §341.0315(c), by failing to provide a minimum service pump capacity of two gpm per connection; 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement or an exception to the easement requirement; 30 TAC §290.46(t), by failing to post a sign at well three that contains the name of the water system and an emergency telephone number where a responsible official can be contacted; and 30 TAC §290.46(u), by failing to properly plug all abandoned wells in the water system with cement; PENALTY: $1,165; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3097; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(11) COMPANY: Harris County Municipal Utility District No. 189; DOCKET NUMBER: 2007-1298-MWD-E; IDENTIFIER: RN103040846; LOCATION: Harris County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0012237001, Interim I Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limits; PENALTY: $2,040; ENFORCEMENT COORDINATOR: Deana Holland, (512) 239-2504; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: Houston Marine Services, Inc.; DOCKET NUMBER: 2007-1112-IWD-E; IDENTIFIER: RN102074739; LOCATION: Baytown, Harris County, Texas; TYPE OF FACILITY: petroleum storage and barge service; RULE VIOLATED: 30 TAC §305.121(1), TPDES Permit Number 02842, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations; PENALTY: $3,960; Supplemental Environmental Project (SEP) offset amount of $1,584 applied to Gulf Coast Waste Disposal Authority ("GCWDA") - River, Lakes, Bays 'N Bayous Trash Bash; ENFORCEMENT COORDINATOR: Deana Holland, (512) 239-2504; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: Houston Oaks Golf Management Company, L.P.; DOCKET NUMBER: 2007-0990-MWD-E; IDENTIFIER: RN102681483; LOCATION: Waller County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 12402001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations; PENALTY: $5,859; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Jay Mills Contracting, Incorporated; DOCKET NUMBER: 2007-1704-WQ-E; IDENTIFIER: RN105278154; LOCATION: Erath County, Texas; TYPE OF FACILITY: contractor; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: Johnson Controls Battery Group, Inc.; DOCKET NUMBER: 2007-1354-AIR-E; IDENTIFIER: RN105172621; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: battery distribution center; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to obtain a permit prior to the construction and operation of the plant; PENALTY: $1,800; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(16) COMPANY: K-C Grain, LP; DOCKET NUMBER: 2007-1222-AIR-E; IDENTIFIER: RN100727866; LOCATION: Lockhart, Caldwell County, Texas; TYPE OF FACILITY: grain storage elevator site; RULE VIOLATED: 30 TAC §116.110(a)(1) and THSC, §382.085(b) and §382.0518(a), by failing to renew NSR Permit Number 4368; PENALTY: $4,000; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(17) COMPANY: Lube Center Management LTD. dba Jiffy Lube 699; DOCKET NUMBER: 2007-1692-PST-E; IDENTIFIER: RN101564516; LOCATION: Dallas County, Texas; TYPE OF FACILITY: oil changing; RULE VIOLATED: 30 TAC §334.50(b)(1)(A), by failing to provide release detection; PENALTY: $1,750; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Greg Maddox; DOCKET NUMBER: 2007-1702-WOC-E; IDENTIFIER: RN105299861; LOCATION: Hill County, Texas; TYPE OF FACILITY: licensing; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license;

PENALTY: $210; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(19) COMPANY: Martindale Water Supply Corporation; DOCKET NUMBER: 2007-1038-PWS-E; IDENTIFIER: RN101214369; LOCATION: Martindale, Caldwell County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.110(e)(2) and §290.111(e)(2), by failing to timely submit surface water monthly operating reports; PENALTY: $572; ENFORCEMENT COORDINATOR: Christopher Keffer, (512) 239-5610; REGIONAL OFFICE: 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(20) COMPANY: Occidental Permian Ltd.; DOCKET NUMBER: 2007-1116-PWS-E; IDENTIFIER: RN102686094; LOCATION: Yoakum County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by failing to comply with the maximum contaminant level for total trihalomethanes; PENALTY: $292; ENFORCEMENT COORDINATOR: Thomas Barnett, (713) 767-3500; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(21) COMPANY: P Chem, Inc.; DOCKET NUMBER: 2007-1083-IWD-E; IDENTIFIER: RN101514164; LOCATION: Latexo, Houston County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 02393, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limits; PENALTY: $3,960; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(22) COMPANY: City of Palmer; DOCKET NUMBER: 2007-0283-MWD-E; IDENTIFIER: RN102092962; LOCATION: Palmer, Ellis County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 13620001, Effluent Limitations and Monitoring Requirements for Outfall 001, and the Code, §26.121(a), by failing to comply with the permitted effluent limits; 30 TAC §305.125(17) and TPDES Permit Number 13620001, Sludge Provisions, Section II (F) Reporting Requirements, by failing to submit the annual sludge disposal report; 30 TAC §305.42(a) and the Code, §26.121, by failing to maintain authorization to discharge wastewater; 30 TAC §319.7(d), by failing to submit monthly discharge monitoring reports; and 30 TAC §317.7(e), by failing to completely fence the equalization basin and post warning signs; PENALTY: $26,390; Supplemental Environmental Project (SEP) offset amount of $8,802 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Clean School Bus Program and offset amount of $12,310 applied to Collection and Recycling Event; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: Panorama Properties, Ltd. dba Cadence Custom Homes; DOCKET NUMBER: 2007-1689-WQ-E; IDENTIFIER: RN105282164; LOCATION: Colleyville, Tarrant County, Texas; TYPE OF FACILITY: construction company; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(24) COMPANY: Chris Schober dba Schober Trucking; DOCKET NUMBER: 2007-1205-IWD-E; IDENTIFIER: RN104555941; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: truck maintenance and repair; RULE VIOLATED: the Code, §26.121(a)(1), by failing to prevent the unauthorized discharge of wastewater from truck washing activities; PENALTY: $900; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(25) COMPANY: Shepherd Place Homes, Inc. dba Shepherd Place Homes Shamrock Ridge; DOCKET NUMBER: 2007-1691-WQ-E; IDENTIFIER: RN105303747; LOCATION: Kaufman County, Texas; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(26) COMPANY: S. J. & Sons, Inc. dba Country Cleaners, Professional Cleaners and Ultra Fine Cleaners; DOCKET NUMBER: 2006-1082-DCL-E; IDENTIFIER: RN104096029, RN104968110, and RN100619741; LOCATION: Stafford, Sugar Land, and Houston; Fort Bend and Harris Counties, Texas; TYPE OF FACILITY: drop stations; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the registration by completing and submitting the required registration form for Facility Number 1; 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form for Facility Number 2; and 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the registration by completing and submitting the required registration form for Facility Number 3; PENALTY: $2,726; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(27) COMPANY: Skyway Business, Inc. dba Eagle Mart 3; DOCKET NUMBER: 2007-1690-PST-E; IDENTIFIER: RN101793586; LOCATION: Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid TCEQ delivery certificate prior to receiving fuel; PENALTY: $875; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(28) COMPANY: Sunoco, Inc. (R&M); DOCKET NUMBER: 2007-0484-AIR-E; IDENTIFIER: RN102888328; LOCATION: La Porte, Harris County, Texas; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 30 TAC §116.115(c), TCEQ Air Permit Number 5572B, Special Condition Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $8,950; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200705219
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 30, 2007

♦ ♦ ♦

Notice of Availability of the Draft October 2007 Update to the Water Quality Management Plan for the State of Texas

The Texas Commission on Environmental Quality (TCEQ or commission) announces the availability of the draft October 2007 Update to the Water Quality Management Plan for the State of Texas (draft WQMP update).

The Water Quality Management Plan (WQMP) is developed and promulgated in accordance with the requirements of federal Clean Water Act, §208. The draft WQMP update includes projected effluent limits of indicated domestic dischargers useful for water quality management planning in future permit actions. Once the commission certifies a WQMP update, the update is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollutant Discharge Elimination System (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission. The draft WQMP update may contain service area populations for listed wastewater treatment facilities and designated management agency information.

A copy of the draft October 2007 WQMP update may be found on the commission's Web site located at *http://www.tceq.state.tx.us/nav/eq/eq_wqmp.html*. A copy of the draft may also be viewed at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas.

Written comments on the draft WQMP update may be submitted to Nancy Vignali, Texas Commission on Environmental Quality, Water Quality Division, MC 150, P.O. Box 13087, Austin, Texas 78711-3087. Comments may also be faxed to (512) 239-4420, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Written comments must be submitted no later than 5:00 p.m. on December 11, 2007. For further information or questions, please contact Ms. Vignali at (512) 239-1303 or by e-mail at *nvignali@tceq.state.tx.us*.

TRD-200705222

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: October 30, 2007

♦ ♦ ♦

Notice of Completion of Technical Review Proposed Radioactive Material License

For the Period of October 24, 2007.

APPLICATION AND PRELIMINARY DECISION: Waste Control Specialists LLC has applied to the Texas Commission on Environmental Quality (TCEQ) for a radioactive material license to authorize commercial disposal of byproduct material. Byproduct material is radioactive tailings or wastes produced by or resulting from the extraction or concentration of uranium or thorium from ore processed for its source material content. Waste Control Specialists LLC provides commercial hazardous waste and radioactive material management and disposal services. The byproduct disposal facility is proposed to be located at 9998 West Highway 176, approximately 30 miles west of the city of Andrews in Andrews County, Texas. The application was submitted to the Texas Department of State Health Services (DSHS) on June 21, 2004. Responsibility for the regulatory program and review of the license application for byproduct was transferred from DSHS to TCEQ under Senate Bill 1604 of the 80th Texas Legislature (2007).

The TCEQ Executive Director has completed the technical review of the application and prepared a draft license. The draft license, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this license, if issued, meets all statutory and regulatory requirements. The license application, TCEQ Executive Director's technical summary, draft license, and draft environmental analysis are available for viewing on the web at: www.tceq.state.tx.us/goto/wcsbyproductapp. These documents are also available for viewing and copying at the Andrews County Library located at 109 Northwest First Street in Andrews, 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. A public meeting is not 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 comments, or significant public comments.

OPPORTUNITY FOR A CONTESTED CASE HEARING: A contested case hearing is a legal proceeding similar to a civil trial in a state district court. The TCEQ may grant a contested case hearing on this application if a written hearing request is timely submitted.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and license number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and, the statement "I/we request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

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 license 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 license 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.

AGENCY CONTACTS AND INFORMATION: If you need more information about this license application or the licensing 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.

Further information may also be obtained from Waste Control Specialists, LLC at P.O. Box 1129, Andrews, TX 79714 or by calling Mr. Tom Jones, Vice-President of Community Relations at (432) 523-4444.

TRD-200705262
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 31, 2007

♦ ♦ ♦

Notice of District Petition

Notices issued October 25, 2007 and October 30, 2007.

TCEQ Internal Control No. 06082007-D19; 1122 Alpha Sendera Partners, Ltd. and WRR Properties, Inc. (Petitioner) filed a petition for creation of Alpha Ranch Water Control and Improvement District (District) of Denton and Wise Counties (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 51 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner is the majority owner of the land to be included in the proposed District; (2) there is one lienholder, Varde Investment Partners, L.P. on the property to be included in the proposed District; (3) the proposed District will contain approximately 1,293.736 acres located within Denton and Wise Counties, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of City of Fort Worth, Texas. By Resolution No.3345-05-2006, effective May 16, 2006, the City of Fort Worth, Texas, gave its conditional consent to the creation of the proposed District. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately $54,014,446.

TCEQ Internal Control No. 09242007-D05; Hickory Creek Farms, LLC, Waterford Club Development, LP, and The Club at Waterford, L.P. (Petitioners) filed a petition for creation of Waterford Municipal Utility District No. 1 of Burnet County (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 Petitioners are the owners of a majority in value of the land, consisting of four tracts, to be included in the proposed District; (2) there are four lien holders, Credit Suisse Loan Funding, LLC., United Heritage Credit Union, Hickory Creek Farms, LLC, and Myron L. Wier, on the property to be included in the proposed District; (3) the proposed District will contain approximately 463.03 acres located in Burnet, Texas; and (4) 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. 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 $35,810,000.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing;" (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en Español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200705261
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 31, 2007

♦ ♦ ♦

Notice of Meeting on December 13, 2007, in Moore County, Texas, Concerning the American Zinc State Superfund Site

The purpose of this meeting is to obtain public input and information concerning the proposed remedy for the American Zinc State Superfund Site (Site), north of Dumas in Moore County, Texas. The executive director of the Texas Commission on Environmental Quality (TCEQ or commission) issues this public notice of a proposed remedy selection for the American Zinc State Superfund Site. In accordance with 30 TAC §335.349(a) and Texas Health and Safety Code, §361.187, the commission shall hold a public meeting regarding the commission's selection of a proposed remedy for the American Zinc State Superfund Site. The statute requires the commission to publish notice of the meeting in the *Texas Register* and in a newspaper of general circulation in the county in which the facility is located at least 30 days before the date of the public meeting. This notice was also published in the *Moore County Press* on November 7, 2007.

The public meeting is scheduled for December 13, 2007, 7:00 p.m., Dumas City Hall, Commissioners Chambers, 124 West 6th Street, Dumas, Texas. The public meeting is not a contested case hearing under the Texas Government Code, Chapter 2001.

The Site was proposed for listing on the state registry of Superfund sites in the October 15, 1993, edition of the *Texas Register* (18 TexReg 7201). The Site is located on F.M. 119 north of Dumas, in Moore County, Texas. The Site was operated as a zinc smelter from the late

1930's until the late 1960's or early 1970's, generating heavy metal waste typical to that process. The Site was originally developed by the Illinois Zinc Company, and then sold to the Peru Mining Company, a Delaware corporation, in September 1939. In March 1943, the Peru Mining Company transferred the Site to the American Zinc Company of Illinois. Between 1943 and 1958, the Site was subject to a lease agreement with the Defense Plant Corporation, on behalf of the United States national defense program during World War II. In 1958, the United States conveyed its leasehold interest to the American Zinc, Lead and Smelting Company and American Zinc, Lead and Smelting Company then conveyed their leasehold to American Zinc of Illinois. After the plant was decommissioned in the early 1970s, the American Zinc Company sold the Site to W.R. Pendleton and Clark A. Pendleton through public auction on December 14, 1971. On May 2, 1985, Extraction Systems of America purchased part of the Site through a deed of trust. All improvements, scrap materials and residue located on part of the Site sold were included as part of this deed of trust. On December 8, 1988, Extraction Systems of America, Inc., and Extraction Systems of America Enterprises, Ltd., conveyed a portion of the Site back to W.R. Pendleton and wife, Mozelle Pendleton, in lieu of foreclosure.

On November 19, 1987, the Texas Water Commission (predecessor of TCEQ) District 1 office collected a creek sediment sample, soil sample, and a solid waste composite sample from various locations around the Site. These samples were analyzed for leachable Resource Conservation and Recovery Act metals and for total copper and zinc. Analytical results indicated the presence of lead and cadmium in the leachate as well as high concentrations of zinc and copper.

The Hazard Ranking System (HRS) is a numerically-based screening system that uses information from the previous initial, limited investigations to assess whether a site qualifies for the State or Federal Superfund Program. Sites scoring 28.5 or greater may qualify for the Federal Superfund Program, while sites scoring 5 or greater may qualify for the State Superfund Program. The HRS scoring for the Site was prepared by the TCEQ in March of 1993, and is presented in the report entitled Hazardous Ranking Package. This Site earned a score of 15.21, which qualified the Site for proposal to the State Registry of Superfund Sites on October 15, 1993, and acceptance into the State Superfund Program.

The Remedial Investigation Report dated January 1998, and The Remedial Investigation Addendum Report dated March 1999, includes documentation of the results of the data gathering activities at the source property area, and the adjacent non-source property surface soils and creek bed sediments. The Remedial Investigation is focused on evaluating chemicals of concern (COCs), defined by the TCEQ to be arsenic, cadmium, chromium, lead, silver, and zinc as they occur in potential source areas and as they may occur in potential pathways of migration.

The Preliminary Description of Remedial Alternatives, Feasibility Study, dated February 6, 2006, screened and evaluated remedial alternatives which could be used to remediate the Site. The Feasibility Study report developed five alternatives for remediation of surface and subsurface soils. The commission prepared the Proposed Remedial Action Document on October 11, 2007. This document presents the proposed remedy and justification for how this remedy demonstrates compliance with the relevant cleanup standard.

The recommended remedial alternative is source property containment with stabilization. This remedial alternative was selected based on the fact that vertical migration of COCs to groundwater has not been documented and is not expected. It has been demonstrated that metals have not leached from the soil column, and that groundwater is more than 250 feet below the ground surface at the Site. In addition, source property soil with metal concentrations that is not protective of commercial and industrial practices will be excavated and consolidated on the southeastern portion of the source property area. The consolidated area will then be capped with approximately 12 inches of soil borrowed from the western 1/3 portion of the source property area, where the soil metal concentration is below the protective concentration levels (PCLs) of the Texas Risk Reduction Program rules found in 30 TAC Chapter 350.

The capped area will be graded and vegetated to prevent erosion. A restrictive covenant or deed notice will be placed on the consolidated area to notify the public and property owner(s) that the capped area should not be disturbed and that the property may only be used for commercial and industrial purposes. For non-source properties, the TCEQ recommends the use of institutional controls which includes filing a restrictive covenant to notify the public and property owner(s) that the levels of COCs are not protective of human health and the environment. Under this alternative, if a land owner does not agree to file a restrictive covenant on his or her land, then the non-source areas, where surface soil concentrations exceed residential PCLs, will be deep tilled and treated with a soil amendment to the total depth of impacted soil in order to reduce and stabilize the metals. After treatment, the treated area will be re-sampled to confirm that the metals in the soil are no longer above PCLs. Should confirmation sampling indicate that soil from any treated area still contains metals at levels unprotective of residents and the environment, then that soil will be excavated, and the excavated area backfilled with clean (with concentrations less than the residential PCLs) soils. The excavated soils will be transported to the source property, deposited in the source property consolidation area, capped, and backfilled. The surface of the backfilled area will be contoured to match the surrounding land and seeded. The recommended alternative is the most cost effective, reasonable, and appropriate remedy to address the Site.

All persons desiring to make comments may do so prior to or at the public meeting. All comments submitted *prior* to the public meeting must be received by 5:00 p.m. on December 11, 2007, and should be sent in writing to Otu Ekpo-Otu, Project Manager, TCEQ, Remediation Division, MC 143, P.O. Box 13087, Austin, Texas 78711-3087, or facsimile at (512) 239-2450. The public comment period for this action will end at the close of the public meeting on December 13, 2007.

A portion of the record for this Site including documents pertinent to the proposed remedy is available for review during regular business hours at the Killgore Memorial Library located at 124 South Bliss Avenue in Dumas, Texas; phone number (806) 935-4941. Copies of the complete public record file may be obtained during business hours at the commission's Records Management Center, Building E, First Floor, Records Customer Service, MC 199, 12100 Park 35 Circle, Austin, Texas 78753, (800) 633-9363 or (512) 239-2920 and additional files may also be obtained from the Project Manager, Otu Ekpo-Otu, at (512) 239-2445. Photocopying of file information is subject to payment of a fee. Parking for persons with disabilities is available on the east side of Building D, convenient to access ramps that are between Buildings D and E.

Information is also available regarding the State Superfund Program at *http://www.tceq.state.tx.us/remediation/superfund/index.html*.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the commission at (800) 633-9363 or (512) 239-1352. Requests should be made as far in advance as possible.

For further information about this site or the public meeting, please contact Kelly Peavler, TCEQ Community Relations, at (800) 633-9363, extension 1352.

TRD-200705223

Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 30, 2007

♦ ♦ ♦

Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 10, 2007**. 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 December 10, 2007**. 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: Brooks Special Company; DOCKET NUMBER: 2007-0495-PST-E; TCEQ ID NUMBER: RN105029896; LOCATION: 504 Military Road, Brownsville, Cameron County, Texas; TYPE OF FACILITY: mini mart; RULES VIOLATED: 30 TAC §§334.47(a)(2), 334.54(d)(2), and 334.54(b), by failing to either permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, two underground storage tanks (USTs) for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, or ensure that any residue from stored regulated substances which remained in the temporarily out of service UST system did not exceed a depth of 2.5 centimeters at the deepest point and did not exceed 0.3% by weight of the system at full capacity; and 30 TAC §334.47(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change; PENALTY: $12,100; STAFF ATTORNEY: Barham Richard, Litigation Division, MC 175, (512) 239-0107; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(2) COMPANY: Dolores A. Luke dba Little Big Horn Services; DOCKET NUMBER: 2007-0743-MLM-E; TCEQ ID NUMBER: RN101228740; LOCATION: 9700 Little Big Horn Drive, 5 miles north of Silsbee, Hardin County, Texas; TYPE OF FACILITY: public water system (PWS); RULES VIOLATED: 30 TAC §288.20, by failing to develop and maintain a drought contingency plan for the PWS; 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that will be used to comply with the monitoring requirements; 30 TAC §290.42(1), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.42(j), by failing to maintain American National Standards Institute/National Science Foundation certification for all chemical additives used at the water supply; 30 TAC §290.46(n)(2), by failing to develop and maintain an accurate and up-to-date map of the distribution system so that all valves and mains can be easily located in an emergency; 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to maintain a minimum chlorine residual of 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; 30 TAC §290.41(c)(3)(J), by failing to provide a concrete sealing block for the water system's well that extends a minimum of three feet from the well head in all directions; 30 TAC §290.46(m)(4), by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition; 30 TAC §290.45(b)(1)(A)(ii) and THSC, §341.0315(c), by failing to provide a minimum pressure tank capacity of 50 gallons per connection; 30 TAC §290.46(f)(2) and (f)(3), by failing to maintain the water system's operational records and make those records available to commission personnel at the time of the investigation; and 30 TAC §290.51(a)(3) and Texas Water Code (TWC), §5.702, by failing to remit all Public Health Service annual and late fees to the commission in a timely manner; PENALTY: $1,730; STAFF ATTORNEY: Barham Richard, Litigation Division, MC 175, (512) 239-0107; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(3) COMPANY: Gerry L. Woods dba Ruby's Laundry Dry Cleaners; DOCKET NUMBER: 2006-1403-DCL-E; TCEQ ID NUMBER: RN104967047; LOCATION: 2212 South Beckley Avenue, Dallas, Dallas County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULES VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form to the TCEQ for a dry cleaning and/or drop station facility; and 30 TAC §337.14(c) and TWC, §5.702, by failing to pay outstanding dry cleaning fees and associated late fees for TCEQ Financial Account Number 24003924 for Fiscal Years 2004, 2005, and 2006; PENALTY: $1,185; STAFF ATTORNEY: Dinniah Chahin, Litigation Division, MC 175, (512) 239-0617; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Inwood Center, LLC; DOCKET NUMBER: 2006-1719-DCL-E; TCEQ ID NUMBER: RN104158167; LOCATION: 2311 Little York Road, Suite A, Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning facility; RULES VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the registration by completing and submitting the required registration form to the TCEQ for a dry cleaning and/or drop station facility; PENALTY: $378; STAFF ATTORNEY: Tracy Chandler, Litigation Division, MC 175, (512) 239-0629; REGIONAL OFFICE: Houston

Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(5) COMPANY: Lorenzo Hernandez; DOCKET NUMBER: 2007-0900-PST-E; TCEQ ID NUMBER: RN101728350; LOCATION: 539 North Pine Street, Woodville, Tyler County, Texas; TYPE OF FACILITY: non-operational former convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.47(a)(2) and §334.54(b) and (d)(2), by failing to either permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, four USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, or ensure that any residue from stored regulated substances which remained in the temporarily out-of-service UST system did not exceed a depth of 2.5 centimeters at the deepest point and did not exceed 0.3% by weight of the system at full capacity; and by failing to maintain all piping, pump, man-ways, tank access points and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change; and 30 TAC §334.74, by failing to investigate a suspected release within 30 days of discovery; PENALTY: $38,475; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(6) COMPANY: Marcos Mariscal dba MSW Unauthorized Site No. 455150025; DOCKET NUMBER: 2003-0302-MSW-E; TCEQ ID NUMBER: RN102864790; LOCATION: the south side of State Highway 107, Block 193, approximately 0.5 miles east of the intersection of State Highway 107 and Farm-to-Market Road 493, La Blanca, Hidalgo County, Texas; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULES VIOLATED: 30 TAC §328.60(a), by failing to obtain a scrap tire storage site registration for the facility; and 30 TAC §330.7(a) and §330.5(a), by failing to prevent the collection, storage, and disposal of MSW at an unauthorized disposal site; PENALTY: $10,500; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(7) COMPANY: Michael Daniel dba Mike's Tires; DOCKET NUMBER: 2006-1945-MSW-E; TCEQ ID NUMBER: RN104381843; LOCATION: 11808 County Road, Jewett, Leon County, Texas; TYPE OF FACILITY: MSW; RULES VIOLATED: 30 TAC §330.15(c) and §328.60(a) and THSC, §361.112(a), by failing to prevent the unauthorized disposal of MSW and unauthorized storage of more than 500 scrap tires on the ground at the facility; PENALTY: $5,250; STAFF ATTORNEY: Barham Richard, Litigation Division, MC 175, (512) 239-0107; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(8) COMPANY: Tom Wells dba Wells Auto Truck Stop; DOCKET NUMBER: 2003-1152-MLM-E; TCEQ ID NUMBER: RN103937587; LOCATION: 105725 West Highway 80, Sierra Blanca, Hudspeth County, Texas; TYPE OF FACILITY: unregistered facility where more than 500 used or scrap tires are stored; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an existing UST system for which any applicable component of the system had not been brought into timely compliance with the upgrade requirements; 30 TAC §334.127(a)(1), by failing to register with the commission an aboveground storage tank that was in existence on or after September 1, 1989; 30 TAC §334.7(d), by failing to update the status of four USTs; and 30 TAC §328.60(a), by failing to obtain a registration number from TCEQ for storing more than 500 tires; PENALTY: $5,250; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

TRD-200705221
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 30, 2007

♦ ♦ ♦

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 **December 10, 2007**. 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 December 10, 2007**. 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: Amer Tell dba Quick Stop 1; DOCKET NUMBER: 2005-1876-PST-E; TCEQ ID NUMBER: RN101897502; LOCATION: 300 West United States Highway 82, New Boston, Bowie County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b), by failing to maintain underground storage tank (UST) records at the facility and failing to make them immediately available for inspection upon request; PENALTY: $100; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(2) COMPANY: Amir Ali Momin dba Shop N Go; DOCKET NUMBER: 2006-1915-PST-E; TCEQ ID NUMBER: RN101447464; LOCATION: 1363 Federal Road, Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.72, by failing to report a suspected

release to the TCEQ within 24 hours of discovery; and 30 TAC §334.74(1), by failing to investigate a suspected release of regulated substances within 30 days of discovery; PENALTY: $18,800; STAFF ATTORNEY: Ben Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(3) COMPANY: Angus Mims dba Rusk Realty; DOCKET NUMBER: 2007-0710-PST-E; TCEQ ID NUMBER: RN102050614; LOCATION: 206 South Main Street, Henderson, Rusk County, Texas; TYPE OF FACILITY: real estate office; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, two USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: $5,250; STAFF ATTORNEY: Anna Cox, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(4) COMPANY: Augustin Vu dba Louis Food Mart; DOCKET NUMBER: 2004-1250-PST-E; TCEQ ID NUMBERS: RN102546561 and 64854; LOCATION: 2301 West Shaw Street, 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 USTs; and 30 TAC §334.22(a) and Texas Water Code (TWC), §5.702, by failing to pay past due fees; PENALTY: $2,140; STAFF ATTORNEY: Tracy Chandler, Litigation Division, MC 175, (512) 239-0629; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Bruce Coleman Siegel; DOCKET NUMBER: 2007-0233-LII-E; TCEQ ID NUMBER: RN105137715; LOCATION: 2706 West Highway 80, Mineola, Wood County, Texas; TYPE OF FACILITY: landscaping business; RULES VIOLATED: 30 TAC §344.4(a) and §30.5(a) and (b), Texas Occupations Code §1903.251, and TWC, §37.003, by failing to possess a current license or registration when consulting or representing to the public that services can be performed for which a license or registration is required; PENALTY: $250; STAFF ATTORNEY: Ben Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(6) COMPANY: Harrison County; DOCKET NUMBER: 2007-0485-MSW-E; TCEQ ID NUMBER: RN102143211; LOCATION: 347 Muntz Cut Off Road, Hallsville, Harrison County, Texas; TYPE OF FACILITY: Type IV permitted landfill; RULES VIOLATED: 30 TAC §330.165(b), by failing to apply weekly cover to a Type IV landfill; 30 TAC §330.139(2), by failing to pick up windblown solid waste once per day; 30 TAC §330.143(b)(3), by failing to have landfill markers identifying the buffer zone properly in place; 30 TAC §330.133(b), by failing to prevent the unloading of waste at an unauthorized area of the landfill; 30 TAC §330.167, by failing to control ponded water on the landfill surface; 30 TAC §330.153(a) and Municipal Solid Waste (MSW) Permit 307, Special Provision (E), by failing to provide all-weather roads within the facility; 30 TAC §330.305(2), by failing to maintain dikes and embankments in a manner as to minimize the potential for erosion; 30 TAC §330.131 and MSW Permit 307, Special Provision (E), by failing to maintain fences around landfill perimeter; and 30 TAC §205.6 and §330.602 and TWC, §5.702, by failing to pay outstanding general permits storm water fees and solid waste disposal fees for the TCEQ Financial Account Numbers 20009106 and 0708685 for the Fiscal Year of 2007; PENALTY: $8,800; Supplemental Environmental Project offset amount of $8,800 applied to Texas Association of Resource Conservation and Development Areas, Inc. STAFF ATTORNEY: Tracy Chandler, Litigation Division, MC 175, (512) 239-0629; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(7) COMPANY: ISP Synthetic Elastomers LP; DOCKET NUMBER: 2007-0377-AIR-E; TCEQ ID NUMBER: RN100224799; LOCATION: 1615 Main Street, Port Neches, Jefferson County, Texas; TYPE OF FACILITY: styrene butadiene rubber manufacturing facility; RULES VIOLATED: 30 TAC §122.143(4), Federal Operating Permit (FOP) Number O-01224, General Terms and Conditions and Special Condition 11A, Air Permit Number 74010, Special Condition 6D, and Texas Health and Safety Code (THSC), §382.085(b), by failing to perform testing no later than 180 days from the initial startup after conversion at Emission Point Number Boiler 2 from 40 Million British Thermal Units per hour to a higher heat input rate; 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), FOP Number O-01224, General Terms and Conditions and Special Condition 11A, Air Permit Number 9908, Special Condition 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions of 23.164 pounds (lbs) of Butadiene and 4.54 lbs of Styrene during a 25 minute emissions event; and 30 TAC §116.115(b)(2)(F) and (c) and §122.143, FOP Number O-01224, General Terms and Conditions and Special Condition 11A, Air Permit No. 9908, Special Condition 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions of 24 lbs of butadiene and 30 lbs of styrene, that were released when the Respondent failed to prevent a foam-over in the Pressure Flash tank, which resulted in latex getting into the Recycle Butadiene Tanks in the tank farm, causing an emissions event that began on February 28, 2007, and lasted for one hour and 35 minutes; PENALTY: $13,025; STAFF ATTORNEY: Shawn Slack, Litigation Division, MC 175, (512) 239-0063; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(8) COMPANY: Jack Nguyen dba K & K Dry Cleaners; DOCKET NUMBER: 2006-1183-DCL-E; TCEQ ID NUMBER: RN100908599; LOCATION: 12600 Bissonnet Street, Suite A1, Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning facility; RULES VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form to the TCEQ for a dry cleaning and/or drop station facility; PENALTY: $1,185; STAFF ATTORNEY: Patrick Jackson, Litigation Division MC 175 (512) 239-6501; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(9) COMPANY: Jesus Marroquin; DOCKET NUMBER: 2007-0301-MSW-E; TCEQ ID NUMBER: RN105109128; LOCATION: on the west side of Western Road, approximately 0.25 miles north of the intersection of Western Road and Farm-to-Market Road 1924, near Mission, Hidalgo County, Texas; TYPE OF FACILITY: abandoned sand and gravel pit; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: $3,750; STAFF ATTORNEY: Anna Cox, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(10) COMPANY: Price Construction, Ltd.; DOCKET NUMBER: 2005-0295-AIR-E; TCEQ ID NUMBER: RN102743747; LOCATION: one mile east of University Avenue on North Loop 289, Lubbock, Lubbock County, Texas; TYPE OF FACILITY: mobile hot mix asphalt plant; RULES VIOLATED: 30 TAC §116.110(a)(2)(A) and THSC, §382.085(b), by failing to submit registration for the installation of a pollution control device; and 30 TAC §116.115(c), THSC, §382.085(b) and New Source Review (NSR) Air Permit Number

7901, Special Condition 3, by failing to use only the fuel specified by NSR Air Permit Number 7901; PENALTY: $5,500; STAFF ATTORNEY: Robert Mosley, Litigation Division, MC 175, (512) 239-0627; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3520, (806) 796-7092.

(11) COMPANY: Racetrac Petroleum, Inc. dba Racetrac 512; DOCKET NUMBER: 2006-0378-PWS-E; TCEQ ID NUMBER: RN102270121; LOCATION: 4011 Highway 6 North, Houston, Harris County, Texas; TYPE OF FACILITY: convenience store; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B) and THSC, §341.033(d), by failing to collect routine water samples for bacteriological analysis for the months of November and December 2004 and July and September 2005 and by failing to post public notice of the failure to conduct sampling; and 30 TAC §205.6 and TWC, §5.702, by failing to pay outstanding General Permits Stormwater Fees for Financial Administration Account Number 20017811; PENALTY: $1,200; STAFF ATTORNEY: Anna Cox, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(12) COMPANY: Texas Malik Enterprises, Inc. dba KC 2 Grocery Store; DOCKET NUMBER: 2007-0305-PST-E; TCEQ ID NUMBER: RN101634889; LOCATION: 2312 North Sylvania Avenue, Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.246(7)(A) and THSC, §382.085(b), by failing to keep on file and make available for review the required records for the station; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification, whichever occurs first; PENALTY: $3,850; 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.

TRD-200705220
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 30, 2007

♦ ♦ ♦

Notice of Water Quality Applications

The following notices were issued during the period of October 18, 2007 through October 25, 2007.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

AQUA DEVELOPMENT INC has applied for a renewal of TPDES Permit No. WQ0014007001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 130,000 gallons per day. The facility is located approximately 7,150 feet northwest of the point where Rose Hill Road crosses Spring Creek and approximately 12,500 feet north-northeast of the intersection of Farm-to-Market Road 2920 and Mueschke Road in Montgomery County, Texas.

AQUA UTILITIES INC has applied for a renewal of TPDES Permit No. WQ0012898001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day. The facility is located approximately 2,300 feet north of Spring Creek and 5,500 feet east of the Waller-Montgomery County line in Montgomery County, Texas.

CITY OF WOODBRANCH VILLAGE has applied for a renewal of TPDES Permit No. WQ0011993001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 133,000 gallons per day. The facility is located approximately 8,000 feet east of U.S. Highway 59 and 2.5 miles northeast of the intersection of State Highway 1485 and U.S. Highway 59, at the northwest corner of the intersection of Roman Forest Boulevard and Peach Creek in Montgomery County, Texas.

GREENS PARKWAY MUNICIPAL UTILITY DISTRICT has applied for a major amendment to TPDES Permit No. WQ0012754001 to authorize an increase in the two-hour peak flow in the final phase. The current permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 980,000 gallons per day. The facility is located approximately 5,000 feet east of the intersection of Hardy Road and Greens Road, and 400 feet north of Greens Road in Harris County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 191 has applied for a major amendment to TPDES Permit No. WQ0014447001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 600,000 gallons per day to a daily average flow not to exceed 710,000 gallons per day. The facility is located approximately 2,000 feet south of Farm-to-Market Road 1960 and 2,000 feet west of Cutten Road, adjacent to the Southern Pacific Railroad, at 7201 Cockrum Boulevard in Harris County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 196 has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0012447001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,400,000 gallons per day. The facility is located approximately 1.7 miles south of the intersection of U.S. Highway 290 and Barker-Cypress Road, approximately 3,000 feet east of Barker-Cypress Road in Harris County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 360 has applied for a renewal of TPDES Permit No. WQ0013753001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 800,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility is located approximately 3,500 feet north of the intersection of Kluge Road and Huffmeister Road, 1,100 feet northwest of Kluge Road and approximately 4.0 miles north of the intersection of U.S. Highway 290 and Huffermeister Road in Harris County, Texas.

HARRIS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO 116 has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0010955001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,300,000 gallons per day. The facility is located at 5335 Strack Road approximately 5,000 feet west from the intersection of Strack Road and Stuebner-Airline Road in Harris County, Texas.

HYDRIL GENERAL LLC has applied for a renewal of TPDES Permit No. WQ0011794001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The facility is located on the south side of North Belt Drive, approximately 0.5 mile west of the intersection of North Belt Drive and John F. Kennedy Boulevard, and 2.7 miles west of U.S. Highway 59 in Harris County, Texas.

IVY VALLEY UTILITIES LP has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014841001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility will be located on the north bank of the West Fork Trinity River, approximately 4200 feet southwest of the intersection of State Highway 730 and County Road 4481 in Wise County, Texas.

LONE STAR ETHANOL LLC which proposes to operate an ethanol manufacturing facility has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004835000, to authorize the discharge of cooling tower and boiler blowdown, water treatment blowdown and treated sanitary sewage effluent at a daily average flow not to exceed 363,500 gallons per day via Outfall 001. The facility is located the Port Victoria Industrial Park, south of the City of Victoria, on Farm-to-Market Road 1432, approximately 1 mile southwest of State Highway 185 in the City of Victoria, Victoria County, Texas.

TIMBER LANE UTILITY DISTRICT has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0011142002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,620,000 gallons per day. The facility is located at 22801 1/2 Grand Rapids Lane, approximately 0.5 mile southwest of the intersection of Wood River Drive and Aldine-Westfield Road, 2.75 miles northeast of the intersection of Farm-to-Market Road 1960 and Interstate Highway 45, and approximately 20 miles north of the City of Houston Central Business District in Harris County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200705259
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 31, 2007

♦ ♦ ♦

Notice of Water Rights Applications

Notices issued October 31, 2007.

APPLICATION NO. 12191; Alcoa Inc., P.O. Box 1491, Rockdale, Texas 76567, Applicant, has applied for a Water Use Permit to maintain an exempt sediment control reservoir on Sand Branch, Brazos River Basin in Lee County for domestic and livestock use and for support of post-mining land uses to maintain such reservoir for fish and wildlife habitat and pastureland purposes, with no right of diversion, after final reclamation of the Sandow Mine. The application and fees were received on April 16, 2007, and additional information and fees received on August 1, 2007. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on September 4, 2007. 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. 12190; Alcoa Inc., P.O. Box 1491, Rockdale, Texas 76567, Applicant, has applied for a Water Use Permit to maintain two exempt sediment control reservoirs on Walleye Creek and Cottonwood Creek, Brazos River Basin in Lee and Milam Counties for domestic and livestock use and for support of post-mining land uses to maintain such reservoirs for fish and wildlife habitat and pastureland purposes, with no right of diversion, after final reclamation of the Sandow Mine. The application and fees were received on April 16, 2007, and additional information and fees received on August 1, 2007. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on September 4, 2007. 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.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement "I/we request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200705260
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 31, 2007

♦ ♦ ♦

Texas Facilities Commission

Request for Proposal #303-8-10487

The Texas Facilities Commission (TFC), on behalf of the Department of Assistive and Rehabilitative Services (DARS), announces the issuance of Request for Proposals (RFP) #303-8-10487. TFC seeks a 5 or 10 year lease of approximately 4,463 square feet of office space in Arlington, Tarrant County, Texas.

The deadline for questions is November 21, 2007 and the deadline for proposals is November 30, 2007 at 3:00 p.m. The award date is January 16, 2008. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Myra Beer at (512) 463-5773. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=73603.*

TRD-200705150
Kay Molina
General Counsel
Texas Facilities Commission
Filed: October 25, 2007

♦ ♦ ♦

General Land Office

Notice of Availability and Request for Comments on a Proposed Settlement Agreement

Natural Resource Damages Related to Hazardous Substances Releases into Alligator Bayou and Drainage District No. 7 Lower Main Canal, Port Arthur, Texas

AGENCIES: The Texas General Land Office (TGLO), Texas Parks and Wildlife Department (TPWD), and the Texas Commission on Environmental Quality (TCEQ) (collectively, the Trustees).

ACTION: Notice of availability of a proposed Settlement Agreement for Natural Resource Damages related to the Port Arthur refinery ('Facility'), owned and operated by Motiva Enterprises LLC ('Motiva'), release of hazardous substances and of a 30-day period for public comment on the Agreement beginning the date of publication of this notice.

SUMMARY: Notice is hereby given that the Trustees propose a Settlement Agreement to compensate for natural resource injuries and ecological service losses attributable to the release of hazardous substances into Alligator Bayou and Drainage District No. 7 Lower Main Canal from the Facility within the City of Port Arthur, Jefferson County, Texas. The proposed Agreement calls for the responsible party to provide $1,200,000 to the Trustees to be used for wetlands restoration project(s) within the Neches or Sabine River systems, the preservation of woodlands in perpetuity in the vicinity of the release as well as pay all Trustee costs of assessment.

The opportunity for public review and comment on the proposed Settlement Agreement announced in this notice is required under 43 Code of Federal Regulations (C.F.R.) §11.81(d) of the Natural Resource Damage Assessment regulations.

ADDRESSES: A copy of this Settlement Agreement may be obtained by contacting: Keith Tischler, Texas General Land Office, Coastal Resources Division, Natural Resource Trustee Program, P.O. Box 12873, Austin, Texas 78711-2873, Phone: (512) 463-6287, e-mail: Keith.Tischler@glo.state.tx.us.

DATES: Comments must be submitted in writing within 30 days of the publication of this notice to Keith Tischler of the Texas General Land Office at the address listed in the previous paragraph. The Natural Resource Trustees will consider all written comments received during the comment period prior to finalizing the Draft Settlement Agreement.

SUPPLEMENTARY INFORMATION: The Motiva Facility is located at 2555 Savannah Avenue, at the intersection of Savannah Avenue and 25th Street, east of State Highway 73, in Port Arthur, Jefferson County, Texas. On February 16, 1995, the Texas Natural Resource Conservation Commission, a predecessor of TCEQ, approved an Agreed Order (Docket No. 94-0730-MLM-E) with Motiva's predecessor, Star Enterprise, relating to the release of hazardous materials at the site, providing for receiving water assessments and remediation activities for identified water bodies adjacent to the Facility to assess whether or not the designated aquatic life use of the receiving waters is being met, to identify contaminants and their effect on the aquatic biological community, and to design work plans to generate scientific data to develop appropriate clean-up levels in Alligator Bayou and the Drainage District No. 7 canals.

Motiva elected to perform the remedial alternatives evaluation in a sequential mode by designated segments. The designations were assigned as follows; City Outfall Canal-Segment 1, Alligator Bayou-Segment 2, and the Drainage District No. 7 Main Canal-Segments 3, 4, and 5. Analytical data indicate the presence of elevated concentrations of polycyclic aromatic hydrocarbons (PAHs) and metals, including chromium, copper, lead, and zinc (COCs), in sediments of Segment 2 and to a lesser extent in Segment 3, with potential adverse effects to any benthic macroinvertebrates and semi-aquatic wildlife exposed to these chemicals of concern. Motiva sought approval of a remedial alternative for Segment 2 that will (1) reroute the City Outfall Canal flow so that storm water from the City of Port Arthur flows directly to the DD7 Main Canal instead of through Segment 2; and (2) remediate Segment 2 by stabilizing the contaminated sediment/soils and placement of these sediments either in-situ or into a consolidation cell. The remediated portion of Segment 2 would subsequently serve to create additional stormwater retention capacity. Stabilization of contaminated sediments/soils will be performed using methods involving the mixing of a stabilization reagent (e.g. fly ash, bed ash, cement-kiln dust, portland cement) and occasionally other materials to produce a cured, stabilized product capable of supporting a cap providing physical fixation of the COCs in a solid matrix. The TCEQ concurred with Motiva's remediation concept for Segment 2 and issued a remediation directive dated November 29, 2006, authorizing implementation of the remediation concept for Segment 2. In a letter dated April 17, 2007, Motiva requested authorization to conduct an Ecological Services Analysis (ESA) in cooperation with the Trustees for relevant portions of the Lower Main Canal (Segments 3 and 4).

The TGLO, TCEQ, TPWD, and the US Fish and Wildlife Service (USFWS) (representing the United States Department of the Interior), are designated as the natural resource trustees pursuant to Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9601 et seq., the Federal Water Pollution Control Act ("FWPCA"), 33 U.S.C. §1251, et seq.; the Clean Water Act ("CWA"), 33 U.S.C. §1321, with responsibility to conduct natural resource damage assessments on behalf of the public when a release of hazardous substances affect natural resources and services.

The Trustees conducted an assessment of natural resource damages pursuant to 43 C.F.R. §11.60 et seq. for injuries to Alligator Bayou and DD-7 Main Channel resulting from Facility releases of hazardous substances, including Polycyclic Aromatic Hydrocarbons compounds (PAHs), metals, and gross hydrocarbon contamination. The assessment was limited to the portion of Alligator Bayou beginning at Savannah Avenue and continuing downstream to the confluence with Drainage District No. 7 (DD-7) Main Canal at State Highway (SH) 82 ('Segment 2') located within the Motiva Port Arthur Refinery facility; and the DD-7 Lower Main Canal beginning at the confluence of the DD-7 Main Canal with Alligator Bayou and continuing downstream to the DD-7 hurricane protection levee at Taylor Bayou ('Segment 3') located outside the facility where hazardous substances may have come to be

located as a result, either directly or indirectly, of releases of hazardous substances from the Facility.

The Natural Resource Trustees have determined that resources subject to their trust authority under these Acts were exposed to hazardous substances as a result of the release. The Trustees determined that hazardous substances (including PAHs and metals) were available in the sediments and injury to approximately 44.2 acres of benthic habitat had occurred. Additionally, the remediation concept for Alligator Bayou will result in injury to 45.8 acres of riparian habitat.

The Trustees used a reasonably conservative injury evaluation approach to identify and quantify natural resource injuries and services losses, using analytical chemistry results from samples collected during the remedial investigation to determine the nature and extent of contamination in sediments from the assessment areas. The Trustees utilized the results of toxicological testing and contaminant concentration benchmarks that are known or suspected injury thresholds for benthic resources that, when exceeded, are reasonably likely to result in an adverse effect in the evaluation of potential resource injury. Acres of affected benthic service losses and riparian habitat losses were computed based on the remediation concept for Alligator Bayou (Segment 2) approved by TCEQ and the proposed remediation concept for Segment 3. A Habitat Equivalent Analysis (HEA) was then used to scale for equivalent habitat restoration. The HEA is a method by which the Trustees apply a resource-to-resource approach, to determine and quantify injury levels as well as scale appropriate ecological restoration actions.

The Trustees and Motiva have reviewed all of the available data and restoration scaling completed by the Trustees, and agreed to settle natural resource liability for injuries that resulted from the release. Motiva has agreed to pay $1,200,000.00 to the Trustees for the construction of wetlands habitat and the preservation of woodlands in perpetuity in the vicinity of the release, as well as pay all Trustees costs of assessment. The USFWS participated in and contributed to the assessment but elected to withdraw from further participation in the assessment and settlement upon payment of assessment costs incurred by their agency. A minimum of $720,000.00 shall be used by the Trustees to implement a wetlands restoration project(s) in the Neches River system, Sabine River system, or wetlands in the vicinity of the release. The Trustees anticipate using these funds to construct approximately 31.67 acres of salt marsh in the vicinity of the release. The Trustees anticipate using a minimum of $275,000.00 to preserve in perpetuity approximately 422.15 acres of woodlands in the vicinity of the release. Alternatively, the Trustees may implement a comparable restoration project(s) that provides natural resources services equivalent to those injured or lost. Approximately $205,000.00 may be used by the Trustees to compensate for un-reimbursed costs of assessment and estimated future Trustee costs of implementing restoration project(s). Any such restoration project will be implemented only in accordance with a final restoration plan that has been through a public notice and comment process. The Trustees will prepare and notice a Restoration Plan detailing the proposed use of these funds prior to the implementation of restoration actions.

For further information contact: Keith Tischler at (512) 463-6287, fax: (512) 475-0680, e-mail: Keith.Tischler@glo.state.tx.us.

TRD-200705241
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: October 30, 2007

♦ ♦ ♦

Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rates for Support Consultation Services

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 28, 2007, at 9:00 a.m. to receive public comment on the proposed rate for Support Consultation Services. The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.105(g), which require public notice and hearings on proposed Medicaid reimbursements. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Blvd, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Kimbra Rawlings by calling (512) 491-1174, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. HHSC proposes to adopt a rate for Support Consultation Services to be effective January 1, 2008.

Methodology and Justification. The proposed rate was determined in accordance with the rate setting methodology codified at 1 TAC Chapter 355, Subchapter A, §355.101, Introduction. Support Consultation Services is a new service available to Department of Aging and Disability Services (DADS) consumers who participate in Consumer Directed Services.

Briefing Package. A briefing package describing the proposed payment rate will be available on November 9, 2007. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1174; by fax at (512) 491-1998; or by e-mail at Kimbra.Rawlings@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rate may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to Kimbra.Rawlings@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-200705217
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: October 29, 2007

♦ ♦ ♦

Department of State Health Services

Notice of Emergency Impoundment Order

Notice is hereby given that the Department of State Health Services (department) ordered all radiation-producing machines located at Ellis Chiropractic (unregistered), Houston, be impounded and not transferred without written authorization by the department.

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-200705153
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: October 26, 2007

♦ ♦ ♦

Texas Higher Education Coordinating Board

Notice and Opportunity to Comment on College Readiness Standards Under the Texas College Readiness Project of the Texas Higher Education Coordinating Board

On October 25, 2007, the Texas Higher Education Coordinating Board proposed draft College Readiness Standards (CRS) in order to provide the opportunity for public comment prior to consideration for adoption by the Coordinating Board in January 2008. The Texas College Readiness Project was developed jointly by the Texas Higher Education Coordinating Board and Texas Education Agency under provisions of Texas Education Code, §28.008(a) and (b)(1). CRS are defined as the knowledge and skills expected of students to perform successfully in the workplace and in entry-level courses offered at institutions of higher education.

As outlined under TEC §28.008(a), Vertical Teams of public school teachers and higher education faculty were established by the Texas Education Agency and Coordinating Board to develop draft CRS. The draft CRS are presented in four levels, each representing an increasing degree of specificity. The highest level presents broad, overarching ideas of a discipline, and is referred to as the "key concept." The second level is referred to as the "organizing component" and indicates how the skills and knowledge of the key concepts are structured. "Performance expectations" indicate the knowledge and skills that represent the important ideas of the organizing concepts. Finally, "examples of performance indicators" provide examples of how to assess and measure performance expectations. These indicators are not and will not be mandated activities; rather, they represent how students might demonstrate their competency in a given area.

While the four major disciplines have their own standards, there is a fifth set of standards that may be the most important of all. These are "cross-discipline standards" and are important to success in all disciplines and all careers, whether in mathematics, the arts, business, or education.

A copy of the College Readiness Standards by the four content areas of English/Language Arts, Mathematics, Social Studies/Sciences, and Science, and the cross-discipline standards is available online at www.thecb.state.tx.us/collegereadiness/DRAFT_CRS.pdf, by email at CRS@thecb.state.tx.us, or by phone at (512) 427-6318. Written comments about any of the College Readiness Standards should be submitted through an online procedure outlined at www.thecb.state.tx.us/collegereadiness/TCRS.cfm. Written comments may also be mailed to the The Texas College Readiness Project, Texas Higher Education Coodinating Board, P.O. Box 12788, Austin, Texas 78711-2788. Written comments may also be sent by facsimile machine to the Texas College Readiness Project at (512) 427-6444. Public comments shall be submitted to the Texas Higher Education Coordinating Board in writing only and must be received by 5:00 p.m. on December 10, 2007.

TRD-200705174
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: October 29, 2007

♦ ♦ ♦

Texas Department of Housing and Community Affairs

Notice of Public Hearing

Multifamily Housing Revenue Bonds (Stony Creek Apartments) Series 2008

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Walter P. Jett Center, 601 West Lewis Street, Conroe, Montgomery County, Texas 77301, at 6:00 p.m. on November 28, 2007, with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $12,400,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to MC Stony Creek, LLC, a limited liability company, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring a leasehold or other ownership interest in, rehabilitating, and equipping a multifamily housing development (the "Development") described as follows: 252-unit multifamily residential rental development located at 229 I-45 North, Montgomery County, Texas. Upon the issuance of the Bonds, the Development will be leased by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Teresa Morales at the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, TX 78711-3941; (512) 475-3344; and/or teresa.morales@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Teresa Morales in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Teresa Morales prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Teresa Morales at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200705251
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: October 31, 2007

♦ ♦ ♦

Notice of Public Hearing

Multifamily Housing Revenue Bonds (Aston Brook Apartments, Ridge at Willow Brook Apartments and Woodedge Apartments) Series 2008

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Bleyl Middle School, 10800 Mills Road, Houston, Harris County, Texas 77070, at 6:00 p.m. on November 29, 2007, with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $8,500,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds

will be loaned to **MC Aston Brook, LLC**, a limited liability company, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring a leasehold or other ownership interest in, rehabilitating, and equipping a multifamily housing development (the "Development") described as follows: 152-unit multifamily residential rental development located at 14101 Walters Road, Harris County, Texas. Upon the issuance of the Bonds, the Development will be leased by the Borrower.

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Bleyl Middle School, 10800 Mills Road, Houston, Harris County, Texas 77070, at 6:00 p.m. on November 29, 2007, with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $15,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to **MC Ridge at Willow Brook, LLC**, a limited liability company, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring a leasehold or other ownership interest in, rehabilitating, and equipping a multifamily housing development (the "Development") described as follows: 314-unit multifamily residential rental development located at 8330 Willow Place South, Harris County, Texas. Upon the issuance of the Bonds, the Development will be leased by the Borrower.

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Bleyl Middle School, 10800 Mills Road, Houston, Harris County, Texas 77070, at 6:00 p.m. on November 29, 2007, with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $7,400,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to **MC Woodedge, LLC**, a limited liability company, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring a leasehold or other ownership interest in, rehabilitating, and equipping a multifamily housing development (the "Development") described as follows: 126-unit multifamily residential rental development located at 10802 Greencreek Drive, Harris County, Texas. Upon the issuance of the Bonds, the Development will be leased by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Teresa Morales at the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, TX 78711-3941; (512) 475-3344; and/or teresa.morales@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Teresa Morales in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Teresa Morales prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Teresa Morales at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200705252

Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: October 31, 2007

♦ ♦ ♦

Request for Proposals for Uniform Physical Condition Standards Inspections

SUMMARY. The Texas Department of Housing and Community Affairs (TDHCA), through its Contract monitoring and Compliance Division, is issuing a Request for Proposals (RFP) for outsourced Uniform Physical Condition Standards (UPCS) Inspections for multifamily housing rental developments funded by TDHCA.

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 16, 2007. No proposal received after the deadline will be considered. No incomplete, unsigned, or late proposals will be accepted after the Proposal Deadline, unless TDHCA determines, in its sole discretion, that it is in the best interest of TDHCA to do so.

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.

Individuals or firms interested in submitting a proposal should visit our website at http://www.tdhca.state.tx.us/pmcomp/index.htm, for a complete copy of the RFP. Throughout the procurement process, all questions relating to this RFP must be submitted to TDHCA in writing to Mike Garrett (michael.garrett@tdhca.state.tx.us).

Place and Method of Proposal Delivery. Proposals shall be delivered to:

Mike Garrett, Compliance Monitor:

Physical Address for Overnight Carriers

221 East 11th Street

Austin, Texas 78701-2410

Mailing Address:

P.O. Box 13941

Austin, Texas 78711-3941

(512) 475-3800

TRD-200705254
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: October 31, 2007

♦ ♦ ♦

Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by PROFESSIONALS DIRECT INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Grand Rapids, Michigan.

Application to change the name of STOCKBRIDGE INSURANCE COMPANY to IRONSHORE INDEMNITY INC., a foreign fire and/or casualty company. The home office is in Minneapolis, Minnesota.

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-200705257
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: October 31, 2007

♦ ♦ ♦

Notice of Hearing

The Commissioner of Insurance will hold a public hearing under Docket No. 2677 at 9:30 a.m. on December 11, 2007, in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, to consider the annual private passenger and commercial automobile insurance rate filing made by the Texas Automobile Insurance Plan Association (TAIPA) pursuant to the Insurance Code §2151.202. TAIPA was established by the legislature to make automobile bodily injury and property damage liability insurance required by the Texas Motor Vehicle Safety Responsibility Act available to eligible applicants.

The TAIPA private passenger and commercial automobile insurance rate filling is available for review during regular business hours in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Texas 78701. For further information, or to request a copy of the filing, please contact Sylvia Gutierrez at (512) 463-6327 (refer to Reference No. A-1007-15).

Written comments, analyses, or other information related to the filing may be submitted to the Office of the Chief Clerk, Texas Department of Insurance, P.O. Box 149104, MC 113-2A, Austin, Texas 78714-9104 prior to the hearing on December 11, 2007. An additional copy of the comments must be submitted to J'ne Byckovski, Chief Actuary, P.O. Box 149104, MC 105-5F, Austin, Texas 78714-9104. Pursuant to the Insurance Code §2151.206(a), interested persons may present written or oral comments related to the filing at the public hearing; and pursuant to the Insurance Code §2151.206(b), TAIPA, the public insurance counsel, and any other interested person or entity that has submitted proposed changes or actuarial analyses may ask questions of any person testifying at the hearing.

This notification is made pursuant to the Insurance Code §2151.204 that requires the publication of notice in the *Texas Register* that the annual TAIPA rate filing has been made and that a hearing on the matter is scheduled. Pursuant to Insurance Code §2151.206(c), the hearing is not a contested case hearing under Chapter 2001 of the Government Code.

TRD-200705248
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: October 30, 2007

♦ ♦ ♦

Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application of STARLINE USA, LLC, (using the assumed name of STARLINE GROUP, LLC.), a foreign third party administrator. The home office is WILMINGTON, DELAWARE.

Application of GULF COAST ADJUSTMENT SERVICE OF HOUSTON, INC., (using the assumed name of GULF COAST CLAIMS SERVICE), a domestic third party administrator. The home office is HOUSTON, TEXAS.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200705264
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: October 31, 2007

♦ ♦ ♦

Texas Lottery Commission

Instant Game Number 1029 "Quick 7's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1029 is "QUICK 7'S". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1029 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 1029.

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, $1.00, $2.00, $3.00, $4.00, $5.00, $6.00, $10.00, $20.00, $30.00, $50.00, $60.00, $200, and $1,000.

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. 1029 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$
$4.00	FOUR$
$5.00	FIVE$
$6.00	SIX$
$10.00	TEN$
$20.00	TWENTY
$30.00	THIRTY
$50.00	FIFTY
$60.00	SIXTY
$200	TWO HUND
$1,000	ONE THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 1029 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
THR	$3.00
FOR	$4.00
FIV	$5.00
SIX	$6.00
TEN	$10.00
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 $1.00, $2.00, $3.00, $4.00, $5.00, $6.00, $10.00, or $20.00.

H. Mid-Tier Prize - A prize of $30.00, $60.00, $100, or $200.

I. High-Tier Prize - A prize of $1,000.

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 (1029), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1029-0000001-001.

L. Pac - A pack of "QUICK 7'S" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

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 "QUICK 7'S" Instant Game No. 1029 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 "QUICK 7'S" Instant Game is determined once the latex on the ticket is scratched off to expose 12 (twelve) Play Symbols. If a player reveals a "7" symbol in the play area, the player wins the prize shown below it. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 12 (twelve) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code, and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 12 (twelve) 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 12 (twelve) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 12 (twelve) 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 un-

played 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 prize symbols on a ticket.

C. No duplicate non-winning play symbols on a ticket.

D. Non-winning prize symbols will never be the same as a winning prize symbol.

E. The top prize will appear on every ticket unless otherwise restricted by the prize structure.

F. Non-winning play symbols will never appear with the same prize symbol (i.e., 5 and $5).

2.3 Procedure for Claiming Prizes.

A. To claim a "QUICK 7'S" Instant Game prize of $1.00, $2.00, $3.00, $4.00, $5.00, $6.00, $10.00, $20.00, $30.00, $60.00, $100, or $200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid and upon presentation of proper identification, if appropriate, 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 $30.00, $60.00, $100, or $200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "QUICK 7'S" Instant Game prize of $1,000, 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 "QUICK 7'S" 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 "QUICK 7'S" 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 "QUICK 7'S" 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 10,080,000 tickets in the Instant Game No. 1029. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 1029 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	806,400	12.50
$2	940,800	10.71
$3	100,800	100.00
$4	67,200	150.00
$5	67,200	150.00
$6	67,200	150.00
$10	33,600	300.00
$20	33,600	300.00
$30	6,720	1,500.00
$60	4,620	2,181.82
$100	1,260	8,000.00
$200	1,134	8,888.89
$1,000	210	48,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.73. 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. 1029 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. 1029; 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-200705140
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: October 25, 2007

♦ ♦ ♦

Instant Game Number 1030 "Strike It Rich"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1030 is "STRIKE IT RICH". The play style is "key number match with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1030 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 1030.

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, $5.00, $10.00, $15.00, $20.00, $25.00, $50.00, $100, $500, $1,000, and $50,000.

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. 1030 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
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
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$25.00	TWY FIV
$50.00	FIFTY

$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU
$50,000	50 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 1030 - 1.2E

CODE	PRIZE
FIV	$5.00
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 $5.00, $10.00, $15.00, or $20.00.

H. Mid-Tier Prize - A prize of $100 or $500.

I. High-Tier Prize - A prize of $1,000, $5,000, or $50,000.

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 (1030), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1030-0000001-001.

L. Pack - A pack of "STRIKE IT RICH" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075, while the other fold will show the back of ticket 001 and front of 075.

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 "STRIKE IT RICH" Instant Game No. 1030 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 "STRIKE IT RICH" Instant Game is determined once the latex on the ticket is scratched off to expose 48 (forty-eight) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any WINNING NUMBER play symbol, the player wins the PRIZE shown for that number. If a player matches any of YOUR NUMBERS play symbols to any STRIKE IT RICH NUMBER play symbol, the player wins DOUBLE the PRIZE shown for that number. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 48 (forty-eight) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified; and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code, and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut and have exactly 48 (forty-eight) 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 48 (forty-eight) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 48 (forty-eight) 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. The top prize will appear on every ticket unless otherwise restricted.

C. No duplicate non-winning YOUR NUMBERS play symbols.

D. No non-winning prize symbol will match a winning prize symbol in this game.

E. No four or more matching non-winning prize symbols.

F. No duplicate WINNING NUMBERS play symbols.

G. No duplicate STRIKE IT RICH NUMBER play symbols.

H. No prize amount in a non-winning spot will correspond with the YOUR NUMBER play symbol (i.e., 20 and $20).

I. A YOUR NUMBER play symbol will match to a STRIKE IT RICH NUMBER play symbol only as dictated by the prize structure.

J. No WINNING NUMBER will match a STRIKE IT RICH NUMBER play symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "STRIKE IT RICH" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $100, 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, if appropriate, 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, 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 "STRIKE IT RICH" Instant Game prize of $1,000, $5,000, or $50,000, 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 "STRIKE IT RICH" 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 "STRIKE IT RICH" 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 "STRIKE IT RICH" 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 6,000,000 tickets in the Instant Game No. 1030. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 1030 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	880,000	6.82
$10	400,000	15.00
$15	160,000	37.50
$20	140,000	42.86
$50	80,000	75.00
$100	19,450	308.48
$500	550	10,909.09
$1,000	150	40,000.00
$5,000	26	230,769.23
$50,000	6	1,000,000.00

*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 3.57. 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. 1030 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. 1030; 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-200705142
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: October 25, 2007

♦ ♦ ♦

Notice of Public Hearing

A public hearing to receive public comments regarding proposed new rules 16 TAC §402.500, relating to General Records Requirements, §402.506, relating to Disbursement Records Requirements, and §402.511, relating to Required Inventory Records, will be held on Tuesday, November 13, 2007, at 10:00 a.m. at the Texas Lottery Commission, Commission Auditorium, First Floor, 611 E. Sixth Street, Austin, Texas 78701. Persons requiring any accommodation for a disability should notify Michelle Guerrero, Executive Assistant to the General Counsel, Texas Lottery Commission at (512) 344-5113 at least 72 hours prior to the public hearing.

TRD-200705156
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: October 26, 2007

♦ ♦ ♦

Public Utility Commission of Texas

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 October 29, 2007, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of AP Electric, LLC for Retail Electric Provider (REP) Certification, Docket Number 34959 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 November 16, 2007. 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 34959.

TRD-200705236
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 30, 2007

♦ ♦ ♦

Notice of Application for Amendment to Certificated Service Area Boundary

Notice is given to the public of an application filed on October 24, 2007, with the Public Utility Commission of Texas for an amendment to certificated service area boundaries in Collin County, Texas.

Docket Style and Number: Application of AT&T Texas to amend a Certificate of Convenience and Necessity for a Minor Boundary Amendment between the McKinney and Frisco Exchanges. Docket Number 34942.

The Application: The minor boundary amendment is being filed to realign the service area boundaries of the McKinney and Frisco exchanges and to correct a posting error to the McKinney and Allen tariff maps previously approved.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by November 16, 2007, 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 34942.

TRD-200705235
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 30, 2007

♦ ♦ ♦

Notice of Application for Amendment to Certificated Service Area Boundary

Notice is given to the public of an application filed on October 25, 2007, with the Public Utility Commission of Texas for an amendment to a certificated service area boundary in Scurry County, Texas.

Docket Style and Number: Application of AT&T Texas to Amend a Certificate of Convenience and Necessity for a Minor Boundary Amendment Between the Colorado City and Snyder Exchanges. Docket Number 34952.

The Application: The minor boundary amendment is being filed to transfer a small portion of the serving area from the Snyder exchange to the Colorado City exchange of AT&T. This amendment will allow AT&T to provide DS1 service to a customer more economically due to the accessibility of existing cables in the Colorado City area.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by November 16, 2007, 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) at 1-800-735-2989. All comments should reference Docket Number 34952.

TRD-200705240

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 30, 2007

♦ ♦ ♦

Notice of Application for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on October 29, 2007, for waiver of denial by the Pooling Administrator (PA) of 1stel, Inc.'s request for a 1,000 number block for Alvarado, Texas.

Docket Title and Number: Petition of 1stel, Inc. for Waiver of Denial of Numbering Resources; Docket Number 34957.

The Application: 1stel, Inc. submitted an application to the PA for a 1,000 number block for Alvarado, Texas in accordance with the current guidelines. The PA denied the request because 1stel, Inc. did not meet the month-to-exhaust established by the Federal Communications Commission.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than November 14, 2007. 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 34957.

TRD-200705237
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 30, 2007

♦ ♦ ♦

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 October 24, 2007, 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 November 2, 2007.

Docket Title and Number: Application of Consolidated Communications of Fort Bend (CCFB) d/b/a Consolidated Communications for Approval of LRIC Study for Decrease in Brookshire Exchange Business Trunk EMS Rates Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 34938.

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 34938. Written comments or recommendations should be filed no later than forty-five (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 34938.

TRD-200705181
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 29, 2007

♦ ♦ ♦

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 October 24, 2007, 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 November 2, 2007.

Docket Title and Number: Application of Consolidated Communications of Fort Bend (CCFB) d/b/a Consolidated Communications for Approval of LRIC Study for Changes/Repricing in Term Rates for PRI ISDN Service, Elimination of Renewal Service Terms, and Grandfathering Existing Terms Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 34939.

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 34939. Written comments or recommendations should be filed no later than forty-five (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 34939.

TRD-200705180
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 29, 2007

♦ ♦ ♦

Notice of Intent to Implement Minor Rate Changes Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of South Plains Telephone Cooperative, Inc. (South Plains Telephone) application filed with the Public Utility Commission of Texas (commission) on October 25, 2007, for approval of a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: South Plains Telephone Cooperative, Inc. Statement of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171; Tariff Control Number 34949.

The Application: South Plains Telephone Cooperative, Inc. filed an application to change the rates for Directory Assistance Service for residence and business customers in its Member Services Tariff and Long Distance Message Telecommunications Service Tariff. South Plains Telephone also seeks to reduce the monthly call allowance from three free calls to two free calls to Directory Assistance and remove the alternate billing charges. The proposed effective date for the proposed rate changes is February 1, 2008. The estimated annual revenue increase recognized by South Plains Telephone is $15,923 or less than 5% of South Plains Telephone's gross annual intrastate revenues. South Plains Telephone has 4,804 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by the lesser of 5% or 1,500 of the affected local service customers to which this application applies by December 28, 2007, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by December 28, 2007. Requests to intervene should be mailed to the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 34949.

TRD-200705203
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 29, 2007

♦ ♦ ♦

Notice of Petition for Expanded Local Calling Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on September 18, 2007, for expanded local calling service (ELCS), pursuant to Chapter 55, Subchapter C of the Public Utility Regulatory Act (PURA).

Project Title and Number: Petition of the Miller Exchange for Expanded Local Calling Service; Project Number 34761.

The petitioners in the Millet exchange request ELCS to the exchanges of Artesia Wells, Big Wells, Cotulla, Fowlerton, and Pearsall.

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 November 22, 2007. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2789. All comments should reference Project Number 34761.

TRD-200705211
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 29, 2007

♦ ♦ ♦

Railroad Commission of Texas

Adoption of Changes to Certain Gas Services Division, License and Permit Section Forms

The Railroad Commission of Texas gives notice that it has adopted amendments to certain Gas Services Division, License and Permit Section forms as part of the adoption of amendments to 16 TAC §§9.26, 13.62, and 14.2031, all entitled Insurance Requirements, published in this issue of the *Texas Register*. The amendments to all three rules delete requirements for endorsements and add the Acord™ form as acceptable for use with the Commission. The forms are LPG/CNG/LNG Form 996A/1996A/2996A; LPG/CNG/LNG 997A/1997A/2997A; and LPG/CNG/LNG Form 998A/1998A/2998A.

1. LPG/CNG/LNG Form 996A/1996A/2996A, Certificate of Insurance Workers' Compensation and Employers Liability or Alternative Accident/Health Insurance

RAILROAD COMMISSION OF TEXAS
Gas Services Division
License & Permit Section
Certificate of Insurance

Please indicate type of fuel
LPG__ CNG__ LNG__

Workers' Compensation and Employers Liability or Alternative Accident/Health Insurance

_____
(Name of Insurance Company; TDI No.; and NAIC No.)

Located at: _____
(Home Office Address of Insurance Company)

certifies that insurance coverage as indicated below is being provided to:

_____
(Licensee's Name as it appears on the license) (License No.)

_____
(Mailing Address of Licensee)

CHECK ONE:

_____Workers' Compensation, including Employer's Liability Insurance, is being provided by the insurance company named above in the amount specified in §9.26(a), Table 1, of the LP Gas Safety Rules (16 Tex. Admin. Code Chapter 9); §13.62(a), Table 1, of the Regulations for Compressed Natural Gas (CNG) (16 Tex. Admin. Code Chapter 13); or §14.2031(a), Table 1, of the Regulations for Liquefied Natural Gas (LNG) (16 Tex. Admin. Code Chapter 14).

_____Workers' Compensation Alternative Accident/Health Insurance is being provided by the insurance company named above in the amount specified in §9.26(a), Table 1, of the LP Gas Safety Rules (16 Tex. Admin. Code Chapter 9); §13.62(a), Table 1, of the Regulations for Compressed Natural Gas (CNG) (16 Tex. Admin. Code Chapter 13); or §14.2031(a), Table 1, of the Regulations for Liquefied Natural Gas (LNG) (16 Tex. Admin. Code Chapter 14).

Policy Number _____ is effective from _____ to _____
(Start Date) (End Date)

I declare that I am authorized to make the representations on behalf of the Insurance Company named above, and that the statements are true, correct, and complete to the best of my knowledge.

Signed at _____ on this _____ day of _____, 20___.
(County and State)

_____
Printed Name of Insurance Company

_____
Printed Name of Insurance Company's Authorized Representative

_____
Signature of Insurance Company's Authorized Representative

Return to:
Railroad Commission of Texas
Gas Services Division
License and Permit Section
PO Box 12967
Austin, TX 78711-2967

Website: www.rrc.state.tx.us
Phone (512) 463-6931
Fax (512) 463-8111

Revised August 2007

LPG Form 996A/CNG Form 1996A/LNG Form 2996A

2. LPG/CNG/LNG Form 997A/1997A/2997A, Certificate of Insurance Motor Vehicle, Bodily Injury, and Property Damage Liability

RAILROAD COMMISSION OF TEXAS

Gas Services Division
License & Permit Section
Certificate of Insurance
Motor Vehicle, Bodily Injury, and Property Damage Liability

Please indicate type of fuel

LPG___ CNG___ LNG___

_____
(Name of Insurance Company; TDI No.; and NAIC No.)

Located at: _____
(Home Office Address of Insurance Company)

certifies that insurance coverage as indicated below is being provided to:

_____
(Licensee's Name as it appears on the license) (License No.)

_____
(Mailing Address of Licensee)

Liability insurance is being provided by the insurance company named above in the amount specified in §9.26(a), Table 1, of the LP Gas Safety Rules (16 Tex. Admin. Code Chapter 9); §13.62(a), Table 1, of the Regulations for Compressed Natural Gas (CNG) (16 Tex. Admin. Code Chapter 13); or §14.2031(a), Table 1, of the Regulations for Liquefied Natural Gas (LNG) (16 Tex. Admin. Code Chapter 14).

Policy Number _____ is effective from _____ to _____
(Start Date) (End Date)

I declare that I am authorized to make the representations on behalf of the Insurance Company named above, and that the statements are true, correct, and complete to the best of my knowledge.

Signed at _____ on this _____ day of _____, 20___.
(County and State)

_____
Printed Name of Insurance Company

_____
Printed Name of Insurance Company's Authorized Representative

_____
Signature of Insurance Company's Authorized Representative

Return to:
Railroad Commission of Texas
Gas Services Division
License and Permit Section
PO Box 12967
Austin, TX 78711-2967

Website: www.rrc.state.tx.us
Phone (512) 463-6931
Fax (512) 463-8111

Revised August 2007

LPG 997A/CNG 1997A/LNG 2997A

3. LPG/CNG/LNG Form 998A/1998A/2998A, Certificate of Insurance General Liability

RAILROAD COMMISSION OF TEXAS

Gas Services Division
License & Permit Section

CERTIFICATE OF INSURANCE
GENERAL LIABILITY

Please indicate type of fuel

LPG___ CNG___ LNG___

_____
(Name of Insurance Company; TDI No.; and NAIC No.)

Located at: _____
(Home Office Address of Insurance Company)

certifies that insurance coverage as indicated below is being provided to:

_____
(Licensee's Name as it appears on the license) (License No.)

_____
(Mailing Address of Licensee)

General liability insurance is being provided by the insurance company named above in the amount specified in §9.26(a), Table 1, of the LP-Gas Safety Rules (Tex. Admin. Code Chapter 9); §13.62(a), Table 1, of the Regulations for Compressed Natural Gas (CNG) (16 Tex. Admin. Code Chapter 13); or §14.2031(a), Table 1, of the Regulations for Liquefied Natural Gas (LNG) (16 Tex. Admin. Code Chapter 14). **CHECK ONE:**

_____Amount stated in the policy, but not less than $25,000 per occurrence, with a $50,000 policy aggregate (LPG License Categories: D, F, I, G, L, M, N, K, P; CNG License Categories: 2, 5, 6; LNG License Categories: 30, 40, 45).

_____Amount stated in the policy, but not less than $300,000 per occurrence, with a $300,000 policy aggregate (LPG License Categories H and J).

_____Amount stated in the policy, but not less than $300,000 per occurrence, with a $300,000 policy aggregate; including completed operations and products liability coverage with a $300,000 policy aggregate (LPG License Categories: A, B, C, E, O; CNG License Categories: 1, 3, 4; LNG License Categories: 15, 20, 25, 35, 50).

Policy Number _____ is effective from _____ to _____.
(Start Date) (End Date)

Signed at _____ this _____ day of _____, 20_____.
(County and State)

_____
Printed Name of Insurance Company

_____
Printed Name of Insurance Company's Authorized Representative

_____
Signature of Insurance Company's Authorized Representative

Return to:
Railroad Commission of Texas
License and Permit Section
PO Box 12967
Austin, TX 78711-2967

Website: www.rrc.state.tx.us
Phone (512) 463-6931
Fax (512) 463-8111

Revised August 2007

LPG 998A/CNG 1998A/LNG 2998A

Issued in Austin, Texas, on October 23, 2007.

TRD-200705141
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Filed: October 25, 2007

♦ ♦ ♦

Texas Department of Transportation

Public Hearing - US 281

Public hearing for proposed transfer of a portion of US 281 in northern Bexar County to the Alamo Regional Mobility Authority.

The Texas Department of Transportation (department) will conduct a public hearing on Monday, December 10, 2007 at 6:30 p.m., at Barbara Bush Middle School, 1500 Evans Road, San Antonio, Texas 78258 to receive comments from interested persons concerning the proposed transfer of a portion of US 281 in northern Bexar County to the Alamo Regional Mobility Authority (authority), and removal of that portion from the state highway system, to be utilized by the authority under Transportation Code, Chapter 370 for the design, financing, construction, operation, and maintenance of a turnpike project. The limits of the proposed transfer and removal extend from 0.15 miles north of Loop 1604, north, to the Comal County Line, a distance of approximately 7.82 miles. The proposed transfer is authorized by Transportation Code, §228.151. Criteria and guidelines for the approval of the proposed transfer have been adopted by rule by the Texas Transportation Commission (commission) in 43 Texas Administrative Code (TAC) §27.13.

Transportation Code, §228.151 authorizes the department to lease, sell, or transfer in another manner a toll project or system, including a non-tolled state highway, that is part of the state highway system to a governmental entity that has the authority to operate a tolled highway. Prior to a lease, sale, or transfer, a public hearing is required in each county in which the project is located. The lease, sale, or transfer is subject to approval by the commission and the governor as being in the best interests of the state and the entity receiving the project or system.

Criteria and guidelines in 43 TAC §27.13 specify that the commission may, after considering public comments received, approve the transfer of a toll project to the authority, if:

(1) the authority agrees, through a written commitment, to:

(A) assume all liability and responsibility for the safe and effective maintenance and operation of the highway on its transfer;

(B) assume all liability and responsibility for existing and future environmental permits, issues, and commitments, including obtaining all environmental permits and approvals and for compliance with all federal and state environmental laws, regulations, and policies applicable to the highway and related improvements;

(C) provide for public involvement and to conduct a study of the social and environmental impact of all proposed improvements to the toll project; and

(D) if applicable, comply with the design and construction standards of 43 TAC §27.15 when developing projects on the transferred highway; and

(2) the commission finds that the transfer:

(A) is in the best interests of the state;

(B) is in the best interests of the entity receiving the project; and

(C) will not adversely affect:

(i) the financial viability of the project; or

(ii) regional mobility.

The commission may not approve the transfer unless the governor approves the transfer as being in the best interests of the state and the entity receiving the project.

A metes and bounds description, maps/drawings, indicating the proposed portion of US 281 to be transferred are on file and available for public inspection by contacting Judy Friesenhahn, P.E., or Jesse Hayes, Texas Department of Transportation, Transportation Planning Office, 4615 NW Loop 410, San Antonio, Texas 78229, telephone (210) 615-1110, OR Frank Holzmann, P.E., or Bill Chancellor, Texas Department of Transportation, San Antonio Mobility Initiative Office, 16620 US 281 North, San Antonio, Texas 78232, telephone (210) 403-4300.

All interested citizens are invited to attend this public hearing, which will be conducted in accordance with the procedures specified in 43 TAC §1.5. Speakers will be recognized in the general order they are registered. Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive comment. Groups, organizations, or associations are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible. Presentations must remain pertinent to the issue being discussed. A person may not assign a portion of his or her time to another speaker. A person who disrupts a public hearing must leave the hearing room if ordered to do so by the presiding officer.

Persons with disabilities who plan to attend the hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Melissa Bernal, Texas Department of Transportation, Transportation Planning Office, 4615 NW Loop 410, San Antonio, Texas 78229, telephone (210) 615-5811 at least two working days prior to the hearing so that appropriate arrangements can be made.

Written comments may be submitted to Julia Brown, P.E., Deputy District Engineer, San Antonio District, Texas Department of Transportation, P.O. Box 29928, San Antonio, Texas 78229. The deadline for submitting written comments is 5:00 p.m. on Thursday, December 20, 2007.

TRD-200705263
Bob Jackson
General Counsel
Texas Department of Transportation
Filed: October 31, 2007

♦ ♦ ♦

The University of Texas System

Invitation for Consultants to Provide Offers of Consulting Services

The University of Texas at Dallas

In accordance with the provisions of the *Texas Government Code*, Chapter 2254, The University of Texas at Dallas (the "University") is currently implementing an aggressive strategic plan to grow the university in size, number of faculty, number of students, research

funding, endowment, physical facilities and other capital equipment and improvements. To accomplish these goals, substantial private funding will be required.

The University is looking for a Proposer to provide the following services:

1. Guide and advise the Vice President of Development and her staff in analyzing community prospects to determine a comprehensive donor base and its potential. This will involve identifying and analyzing non-alumni donors from the Dallas Fort Worth Metroplex. This analytical information, combined with alumni analytics already performed will indicate the capacity of the institution's donor base and the ability for the University to reach the specified goals.

2. The consultant would perform a feasibility study customized to the institution's urban university setting and would determine the attitudes about the institution, how top prospects would view a campaign and at what level they would participate. This is an important step in evaluating and planning for a successful campaign. The feasibility study will reveal how best to move forward; it may also reveal a need to modify expectations or extend time lines for realistically reaching the aggressive fund raising goals.

3. The Consultant firm will also play an important role in training and communicating with the volunteer leaders for such an effort. Outside expertise is not only vital for creating objective, realistic roles for the volunteers, but also it provides credibility to motivate volunteers to take action and be accountable for certain responsibilities within the campaign.

4. Once a capital campaign is undertaken the importance of periodic outside consulting cannot be neglected. Again, due to the distinctive features of raising significant private funds in the urban research university scenario, there will be new challenges that arise in the course of the campaign. These challenges can be brought about by the mobility of the University's community, the need to sustain long-term volunteer leadership with principal gift capacity and the need to have ongoing leadership gifts from non-alumni donors.

The U.T. Dallas President, Dr. David Daniel, has made a finding that the Consulting Services are necessary. While the University has a substantial need for the Consulting Services, the University does not currently have staff with adequate expertise or experience in theses areas of Consulting Services, and the University cannot obtain such Consulting Services through a contract with another state governmental entity.

The award for services will be made by the following best value criteria:

(1) demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services; and

(2) if other considerations are equal, give preference to a consultant whose principal place of business is in the state or who will manage the consulting contract wholly from an office in the state.

An Invitation for Offers (IFO) form (see link below) should be used by any firm responding to this IFO. Link to IFO doc: http://www.utdallas.edu/utdgeneral/business/procure/Development-FundraisingIFO.doc

The proposal submission deadline will be November 26, 2007

The individual to be contacted with an offer to provide such consulting services is:

Peter H. Bond, CPCP, C.P.M.

Asst Vice President for Procurement Management

The University of Texas at Dallas

800 W Campbell Road

Richardson, TX 75080-3021

(972) 883-2301

(972) 883-2348 (fax)

Email: pbond@utdallas.edu

TRD-200705216
Francie A. Frederick
General Counsel to the Board
The University of Texas System
Filed: October 29, 2007

♦ ♦ ♦

Texas Water Development Board

Applications Received

Pursuant to the Texas Water Code, §6.195, the Texas Water Development Board provides notice of the following applications received by the Board:

City of Los Fresnos, 5300 South Collins Street, Arlington, TX 76018, received May 31, 2007, application for financial assistance in the amount of $4,975,000 from the Clean Water State Revolving Fund.

City of La Joya, 3510 N. Abram Rd, Palm View, TX 78572, received June 1, 2007, application for financial assistance in the amount of $1,851,000 from the Drinking Water State Revolving Fund.

Harris County Water Control and Improvement District No. 89, 5075 Westheimer, Suite 1175, Houston, TX 77056, received June 6, 2007, application for financial assistance in the amount of $7,565,000 from the Clean Water State Revolving Fund.

Energy Laboratories, 2393 Salt Creek Hwy, Casper, WY 82601, received July 2, 2007, application for financial assistance in the amount of $384,000 from the Regional and Planning Fund and Drinking Water State Revolving Fund.

Anacon, Inc, 730 FM 1959, Houston, TX 77034, received July 30, 2007, application for financial assistance in the amount of $384,000 from the Regional and Planning Fund and Drinking Water State Revolving Fund.

Lower Colorado River Authority Environmental Laboratory Services, 3505 Montopolis Drive, Austin, TX 78744, received July 27, 2007, application for financial assistance in the amount of $384,000 from the Regional and Planning Fund and Drinking Water State Revolving Fund.

TRD-200705207
Ingrid K. Hansen
Acting General Counsel
Texas Water Development Board
Filed: October 29, 2007

♦ ♦ ♦

Request for Proposals for Brackish Groundwater Desalination Demonstration Projects

The Texas Water Development Board (TWDB) invites interested parties to submit proposals for brackish groundwater desalination demonstration projects.

Goals:

To provide tangible examples of the use of water desalination technologies and concentrate management strategies that can serve as replicable

models for implementing small scale brackish groundwater desalination projects (less than 5 million gallons per day), showcase technological advances and/or promising strategies to increase the efficiency of waste desalination and concentrate management processes, and assist with the training of operators of desalination facilities.

Eligible expenses include facility planning, feasibility studies, pilot testing, and plant design or construction. All proposals should include a procedure to document and broadcast the project development and its results as an educational activity for others to learn and benefit from.

Background:

In 2003, the TWDB estimated that there was about 2.7 billion acre-feet of brackish groundwater[1] in the state. To accelerate accessing this valuable resource, the TWDB launched the Brackish Groundwater Desalination Initiative. In 2005, the 79th Texas Legislature appropriated funds to the TWDB to implement brackish groundwater desalination demonstration projects. To-date, the TWDB has funded seven demonstration projects for a total awarded amount of $1,472,000 in grants, an average grant per project of approximately $210,000 each.

In 2007, the 80th Texas Legislature appropriated an additional $600,000 to the TWDB to continue and expand the state's efforts at developing new water supplies through brackish groundwater water desalination.

General Requirements:

Pre-Proposal

The pre-proposal is a voluntary step intended to facilitate the application process by providing interested parties an opportunity to receive feedback prior to investing their efforts in preparing a full application. **Full applications will be considered even if a pre-proposal was not provided.**

Five complete copies and one electronic reproducible copy of the pre-proposal should be delivered to the address below no later than 5:00 p.m. on December 28, 2007. Responses should be limited to no more than five, single 8 1/2 x 11 inch, numbered, single spaced pages printed on one side only; font size shall be no less than 12 point type; margins shall be no less than 3/4 inch around the perimeter of each page.

The pre-proposal should contain the following information:

1. Project concept

2. Key tasks

a. Description

b. Estimated cost

c. Share of the cost to be covered by applicant

1. Gantt chart describing the project's proposed time line for execution

2. Project Manager and his/her contact information.

Please submit pre-proposals to:

Brackish Groundwater Demonstration Projects [PRE-PROPOSALS]

David Carter, Agency Contract Administrator

Texas Water Development Board

P.O. Box 13231, Capitol Station

Austin, TX 78711-3231

TWDB staff will review all pre-proposals and will provide feedback individually via regular mail to all respondents no later than January 31, 2008.

Full Applications, Deadline, Review Criteria, and Contact Person for Additional Information:

Ten double-sided copies on recycled paper and one digital copy (CD) of a complete TWDB Research and Planning application for financial assistance including the required attachments must be filed with the Board prior to 5:00 p.m., February 29, 2008. Applications can be directed either in person to Mr. David Carter, Texas Water Development Board, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas or by mail to:

Brackish Groundwater Demonstration Projects [APPLICATIONS]

David Carter, Agency Contract Administrator

Texas Water Development Board

P.O. Box 13231, Capitol Station

Austin, TX 78711-3231

Staff will consider the following screening criteria in reviewing and ranking the applications:

A. Technical approach - 20 points

B. Potential Demonstration Value - 20 Points

C. Technical Qualifications of Key Personnel - 20 points

D. Cash and In-kind Contributions - 20 points

E. Proposed deliverables - 20 points

Requests for information relative to the Request for Proposals should be directed to Mr. Jorge Arroyo at (512) 475-3003, via email at jorge.arroyo@twdb.state.tx.us, or at the preceding address.

[1] LBG-Guyton, *Brackish Groundwater Manual for Texas Regional Water Planning Groups,* Texas Water Development Board, Austin, Texas, February 2003.

TRD-200705204
Robert Flores
Attorney
Texas Water Development Board
Filed: October 29, 2007

♦ ♦ ♦

Request for Statements of Qualifications for Water Research Study Priority Topic on Drought Management

The Texas Water Development Board (board) requests the submission of Statements of Qualifications (SOQs) from interested applicants leading to the possible award of a contract for state Fiscal Year 2007 to conduct water research on a research topic regarding drought management. The total amount of the grant awarded by the board shall not exceed $100,000 from the Research and Planning Fund. Rules governing the Research and Planning Fund (31 Texas Administrative Code, Chapter 355) 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," "Chapter 355,." and "Subchapter A." Guidelines for responding to the SOQ, which include an application form and detailed information on the research topic, will be available at the board's website at: http://www.twdb.state.tx.us/publications/requestforproposals/requestforproposals_index.asp, or will be provided upon request.

Description of the Research Objectives and Purpose

Statements of Qualifications are requested for the following priority research topic:

What is the role of drought management measures as water management strategies in the regional and State-wide water planning process?

To date, the regional water planning groups have not adopted any drought management measures as water management strategies in their Regional Water Plans. Drought management measures are the specific activities that, combined, make up drought contingency plans as identified in Texas Water Code §11.1272. During the public comment period on the 2006 Regional Water Plans and the 2007 State Water Plan, there were numerous comments that the plans did not adequately address the state requirements for drought management planning. This study is intended to examine and define the current and future potential role of drought management measures as water management strategies in the regional and statewide water supply planning process.

The primary questions the research should answer include:

1. Is it possible and appropriate to use drought management measures as water management strategies in regional water plans?

2. Why haven't Regional Water Planning Groups recommended drought contingency planning as a water management strategy?

3. What are the ranges of potential statewide water savings if various drought management measures, already contained in existing drought contingency plans, were recommended in regional plans and implemented?

4. What would need to change in order for Regional Water Planning Groups to recommend drought management measures as water management strategies in the regional water plans?

In answering the primary questions, the research will also evaluate and summarize:

a. The commonly used drought management measures contained in the currently required drought contingency plans including the varying types and timing of the associated implementation triggers.

b. Any difficulties associated with quantification of expected water savings from drought management measures.

c. The generally accepted differences between drought contingency plans and activities and water conservation plans and activities vs. the regional planning group members', water providers', and selected stakeholders' level of understanding regarding the differences between conservation measures and drought management measures.

d. Regional planning group members' understanding of when and for how long drought management measures contained in existing drought contingency plans would be in effect.

e. The major advantages and drawbacks of recommending drought management measures as water management strategies at the regional level.

f. The nature of any existing legal, institutional, management, and political impediments to recommending drought management measures as water management strategies in regional water plans.

g. Any changes/clarifications that may be needed in Water Code statutes, agency administrative rules, and local ordinances in order to facilitate recommending drought management measures as water management strategies in regional water plans.

h. In the regional water plans, whether or not drought management strategies can be evaluated under the same criteria as other water management strategies.

i. In the regional water plans, whether and/or how drought management measures could be utilized in combination with conservation and other strategies (i.e., after water conservation and before water supply strategies).

The research activities will include, but not be limited to:

* Reviewing regional water plans' treatment of drought management measures.

* Performing interviews and surveys of regional water planning group members, water providers/managers, and other selected stakeholders.

* Reviewing existing drought contingency plans and estimating, statewide, the potential water savings from implementing the associated drought management measures.

Regions H and L have also identified the need to better understand and quantify the potential for drought management strategies within their regions during this current, third funding cycle for regional water planning. The results of this effort by Regions H and L should be taken into account and incorporated, where appropriate, into the results of this priority research topic.

Description of Applicant Criteria

The applicant should: (1) demonstrate prior experience in the priority research topic; (2) be able to review, research, analyze, evaluate, and interpret data and research findings; and (3) have excellent oral presentation and writing abilities. An estimate of the total cost and a basic budget for the study is requested. This estimate is to be used by the board for an indication of total grant funding requested, will not be considered as a bid for the study, and will not be used in the evaluation process when selecting applications for consideration of approval for the research proposed. The board reserves the right to not accept any or all submissions based on availability of funding and its evaluation of the qualifications as submitted.

If the applicant is short-listed, the applicant should be prepared to make an oral presentation to board staff. The scope of work, schedule, and contract amount will be negotiated after the board selects the most qualified applicant. Failure to reach a negotiated contract may result in subsequent negotiations with the next most-qualified applicant; however, a negotiation will not occur with applicants who are determined by the board to be unqualified or otherwise unsuited to perform the requested research. Applicants selected to conduct the research may be required to present the results of their research at one or more of the board's monthly public meetings.

Deadline for Submittal, Review Criteria and Contact Person for Additional Information

Historically Underutilized Businesses (HUBs) are encouraged to submit Statements of Qualifications and/or participate as subcontractors in the water research program. As instructed at Texas Government Code §2161.252 and Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter B, §20.14, if the anticipated cost of the study is to exceed $100,000, the applicant must complete a HUB Subcontracting Plan according to: http://www.tbpc.state.tx.us/communities/procurement/prog/hub/hub-subcontracting-plan.

All applicants must obtain the board's guidelines for responding to the Statements of Qualifications. The guidelines are available at http://www.twdb.state.tx.us/publications/requestforproposals/requestforproposals_index.asp.

Ten double-sided, double-spaced copies of a completed Statement of Qualifications must be filed with the board prior to 5:00 p.m., December 14, 2007. Respondents to this request shall limit their Statement of

Qualifications to the size previously mentioned, excluding the resumes of the project team members.

Statements of Qualifications can be directed either in person to Mr. David Carter, Texas Water Development Board, Stephen F. Austin Building, Room 513-E, 1700 North Congress Avenue, Austin, Texas; or by mail to Mr. David Carter, Texas Water Development Board, P.O. Box 13231--Capitol Station, Austin, Texas 78711-3231.

Requests for information and questions relating to the Statements of Qualifications should be directed to Mr. Matt Nelson at the preceding address or by calling (512) 936-3550, or by e-mail to: matt.nelson@twdb.state.tx.us.

TRD-200705205
Robert Flores
Attorney
Texas Water Development Board
Filed: October 29, 2007

♦ ♦ ♦

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).